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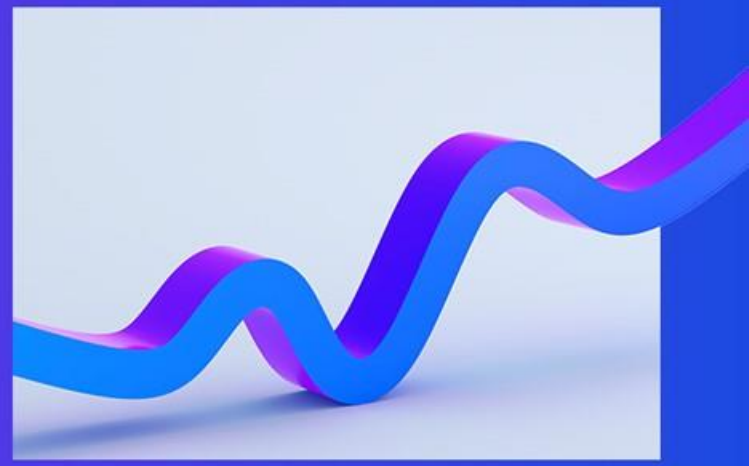

Potential FATCA Impacts of Changes to Hungary and Chile Treaty Statuses

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> FATCA Intergovernmental Agreements (IGAs) between the United States and foreign jurisdictions are typically premised on the automatic exchange of information called for in the income tax treaties between the countries, and accordingly changes to the status of an income treaty can impact the status of the corresponding IGA. The income tax treaty between the United States and Hungary was recently terminated, while the income tax treaty between the United States and Chile recently entered into force. As explained further below, these changes could have substantial FATCA impacts on residents of these countries as well as the counterparties they deal with.

Hungary

The Hungary Treaty was terminated on January 8, 2023, and with respect to taxes withheld at source the treaty ceased to have effect on January 1, 2024. While the Model 1 IGA between the countries (Hungary IGA) currently remains in force, termination of the treaty should eventually cause the IGA to terminate as well.

Impacts on Hungarian Financial Institutions

Hungarian financial institutions are typically classified based on the terms of the Hungary IGA. Once the IGA is terminated, those financial institutions will no longer be able to rely on IGA classifications and will instead need to classify themselves under the U.S. Treasury Regulations (Treas. Regs.). These new classifications may have considerably different obligations.

For example, an entity currently classified as a Reporting Hungarian Financial Institution under the IGA may need to reclassify as a Participating Foreign Financial Institutions (PFFI) under the Treas. Regs. While a Reporting Hungarian Financial Institution and a PFFI are both required to register with the IRS to obtain a GIIN, a PFFI is also required to enter into an FFI Agreement with the IRS, file Foreign Account Tax Compliance Act (FATCA) reports directly with the IRS, and submit periodic certifications of FATCA compliance to the IRS.

In addition to affecting its annual reporting obligations, transitioning from a Reporting Hungarian Financial Institution to a PFFI will likely involve substantial administrative steps. For example, we suspect that impacted entities will need to cancel their current FATCA registrations on the IRS portal and reregister as PFFIs, resulting in new GIINs being issued. As a result, these entities will likely need to provide updated FATCA documentation to any counterparties they continue to do business with.

Entities currently classified as Nonreporting Hungarian Financial Institutions under Annex II of the IGA will need to identify an applicable deemed-compliant status under the Treas. Regs. in order to avoid reporting obligations going forward. While there are substantial overlaps between the nonreporting statuses available under the IGA and the deemed-compliant statuses available under the Treas. Regs., certain Treas. Regs. statuses require IRS registration where the corresponding IGA classification does not. It's also possible that a Nonreporting Hungarian Financial Institution will not qualify for any deemed-compliant status under the Treas. Regs. and therefore, will need to become a PFFI in order to be FATCA compliant going forward.

Impacts on Account Holders of Hungarian Financial Institutions

Entities that hold financial accounts with Hungarian financial institutions and whose FATCA classifications are based on the IGA will also need to reevaluate their FATCA classifications once the IGA is terminated. This generally includes any financial or nonfinancial Hungarian account holder, as well as any nonfinancial account holder that resides in another jurisdiction.[1] Assuming the Hungarian Financial Institution that maintains the financial account becomes a PFFI once the IGA is terminated, impacted account holders will need to determine their FATCA statuses with respect to these accounts under the Treas. Regs.

