



# FATCA and the Cyprus – US Connection

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**THE US DEPARTMENT OF TREASURY HAS ANNOUNCED** that Cyprus and the US have reached agreement in substance as regards the Inter-Governmental Agreement for FATCA and Cyprus has consented to being included on Treasury's list of Model 1 jurisdictions.

The IGA, which implements the tax reporting and withholding procedures commonly associated with FATCA, is expected to be reciprocal in nature and contain the much coveted 'most favoured nation' provision. As such the final text is likely to be similar to the Model 1 IGA between the UK and the US.

Cyprus has been party to a double-taxation treaty with the US for a number of years. The treaty was entered into in 1984 and the efficacy of its tax provisions was recently reaffirmed in a recent internal memorandum by the US IRS (number 201343019 of 25 October 2013), in which a Cyprus company was deemed a 'qualified foreign corporation' enabling dividends received by US individuals from Cyprus companies to be eligible for reduced tax rates.

The Cyprus-US treaty had previously been viewed as restrictive because of a limitation of benefits clause by which a Cyprus company is not eligible for treaty benefits unless more than 75 per cent of the number of shares of each class of the company's shares is owned, directly or indirectly by one or more individual residents of Cyprus. This limitation is subsequently disapplied if the establishment, acquisition and maintenance of the Cyprus company and the conduct of its operations does not have as a principal purpose the

obtaining of benefits under the treaty.

The facts of the memorandum were that a US individual owned an interest in a Cyprus company along with other persons who were not residents of the US or of Cyprus. The US shareholder claimed that dividends received from the Cyprus company were eligible for the treaty reduced rate and the memorandum opines that as there was no principal purpose of obtaining benefits under the US-Cyprus treaty, the Cyprus company would be eligible for 'qualified foreign corporation' status and dividends received by the US individual shareholder were treaty protected. This memorandum is expected to boost the use of Cyprus companies by US shareholders.

As a party to a double tax treaty with the US, engagement with Cyprus under the reciprocal IGA arrangement with the US under the FATCA initiative will put Cyprus in a very strong position when compared to other IFCs.

Under the Model 1 framework, Cypriot Reporting Financial Institutions will be required to identify US accounts and report specified information about those US accounts to the Cyprus competent authority, the Ministry of Finance. The Cyprus authority will then pass this information on to the IRS on an automatic basis. As a result of the IGA, Cypriot Financial Institutions will be 'deemed compliant' with the requirements of US FATCA and will not be subject to the withholding tax that may otherwise be applied by US withholding agents.

Cyprus Reporting Financial Institutions will still need to apply for a Global Intermediary Identification

Number (GIIN) from the IRS and register as Registered Deemed Compliant Foreign Financial Institutions. Obtaining a GIIN will provide independent certification to withholding agents of FATCA compliance. Once the US/Cyprus IGA has been signed, Cyprus Reporting Financial Institutions will be able to register and obtain a GIIN. However, they will not be required to provide a GIIN to withholding agents prior to 1 January 2015.

Concern has been expressed by some industry observers that withholding agents may insist on a GIIN being produced from 1 July 2014, when FATCA is due to come into force. IRS guidance does clearly provide that a Reporting Financial institution under a Model 1 IGA does not need to provide a GIIN prior to 1 January 2015. However, a Reporting Financial Institution may need to register prior to 1 July 2014 if it maintains branches in jurisdictions which are not covered by a Model 1 IGA.

As a result of US Treasury's classification, Cyprus Financial Institutions may presently apply for and obtain GIINs from the IRS as if Cyprus had concluded the Model 1 IGA. For example, a Cyprus Reporting Financial Institution with a branch in Switzerland (which has signed a Model 2 IGA) may need to have a GIIN by July 2014. The IRS is due to publish the first list of GIINs on 2 June 2014. In order to be on this list, a Financial Institution must have submitted its application online no later than 5 May 2014. To be on the list in time for coming into force of FATCA on 1 July 2014, registration must occur no later than 3 June 2014. ■