The Foreign Account Tax Compliance Act: What You Need to Know

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Background

International Cooperation

Why now?

- Today's increasingly borderless world.
- Growth in international transactions by entities (corporations, trusts and other enterprises) and individuals.
- Increased complexity of transactions and tax laws.
- Recent international tax evasion scandals put spotlight on improving international compliance; zero political tolerance.
- Economic crisis: ensuring compliance by all taxpayers and collecting all tax legally due essential.

International Cooperation

Three Key Developments

- 2009 saw dramatic expansion of exchange of information networks particularly with offshore jurisdictions.
- Administrations are moving beyond standard forms of exchange of information (on request, spontaneous, automatic) to other types (*e.g.,* sharing of information about types of tax planning schemes).
- OECD working with financial sector to combine treaty relief with compliance enhancement (TRACE project).

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Foreign Account Tax Compliance Act

Introduction

- The Hiring Incentives to Restore Employment (HIRE) Act was passed by the Congress on March 17 and signed into law by the President on March 18.
- Subtitle A of Title V of the HIRE Act, entitled Foreign Account Tax Compliance (FATC), made a number of changes to U.S. tax law to improve tax compliance, including changes with respect to foreign accounts and cross-border transactions.
- Earlier versions of the provisions included in Title V of the HIRE Act originally appeared as legislative proposals in the Foreign Account Tax Compliance Act (FATCA), a bill introduced in Congress in 2009, and therefore are sometimes also referred to collectively as FATCA.

Introduction

- Section 501 of the HIRE Act (new Chapter 4 of the Code) is sometimes described as the "centerpiece" of the FATCA provisions of the Act.
- It provides for a new withholding regime aimed at expanding reporting on foreign accounts owned by certain U.S. persons and disclosure of U.S. owners of certain foreign entities.

Other FATCA Provisions

- In addition to new Chapter 4, FATCA includes, among other things, provisions that:
  - Repeal certain foreign exceptions to the registered bond requirements.
  - Treat certain substitute dividends and dividend equivalent payments received by foreign persons as U.S. source dividends for withholding tax purposes.
  - Require U.S. individuals to disclose to the IRS on their tax returns their foreign financial assets and foreign financial accounts.
  - Increase penalties on U.S. persons who under-report income associated with foreign financial assets that they do not disclose to the IRS.
  - Extend the statute of limitations for taxpayers who do not comply with foreign financial asset disclosure obligations or significantly under-report income associated with foreign assets.
  - Modify certain rules in respect of foreign trusts.
- This presentation will not cover the other provisions of FATCA.

Presentation

- This presentation will provide background with respect to the law and events surrounding the enactment of FATCA and summarize Chapter 4.
- The Addendum contains comments on the OECD Treaty Relief and Compliance Enhancement (TRACE) Project, formerly knows as the Collective Investment Vehicles project.

Current Law

Current Law FDAP Income

- Payments of U.S.-source "fixed or determinable annual or periodical" ("FDAP") income, including interest, dividends, and similar types of investment income, that are made to foreign persons, are subject to U.S. withholding tax at a 30 percent rate, unless the withholding agent can establish that the beneficial owner of the amount is eligible for an exemption from withholding, or a reduced rate of withholding, under a bilateral income tax treaty.
- The term "FDAP income" includes all items of gross income, except gains on sales of property (including market discount on bonds and option premiums).
  - Note: Although insurance premiums are technically FDAP income, they are exempt from withholding if the insurance contract is subject to the excise tax under section 4371.

Current Law Interest

- The principal statutory exemptions from the 30 percent withholding tax apply to interest on bank deposits, portfolio interest and capital gains.
- Since 1984, the United States has not imposed withholding tax on portfolio interest received by a nonresident individual or foreign corporation from sources within the United States.
- Portfolio interest includes, generally, any interest (including original issue discount) other than interest received by a 10 percent shareholder, certain contingent interest, interest received by a controlled foreign corporation from a related person and interest received by a bank on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of its trade or business.

