

FATCA

Automatic Exchange of Information Bank Deposit Interest

In December 2023, the IRS released its periodically updated Revenue Procedure (Rev. Proc. 2023-36) which sets out the jurisdictions that the IRS determines to be “appropriate” to receive automatic exchange of information with respect to bank deposit interest of \$10.00 or more paid to accounts held by non-resident individuals with US banking institutions, reportable on IRS Form 1042-S. The Revenue Procedure is effective with respect to bank deposit interest paid on or after January 1, 2024.

The Revenue Procedure is comprised of 2 lists. The first list appears in Section 3 of the Revenue Procedure and identifies 95 Jurisdictions which respect to which the United States has an agreement for the automatic exchange of information, such as a Double Tax Treaty (DTT) or Tax Information Exchange Agreement (TIEA). The second list appears in Section 4 of the Revenue Procedure, is far shorter, and identifies 53 jurisdictions that the US Treasury and the IRS have determined to be “appropriate” to receive automatic exchange of information with respect to bank deposit interest. Note that under the Regulations “the IRS will not exchange information with another jurisdiction, even if an information exchange agreement is in effect, if there are concerns about confidentiality, safeguarding of data exchanged, the use of the information, or other factors that would make the exchange of information inappropriate.”

The 2023 Revenue Procedure updated and amended the 2022 Revenue Procedure (Rev. Proc. 2022-35), and added Ecuador under Section 3 as a jurisdiction with respect to which the United States has a DTT or TIEA, and added Argentina and Kazakhstan under Section 4 as jurisdictions that the US Treasury and the IRS determined to be “appropriate” to receive information automatically on bank deposit interest.

The standard utilized by the US Treasury and the IRS in determining whether exchange is “appropriate” with a particular jurisdiction goes beyond confidentiality and data safeguards, and includes “other factors that would make the exchange of information inappropriate.” This standard reflects a measure of realpolitik, and no doubt includes considerations related to the type of political systems in effect in the particular jurisdictions, and whether or not taxpayers have meaningful legal protections, etc.

By contrast, the OECD’s Common Reporting Standard (CRS) appears more restrictive and requires Participating Jurisdictions to exchange information with all “Interested Appropriate Partners,” defined as jurisdictions that meet the confidentiality and data safeguard requirements. The OECD should take note of the US approach and authorize a similar approach.