Impacts on Financial Institutions with Hungarian Account Holders or Withholding Agents with Hungarian Payees

As discussed above, Hungarian financial institutions will no longer be able to rely on IGA classifications once the IGA is terminated, and therefore Reporting Hungarian Financial Institution will eventually cease to be a valid FATCA classification. Once that occurs, financial institutions that maintain financial accounts for, and withholding agents that make withholdable payments to, an entity historically classified as a Reporting Hungarian Financial Institution should expect to receive updated documentation that reflects the entity's new FATCA status.

Withholding agents and financial institutions will be treated as knowing that an entity is not a PFFI or registered deemed-compliant FFI on the earlier of the date that they discover that the FFI has been removed from the IRS GIIN list or one year from the date the FFI was actually removed from the list. If the IRS notifies a withholding agent or financial institution that a person's claimed status is incorrect, however, the withholding agent or financial institution will be treated as knowing the claimed status is incorrect beginning 30 days after such notice is received. Accordingly, withholding agents and financial institutions should monitor for notices from the Treasury or the IRS, whether sent through the IRS FATCA portal or other means, to ensure they remain compliant with their own FATCA withholding and reporting obligations.

[1] Financial institutions are generally classified for FATCA purposes based on the law applicable in the jurisdiction in which they reside rather than the jurisdiction in which they hold a financial account.

Chile

The income tax treaty between the United States and Chile entered into force on December 19, 2023, and it takes effect with respect to taxes withheld at source on February 1, 2024. The Model 2 IGA between the countries (Chile IGA) was signed in 2014, and accordingly the IGA should have entered into force with the treaty. However, the Treasury Department's list of IGA statuses has not updated to show that the IGA is now in force, nor have any announcements to that effect been made. We will be monitoring for further updates.

Impacts on Chilean Financial Institutions

Chilean financial institutions have historically been classified under the Treas. Regs. given that the Chile IGA has not yet gone into effect, and therefore Chilean financial institutions are currently classified as PFFIs unless they qualify for a deemed-compliant status under the Treas. Regs. Once the IGA goes into effect, most PFFIs will likely become Reporting Chilean Financial Institutions under the IGA.

This change in classification should have minimal impact on a Chilean financial institution's existing FATCA reporting obligations given that both PFFIs and Reporting Model 2 Financial Institutions are required to register with and report directly to the IRS, however there may be some administrative steps that need to be taken to complete the transition. We are hopeful that the IRS will provide a mechanism for streamlining the transition, as opposed to making Chilean financial institutions cancel their existing PFFI registrations, complete new registrations as Reporting Model 2 Financial Institutions, and provide all counterparties with updated FATCA documentation.

The IGA allows Chilean financial institutions to rely on deemed-compliant statuses from the Treas. Regs., and accordingly a financial institution that already qualifies for a deemed-compliant status still won't need to report going forward. Given that Annex II of the IGA contains slightly different deemed-compliant statuses than the Treas. Regs., however, it's possible that an entity that previously had reporting obligations as a PFFI will qualify for a newly available deemed-compliant status under the IGA and no longer need to report.

Impacts on Account Holders of Chilean Financial Institutions

Certain entities that hold financial accounts with Chilean financial institutions may have additional classification options once the IGA goes into effect, as they may be able to continue classifying themselves under the Treas. Regs. or adopt a new status under the IGA. This generally includes any financial or nonfinancial Chilean account holder, as well as any nonfinancial account holder that resides in another jurisdiction.[2]

Impacts on Financial Institutions with Chilean Account Holders or Withholding Agents with Chilean Payees

As discussed above, the classifications available to Chilean entities will generally expand once the IGA goes into effect. Certain Chilean entities will be able to keep their current Treas. Regs. statuses if they choose, so financial institutions that maintain accounts for, and withholding agents that make payments to, Chilean entities shouldn't necessarily expect their FATCA statuses to change in all cases. Where an entity's classification does change, however, any financial institution or withholding agent doing business with such entity should make sure its records and documentation are updated accordingly to avoid any potential withholding or reporting exposure. While an entity whose FATCA status changes has an obligation to notify its counterparties, financial institutions and withholding agents should be diligent in monitoring for changes in circumstances or other reasons to know that documentation currently on file is no longer reliable.

[2] Financial institutions are generally classified for FATCA purposes based on the law applicable in the jurisdiction in which they reside rather than the jurisdiction in which they hold a financial account.

Going Forward

In summary, we expect the IRS to provide further updates regarding the statuses of the Hungary and Chile IGAs, as well as associated guidance for impacted parties.

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