Current Law Gains

- Gains from the sale or disposition of property are generally exempt from U.S. withholding taxation unless:
  - Effectively connected to U.S. trade or business, or attributable to a U.S. permanent establishment; or
  - Real estate related.
  - Other.

Current Law
Withholding Tax System

- The U.S. withholding tax rules are administered through a system of self-certification.
- A nonresident investor seeking to obtain withholding tax relief for U.S.-source investment income typically must provide a certification, on Internal Revenue Service ("IRS") Form W-8, to the withholding agent in order to establish foreign status and eligibility for an exemption or reduced rate. For example:
  - Form W-8BEN if nonresident investor is beneficial owner.
  - Form W-8IMY if non-resident investor is not the beneficial owner (*e.g.*, a nominee) along with a Form W-8BEN for each beneficial owner.
- Provision of the IRS Form W-8 also establishes an exemption from the rules that apply to many U.S. persons governing information reporting on IRS Form 1099 and backup withholding.

Current Law
The QI Program: Background

- The qualified intermediary ("QI") program: foreign intermediaries (*e.g.*, foreign financial institutions and foreign clearing organizations) assume responsibility for substantiating the status of the purported foreign investor (and collecting withholding tax under some circumstances).
- A QI is a foreign financial institution that has entered into a QI contract with the IRS.
  - IRS has published a model QI agreement that details the requirements of the QI program.
- A QI does not ordinarily pass on to U.S. payors or the IRS the name of its foreign customers.
- A QI certifies on behalf of its customers as to their eligibility for withholding tax relief and provides withholding rate pool information to the U.S. withholding agent as to the portion of each payment that qualifies for an exemption or reduced rate of withholding.

Current Law
The QI Program: KYC Rules

- A QI determines for itself a customer's eligibility for withholding tax relief.
- A QI relies on IRS forms provided by the customer or information from "know-your customer" ("KYC") rules imposed by local banking laws.
- If the IRS determines that a country's KYC rules are acceptable, a QI can rely on information obtained under those rules.
  - IRS website lists 60 jurisdictions whose KYC rules have been found acceptable.

Current Law The QI Program: Nominal vs. Beneficial Ownership

- A foreign account holder (*e.g.*, a trust or a nominee) that is not the beneficial owner of a payment must provide the QI with an IRS Form W-8IMY for itself, along with specific information about each beneficial owner to which the payment relates.
- A QI that has actual knowledge that an account holder is not the beneficial owner of a payment may not reduce the rate of withholding on that payment.
  - However, foreign corporations treated as “opaque” beneficial owners.
- If the account holder (or beneficial owner) to which the payment relates is a U.S. person, the account holder must provide the QI with an IRS Form W-9 or appropriate evidence that supports the account holder’s status as a U.S. person.
  - Such information must be provided to the IRS.
- Certain presumption rules must be applied if the QI cannot associate a payment with valid documentation from account holder.

Current Law
The QI Program: Enforcement

- Generally, an approved auditor conducts a periodic audit of the QI's compliance with the QI agreement.
- QIs have incentive to comply in order to obtain benefits of QI agreement:
  - No requirement to disclose customer identities to competitors in payment chain (*e.g.*, a QI does not have to reveal its clients to a withholding agent).
  - Ability to rely on documentary evidence to determine non-U.S. customer status, instead of collecting Form W-8.

Current Law The QI Program: Challenges/Deficiencies

- No requirement to look through a foreign corporation beneficially owned by U.S. person.
- Reporting on U.S. account holders limited to U.S. (and not) foreign source income.
- The ability for foreign financial institutions participating in QI regime to hold accounts of U.S. investors at non-participating affiliates.
- Bank secrecy rules.
- QI auditor has no obligation to specifically report identified fraud or illegal acts to IRS.
  - However, several changes proposed by IRS Announcement 2008-98.

