

September Update – A busy news month for FATCA

As those following FATCA would expect, a great deal has happened this month – and it is not over yet. This is due largely to (what we were treating as – see below!) the looming September 30 2015 deadline for the first transfer of the financial account information of US Persons to the IRS under the terms of the FATCA legislation, regulation and intergovernmental agreements.

Canadian Court rules against FATCA challenge

A Canadian court ruled against the plaintiffs bringing a suit against the Canadian government challenging the constitutionality of the CA-USA Intergovernmental Agreement (IGA) implementing FATCA and seeking to halt the implementation of the law ahead of 30 September 2015. The plaintiffs are expected to appeal the verdict. More [here](#), [here](#) and [here](#).

Arguments heard in FATCA constitutional challenge seeking an immediate injunction of the law

On 4 September the parties to *Crawford v United States*, the lawsuit challenging the constitutionality of FATCA, [gave testimony in the Southern District Court of Ohio on the matter of granting a preliminary injunction against FATCA](#). A preliminary injunction would have the effect of stopping the implementation of FATCA immediately (in advance of said September 30 2015 reporting date) and until there is a final verdict in the case. As at 21 September we await the judge's ruling.

In the meantime, on September 15 the defendants in *Crawford v United States* (United States Department of the Treasury, United States Financial Crimes Enforcement Network and United States Internal Revenue Service) filed a Motion to Dismiss for Failure to State a Claim and Motion to Dismiss for Lack of Jurisdiction. Responses from the plaintiffs were due by October 9, 2015, but they have filed a Motion for Extension of time to November 9, 2015.

As previously noted, this lawsuit is going to take a while to work its way through the judicial process.

Treasury and the IRS receive Congressional request to reform FATCA with the Same Country Safe Harbor for Americans Abroad

Also on September 15 Congressional supporters of the FATCA Same Country Safe Harbor for Americans abroad sent a [letter to Treasury Secretary Jacob Lew and IRS Commissioner John Koskinen](#) outlining their support for this critical reform recommendation endorsed by the National Taxpayer Advocate. Democrats Abroad will be following up with Treasury and the IRS and will also be progressing a similar communication from members of the Senate.

Thanks again to the more than 5,500 participants in our grassroots campaign to draw the attention of our members of Congress to this urgently needed reform and for asking their signature on the letter.

IRS again delays the full implementation of FATCA

On Friday 18 September the IRS issued a [notice](#) that will delay the full implementation of FATCA by 12 months. The tax authorities of jurisdictions operating under the [model 1 IGA](#)

were to forward the 2014 financial account information of US Persons submitted by banks and brokerage houses by 30 September 2015, or else trigger the 30pc withholding penalty on payments from the U.S.

Although many [model 1 IGA](#) jurisdiction banks and brokerage houses will still be obliged to submit the 2014 financial account information of US Persons to the jurisdiction's tax authority by 30 September 2015, **those tax authorities now have until 30 September 2016 to submit that data to the IRS.** See the IRS notice [here](#) or, if you want to actually understand what the IRS did, see [this](#) or [this](#).

Some are proclaiming this a victory for the FATCA lawsuit over the IRS and US Treasury, saying it demonstrates a weakening of their resolve in implementing the law. More likely this gesture recognizes the challenges facing complying jurisdictions in establishing the systems needed to facilitate the exchange of financial account information, both under FATCA and the OECD's Common Reporting Standards.¹

The most important thing about this delay was noted in coverage published on the Tax Controversy Watch blog:

Today's announcement also provides a reprieve, of sorts, to non-compliant U.S. taxpayers who maintain financial accounts at FFIs (Foreign Financial Institutions) in Model 1 IGA jurisdictions. The relaxation of the September 30 deadline for reporting to the U.S. affords such taxpayers additional time to take steps to become complaint (SIC), by utilizing the various IRS voluntary disclosure programs such as the [Offshore Voluntary Disclosure Program](#) or the [Streamlined Filing Compliance Procedures](#). Once a foreign jurisdiction turns over account information to the U.S., non-compliant taxpayers generally cannot take advantage of the IRS disclosure programs and will be subject to audit or, worse, a criminal investigation.²

Democrats Abroad recommends that US citizens living outside the US who are in need of advice and assistance with US tax matters should consult this global listing of tax return preparers published by American Citizens Abroad.

<http://www.acareturnpreparerdirectory.com/>

We will send news of a decision by the judge ruling on the FATCA preliminary injunction if one should be delivered ahead of the publication of our October report.

Democrats Abroad FBAR/FATCA Task Force

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¹ The Common Reporting Standards will facilitate the global exchange of financial account information related to taxation by nearly 100 nations starting next year.

² <http://taxcontroversywatch.com/2015/09/18/fatca-update-treasury-relaxes-september-30-deadline-for-model-1-iga-jurisdictions-to-exchange-tax-information/>