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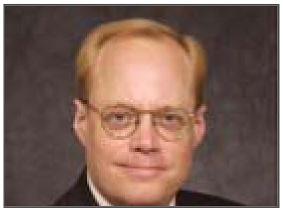

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Caymans & Costa Rica Sign U.S. Tax Evasion Pact---FATCA Gets Even Fatter

Caribbean (Photo credit: Moyan_Brenn)

Caribbean and Central American havens are often thought to be less rigorous in their observance of banking and tax laws than European nations like Switzerland. Of course, Swiss banking has experienced a sea change since UBS paid a $780 million fine and reached a deferred prosecution agreement with American authorities. With other Swiss bank closures and 14 Swiss banks still under investigation, everything is different now.

One by one, foreign governments and banks are lining up to take their medicine from the U.S. But what about Caribbean and Central American nations? The U.S. has pushed hard there too, including use of the pivotal John Doe summons here: IRS Issues John Doe Summonses To Citibank, Chase, BoA, Mellon, HSBC—Tax Prosecutions Coming.

Now, the U.S. scores another pair of big wins by signing Intergovernmental Agreements (IGAs) with the Cayman Islands and Costa Rica. FATCA was quietly enacted in 2010 in a big messy bill called the Hiring Incentives to Restore Employment Act of 2010 (P.L. 111-147). Today, FATCA is the centerpiece of U.S. efforts to curb tax evasion everywhere.

Some FFIs report to the IRS voluntarily, some via agreements. An Intergovernmental Agreement can allow a bank or other FFI to report to its own government on Americans. The foreign government can then report to the IRS.

Foreign banks can use this avenue so they do not need to report ***directly*** to the IRS. But like it or not, report they must, and there is little sign they will refuse. The IRS can be expected to take advantage of the expanded web of global reporting.

FATCA collects information on accounts held by U.S. taxpayers in other countries. It requires U.S. financial institutions to withhold a portion of payments made to foreign financial institutions (FFIs) that do not agree to identify and report information on U.S. account holders. Almost no FFI wants to be in that position.

The Cayman Islands IGA here is a Model 1B agreement. That means FFIs in the Cayman Islands must report tax information about U.S. account holders to the Cayman Islands Tax Information Authority. That agency acts as the sole channel in the Cayman Islands for the provision of tax-related information to other governments.

In turn, the Cayman Islands Tax Information Authority then relays the information to the IRS. But the win for the U.S. didn't end there. The two countries also signed a new Tax Information Exchange Agreement (TIEA), to take the place of the original one signed in 2001.

The Costa Rica IGA here is a Model 1A agreement. That means the U.S. will also provide tax information to the Costa Rican government regarding Costa Rican individuals with accounts in the United States. It's a kind of reciprocity.

So far, there are 12 FATCA IGAs. But there's more. The U.S. has also reached 16 agreements in substance. Plus, it is engaged in dialogues with many more jurisdictions. The IRS FATCA page is here.

Clearly, the Caymans and Costa Rican agreements will not be the last. Whether you admire their efforts or decry them, the Obama administration has done a truly remarkable job of pushing FATCA forward and milking it for tax data everywhere. There is little sign it will stop.

You can reach me at Wood@WoodLLP.com. *This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.*