Current Methods to Detect Non-Compliance

- Traditionally, the IRS and DOJ have utilized multiple methods to detect non-compliant taxpayers using offshore accounts or tax haven entities, as follows:
  - International collaboration through the exchange of information provisions of bilateral tax agreements and cooperative information agreements;
  - The QI program;
  - Criminal investigations in collaboration with the DOJ;
  - The whistleblower program through which the IRS receives many tips; and
  - The "John Doe" summons authority, which the IRS uses when it strongly suspects U.S. taxpayers are using offshore bank accounts to avoid paying taxes but does not know their identities.

Enforcing Reporting on Certain Foreign Accounts (Chapter 4 of the Code)

Reasons for Legislation

- The legislation is a direct result of the focus by the United States on combating offshore tax evasion and recouping much needed tax revenues.
- The legislation (and earlier versions) was proposed to remedy perceived deficiencies in the current methods used by the IRS and the U.S. Department of Justice ("DOJ") to identify U.S. persons who utilize foreign financial accounts or foreign entities and thereby provide more information to the IRS to enforce compliance.

Chapter 4 of the Code

- Chapter 4 of the Internal Revenue Code imposes new compliance burdens on foreign financial institutions and other foreign entities, requiring them to identify and disclose U.S. account holders and investors or be subject to a new 30 percent U.S. withholding tax under a new U.S. withholding tax regime on any payment of U.S. source investment income and proceeds from the sale of equity or debt instruments of U.S. issuers ("New U.S. Withholding Tax Regime").

Ultimate Objective

- The ultimate goal of Chapter 4 is for the United States to obtain information with respect to offshore accounts and investments beneficially owned by U.S. taxpayers, in an efficient and timely manner, rather than have the New U.S. Withholding Tax regime imposed.

Effective Date

- Payments made after December 31, 2012.
- Grandfathered Treatment of Outstanding Obligations.
  - Any payment under any obligation outstanding on date which is two years after date of enactment of the Act (March 18, 2010) or gross proceeds from disposition of such obligation.

IRS Authority to Promulgate Regulations

- During this interim period, the IRS, pursuant to a wide grant of regulatory authority, will draft regulations to implement the new provisions.
- In drafting its guidance, it is understood that the IRS will endeavor:
  - To construct a workable information reporting and withholding system that can be effectively implemented and utilized by foreign reporting entities;
  - To obtain information consistent with the purposes of the legislation; and
  - In a manner that will not discourage or disrupt foreign investment in U.S. capital markets.
- In Announcement 2010-22, the IRS has requested comments on future guidance concerning the interpretation and implementation of the new law.

Scope of Provisions

- In general, applies to "withholdable payments" made to:
  - Foreign financial institutions ("FFIs") (§ 1471) and
  - Other foreign entities ("Fes") (§ 1472).

  Unless:
  - FFI enters into agreement under which it identifies and reports on U.S. accounts, or another exception applies.
  - FE identifies substantial U.S. owners, FE certifies it does not have substantial U.S. owners, or another exception applies.

Withholdable Payments to Foreign Financial Institutions

- **Entities Covered**. Section 1471 applies to foreign financial institutions (FFIs) (except as otherwise provided by the Secretary; a financial institution organized under the laws of a U.S. possession is not an FFI).
- Except as otherwise provided by the Secretary, an FFI is any entity that is not a United States person and:
  - Accepts deposits in the ordinary course of a banking or similar business;
  - As a substantial portion of its business, holds financial assets for the account of others; or
  - Is engaged (or holds itself out to be engaged) primarily in the business of investing, reinvesting or trading in securities, partnership interests, commodities or other interests, including derivatives (**Foreign Investment Vehicle**).

Withholdable Payments to Foreign Financial Institutions

- **Accounts Subject to Reporting Requirements**. In order for an account to be subject to these rules, it must constitute a financial account that is held by one or more specified U.S. persons or U.S. owned foreign entities (a "U.S. Account").
  - **Financial Account**. This term, except as otherwise provided by the Secretary, means with respect to an FFI:
    - Any depository account maintained by the FFI;
    - Any custodial account maintained by the FFI; and
    - Any debt or equity interest in an FFI that is not regularly traded on an established securities market.
  - **Specified U.S. Person**. Generally a U.S. non-exempt recipient (individual, trust, partnership or estate) and a privately held U.S. corporation.
  - **U.S. Owned Foreign Entity**. A foreign entity that has **Substantial U.S. Owners**:
    - Corporation, partnership or trust where specified U.S. person owns a greater than 10-percent interest, directly or indirectly.
    - Foreign investment vehicles. 10 percent is reduced to 0 percent.

Withholdable Payments to Foreign Financial Institutions

- **Exceptions to U.S. Account:**
  - Unless the FFI elects not to have this exception apply, depository accounts are not treated as U.S. Accounts if each holder of the account is a natural person and the aggregate value of all depositary accounts held (in whole or in part), by such holder and maintained by the FFI does not exceed U.S. $ 50,000;
    - To the extent provided by regulations, the FFI and more than 50-percent controlled affiliates of the FFI, are treated as a single FFI for purposes of this exception.
  - Accounts held by another FFI that has entered into an agreement with the IRS; or
  - Accounts held by a person otherwise subject to information reporting requirements that the Secretary determines would make reporting with respect to U.S. Accounts duplicative.

Withholdable Payments to Foreign Financial Institutions

- **Withholdable Payment.** A Withholdable Payment, except as otherwise provided by the Secretary, means:
  - Any payment of interest (including any original issue discount), dividends, rents, salaries, wages, premiums, annuities, compensation, remunerations, emoluments and other fixed or determinable annual or periodical gains, profits and income from sources within the United States;
  - Interest paid on deposits by foreign branches of domestic banks (861(a)(1)(B) does not apply for this purpose); and
  - Gross proceeds from the sale or other disposition of property which can produce U.S. source dividends or interest.
- Rate of Withholding: 30 percent.
- Exceptions:
  - Effectively connected income.
  - To the extent provided in regulations, certain payments made with respect to short-term debt or short-term deposits (including gross proceeds), may be excluded.

Withholdable Payments to Foreign Financial Institutions

- **Passthru Payment.**
  - Definition: Any withholdable payment or other payment to the extent attributable to a withholdable payment.
  - Includes:
    - A withholdable payment made by an FFI to a Recalcitrant Account Holder.
    - A withholdable payment made by an FFI to another FFI which does not meet the requirements of Chapter 4 (**Non-Compliant FFI**).
    - A withholdable payment made to an FFI that has entered into an agreement with the IRS and which has in effect an election with respect to such payment (and meets such other requirements as the Secretary may provide).
      - In the case of a withholdable payment, the passthru payment is so much of the withholdable payment as is allocable to accounts held by Recalcitrant Account Holders or Non-Compliant FFIs.
      - To the extent provided by the Secretary, the election may be made with respect to certain classes or types of accounts of the FFI.

Withholdable Payments to Foreign Financial Institutions

- **Recalcitrant Account Holders and Non-Compliant FFIs.**
  - To deal with situations where an FFI has a Recalcitrant Account Holder or an FFI that does not meet the IRS agreement requirements, the statute provides certain rules:
    - **Recalcitrant Account Holder**. An account holder that fails to comply with reasonable requests for information pursuant to IRS mandated verification, and due diligence procedures to identify U.S. Accounts, to provide a name, address and TIN or fails to provide a bank secrecy waiver upon request.
  - Under the general rule, an FFI that makes a payment to a Recalcitrant Account Holder or a Non-Compliant FFI, is required to withhold 30 percent of the gross amount of such payment.

Withholdable Payments to Foreign Financial Institutions

- **Section 1471 Withholding Applies When:**
  - A withholding agent makes a withholdable payment to an FFI that has not entered into an agreement with the Secretary, and no other exception applies.
  - Passthru payments.
  - Withholding does not apply where the beneficial owner of the payment is a:
    - Foreign Government;
    - International Organization;
    - Foreign Central Bank of Issue; or
    - Any other class of persons identified by Treasury as posing a low risk of tax evasion.

Withholdable Payments to Foreign Financial Institutions

- **Agreement.** An FFI satisfies the requirements of section 1471 if it enters into an agreement with the IRS under which the FFI agrees:
  - To obtain such information regarding each holder of each account maintained by the FFI as is necessary to determine which accounts (if any) are U.S. Accounts;
  - To comply with IRS verification and due diligence procedures with respect to the identification of U.S. accounts;
  - To annually report U.S. Account information to the IRS;
  - To withhold 30 percent on Passthru payments;
  - To comply with additional IRS information requests with respect to U.S. Account Holders; and
  - To attempt to obtain a waiver in any case in which any foreign law would (but for the waiver), prevent the reporting of information as required under this provision, and if a waiver is not obtained within a reasonable period of time, to close the account.
- The IRS may terminate the agreement if the FFI is out of compliance with the agreement.

Withholdable Payments to Foreign Financial Institutions

- **Certain FFIs Deemed to Meet Reporting Requirements.**
  - The statute provides two procedures for FFIs to avoid having to enter into an IRS agreement because, for example, the FFI may not have U.S. Accounts:
    - The first way is if the FFI complies with such procedures as the IRS may prescribe, to ensure that the FFI does not maintain U.S. Accounts, and the FFI meets such other requirements as the IRS may prescribe, with respect to accounts of other FFIs maintained by the first FFI.
    - The second way is if the FFI is a member of a class of institutions with respect to which the IRS has determined that the application of the agreement/withholding provisions is not necessary.

Withholdable Payments to Foreign Financial Institutions

- **Information to be Reported by FFI**:
  - (1) The name, address and TIN of each account holder that is a Specified U.S. Person and, in the case of any account holder that is a U.S. Owned Foreign Entity, the name, address and TIN of each Substantial U.S. Owner of such entity;
  - (2) The account number;
  - (3) The account balance or value determined at such time and in such manner as the IRS may prescribe; and
  - (4) Except to the extent provided by the IRS, the gross receipts and gross withdrawals or payments from the account (as determined by IRS regulations).

Withholdable Payments to Foreign Financial Institutions

- **Election as to Information Reporting**.
  - The FFI may elect to be subject to the same reporting as a U.S. payor (which requires broad information reporting).
  - If this election is made, the FFI must provide the information specified in (1) and (2) in above slide, but does not have to report the information specified in (3) and (4).
  - Under this election, the FFI is required to report the information as if each U.S. Account holder were a natural person and citizen of the United States.
  - Note: if this option is elected, the FFI must report U.S. and foreign source income and gross proceeds, irrespective of whether the amounts are paid inside or outside the U.S.

Withholdable Payments to Foreign Financial Institutions

- **QI Reporting.**
  - An FFI that has entered into a QI or similar agreement with the IRS is required to comply with Chapter 4 *in addition* to any other requirements imposed under the QI or similar agreement.

Withholdable Payments to Foreign Financial Institutions

- **Exception for Certain Payments.**
  - Foreign governments.
  - Political subdivisions of foreign governments.
  - International organizations.
  - Foreign central banks.
  - Any other class of persons identified by the Secretary as posing a low risk of tax evasion for purposes of section 1471 would be excluded from application of section 1471 withholding.

Withholdable Payments to Foreign Entities that are not FFIs

- **Section 1472 General Rule**. Withholding applies at a 30 percent rate on withholdable payments unless:
  - The FE (or beneficial owner) provides the withholding agent either:
    - (a) with a certification that the FE does not have a Substantial U.S. Owner or
    - (b) the name, address and TIN of each Substantial U.S. Owner to the IRS;
  - The withholding agent does not know, or have reason to know, that any information provided above is incorrect; and
  - The withholding agent reports the information to the IRS in such manner as the IRS may provide.
- Or an exception applies.

Withholdable Payments to Foreign Entities that are not FFIs

- **Section 1472 Exceptions**.
  - Publicly traded corporation (or corporation that is in the same expanded affiliated group of publicly traded corporation).
  - Any entity organized in a U.S. possession wholly-owned by one or more bona fide residents of such possession.
  - Foreign government.
  - International Organization.
  - Foreign Central Bank of Issue.
  - Any other class of persons or payments identified by the Secretary (including those identified as posing a low risk of tax evasion).

Withholdable Payments to Foreign Entities that are not FFIs

- **Refunds (Rules Applicable to Both FFIs and FEs)**:
  - **General Rule**. Determination of whether overpayment by beneficial owner of payment made as if tax deducted and withheld under Chapter 3.
  - **Special Rule**. Where FFI is Beneficial Owner of Payment.
    - ***Refund***. If FFI is eligible for benefits under a treaty:
      - Amount of credit or refund not to exceed rate under treaty.
      - No interest on such credit or refund.
    - ***No refund***. No credit or refund allowed if FFI is resident in non-treaty jurisdiction.

Issues for Consideration Scope of FFIs

- FFI definition is broad and includes banks, broker/dealers, investment vehicles, private equity funds, hedge funds, securitization vehicles.
- Rules must be established to determine:
  - Whether an entity is an FFI.
  - Whether an entity is excluded from FFI categorization because:
    - Low risk.
    - As a result of another exemption.

Issues for Consideration Distinguishing FFI from FEs

- Different rules apply to FFIs and FEs.
- Rues need to be developed to determine the criteria for characterizing an entity as an FFI or an FE.

Issues for Consideration Identifying US Accounts

- Covered U.S. Persons:
  - Specified U.S. Persons.
  - U.S. Owned Foreign Entities.
- Identification of a covered U.S. person essentially is a negative proposition; *i.e.*, a U.S. person.
- Should different rules apply to:
  - Pre-FATCA accounts.
  - Post-FATCA accounts.
- How should local country know your customer and anti-money laundering rules apply?
- How should accounts be ascertained and verified?
- What is the impact of local law on identification, opening new accounts, closure of accounts, privacy and document protection?
- How will rules apply to a multi-jurisdictional FFIs?

Issues for Consideration
Annual Reports

- Annual report must contain the following information:
  - Name, address, TIN of specified U.S. person and substantial U.S. owners of U.S. owned foreign entities, account number and balance or value (measured at a time as specified in forthcoming regulations).
  - Annual report may contain gross receipts and withdrawals from account over course of year, except to the extent otherwise provided in regulations.
- FFI must obtain waiver of any foreign law preventing reporting of information or close account.
- Elective 1099 reporting.

Issues for Consideration Recalcitrant Account Holder

- How does bank secrecy waiver requirement interact with Recalcitrant Account Holder rule?
- How should an FFI deal with requests for information, opening and closing of accounts in view of old accounts/new accounts, contracts, local law, privacy and bank secrecy laws or regulations?
- How do passthru payment rules apply to a Recalcitrant Account Holder?
  - How do Passthru Payment rules apply if Recalcitrant Account Holder only derives foreign source income?

Issues for Consideration Passthru Payment

- Passthru Payment. Any withholdable payment or other payment attributable to the extent attributable to a Withholdable Payment.
  - Applies to:
    - Recalcitrant Account Holders.
    - Non-compliant FFIs.
  - Includes:
    - Withholdable payments.
    - Payments "attributable to a withholdable payment."
- How is this rule to be applied:
  - On a tracing basis?
  - On a more generalized basis?
- Implications for a non-compliant FFI that receives a payment from a compliant FFI.

Issues for Consideration Interaction with QI agreement

- Query, how will new Chapter 4 interrelate with QI agreements?
- Verification and audits.
  - What type of verification?
  - Audits.
    - QI agreement type of external audits?
    - QI agreement type waivers?
    - How often?

Issues for Consideration
US Withholding Agents

- Determine whether an entity is an FFI or an FE.
- Determine whether an FFI has an IRS agreement.
- Redesign system and procedures.
- Redesign of withholding forms.

Issues for Consideration
Withholding Issues

- Chapter 4 withholding takes priority over Chapter 3 withholding.
- Coordination of withholding rules to prevent double withholding.
- Under Chapter 4.
  - Withholding on FDAP.
  - Withholding on gross proceeds from sale or disposition of US stocks or securities (new).
    - Recipient can have a loss and still be subject to withholding.
- FFI can elect for another FFI to withhold on Withholdable Payments allocable to Recalcitrant Account Holders and non-compliant FFIs.
- How will withholding be accomplished?

Issues for Consideration
Refunds

- Different rules for FFIs and FEs.
- FFI only can obtain refund if in a treaty jurisdiction, but no interest.
- How will requirement to identify substantial U.S. owners be interpreted?
- How will beneficial owners be determined in tiered passthru entities?

Addendum

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OECD

Treaty Relief And Compliance Enhancement (TRACE) Project

(formerly known as Collective Investment Vehicles project)

Role of Intermediaries

- Cross border investors rarely have a direct relationship with the issuer of the securities in which they invest.
- There will usually be several intermediaries between these two parties and separate contractual agreements will normally be in place between each party in the chain.
- Income payments typically flow from the issuer to the investor via each interposed intermediary.

Problems Securing Tax Relief

- Responsibility for withholding tax usually rests with one of the parties at the top of the chain (typically issuer, paying agent, CSD or custodian bank in source country).
- Investor information usually rests at the bottom of the chain, with the intermediary acting directly for the investor.
- There are commercial, economic and practical difficulties attached to passing investor information up the chain.
- The tax relief systems in source countries vary considerably and a number of countries have failed to keep pace with the growing level of intermediation in typical cross border portfolio investment structures and with the increased volumes of cross border investments.

Some Specific Problems

- Investors required to complete multiple tax declarations.
- Other tax documentation requirements (*e.g.* notarisation of documents, provision of multiple residence certificates etc.).
- Imposition of local advisors in certain countries.
- No “at source” relief facilities in certain countries.
- No centralised tax office for retrospective claims in certain countries.
- Extended refund timeframes in certain countries.
- Some countries view the legal owner as being the beneficial owner, whereas it is difficult for nominee to claim beneficial ownership.

Consequences

- Eligible investors may be denied treaty relief entitlements or suffer disproportionate costs in securing that relief.

Best Practices

- Claims would be allowed by authorized intermediaries on basis of tax rate pools.
- However, reporting of beneficial owner information to source country could be required.
- Source countries would retain right to review compliance.
- Countries would work on standardizing reporting and documentation to minimize the burden for intermediaries.

Benefits to Governments

- Investors will receive benefits negotiated in tax treaties, rather than claiming relief for excess withholding from residence countries.
- System intended to link treaty claim process with information reporting and automatic exchange of information, increasing the amount of usable information available to tax authorities in both source and residence countries.

Enhanced Information Reporting

- Ultimate goal is to have self-confirming system.
  - Information on income, with TINs, reported to source country.
  - Sent to purported residence country through automatic exchange of information.
  - Residence country will inform source country if purported resident not entitled to benefits.
- Should no longer need certificates of residence.

Next Steps

- Implementation Package released for public comment in February requesting comments by **31 August**.
- First meeting IT Expert Group held in May.
- Trace Group meets in October to review comments submitted on proposed implementation package.

Parallel Work at European Commission

- Oct. 19, 2009, EC adopted a Recommendation encouraging EU member States to simplify cross-border withholding relief procedures on income from securities by allowing relief at source (rather than only by refund) under system that would:
  - allow investors to self-certify entitlement to relief and foreign intermediaries to pass pooled withholding rate information about their investor pool to upstream intermediaries and withholding agents in the custody chain;
  - allow Member States to set conditions for authorization of intermediaries in the pooled chain system including under-withholding liability, external audit and reporting of investor-specific information annually or upon request to source State.
- Asks member States to coordinate position on issue in OECD.

Thank You!

If you have additional questions or comments, please contact me.

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From 1981 through 1984, Mr. Granwell was the International Tax Counsel and Director, Office of International Tax Affairs at the US Department of the Treasury. In that capacity, Mr. Granwell was the senior international tax advisor at the Treasury Department and was responsible for advising the Assistant Secretary for Tax Policy on legislation, regulations, and administrative matters involving international taxation and directing the US tax treaty program.