



DEPARTMENT OF THE TREASURY
WASHINGTON

ASSISTANT SECRETARY

OCT 10 2012

The Honorable Rand Paul
United States Senate
Washington, DC 20510

Dear Senator Paul:

Thank you for your letter regarding the joint statement that the Department of the Treasury issued with France, Germany, Italy, Spain, and the United Kingdom on February 8, 2012 (Joint Statement). This statement expressed an intent to explore a common approach to the implementation of the Foreign Account Tax Compliance Act (FATCA) provisions of the Hiring Incentives to Restore Employment Act of 2010. Your letter raised a number of questions regarding the reporting that may be required of U.S. financial institutions under the Joint Statement. Because your letter raises an issue of tax policy, it was referred to me for a response.

When taxpayers using offshore accounts avoid paying what they owe, other Americans must bear a disproportionate share of the tax burden. Congress, with bipartisan support, enacted FATCA to help ensure that U.S. taxpayers cannot evade U.S. tax by hiding income and assets offshore. To that end, FATCA requires foreign financial institutions, in order to avoid being subject to U.S. withholding tax on certain payments, to report to the Internal Revenue Service (IRS) information about accounts held by U.S. persons, including account balances and payments made with respect to the accounts.

Treasury and the IRS have consulted extensively with both U.S. and foreign financial institutions to address concerns regarding the implementation of FATCA and are committed to implementing the statute in a way that eases burdens on financial institutions while still achieving the statute's compliance objectives. On February 8, 2012, Treasury and the IRS issued comprehensive proposed regulations, which addressed many of the concerns that had been expressed regarding potential administrative burdens in implementing FATCA. In finalizing the proposed regulations, Treasury and the IRS continue to engage with U.S. and foreign financial institutions in order to implement the statute in a way that appropriately balances its compliance objectives with the burdens imposed.

In many cases, however, foreign law would prevent foreign financial institutions from directly reporting to the IRS the information required by FATCA. Thus, under the statute, absent the cooperation of foreign governments, U.S. financial institutions would be required to withhold on payments to foreign financial institutions, and FATCA would fail to achieve its objective of fighting offshore tax evasion through increased information reporting. The Joint Statement reflects a shared commitment with France, Germany, Italy, Spain, and the United Kingdom to cooperate to address the legal conflicts that might otherwise interfere with the implementation of

FATCA. Since issuing the Joint Statement, the Treasury Department has worked closely with representatives of those countries to develop a model intergovernmental agreement for the implementation of FATCA (Model Agreement), which was released on July 26. The Model Agreement is intended to be used as the basis for concluding bilateral agreements for the implementation of FATCA on a government-to-government basis, building on a longstanding history of bilateral information exchange. Accordingly, the Organisation for Economic Cooperation and Development and the European Union would not be parties to any such *bilateral* agreement for the implementation of FATCA, and neither organization would have any impact on whether the United States chooses to conclude a bilateral agreement with a particular country. The first bilateral agreement was signed with the United Kingdom on September 12, 2012.

Like the United States, many foreign governments are trying to address offshore tax evasion by their residents and need information from other jurisdictions to support their efforts. Existing regulations already require U.S. financial institutions to report to the IRS certain information with respect to amounts paid to nonresidents. The United States cannot expect foreign governments with shared policy goals and practices regarding transparency and fairness to facilitate the reporting of the information required under FATCA by their financial institutions if we are unwilling to help address tax evasion under their tax systems. We think the most straightforward approach would be to share information, in appropriate circumstances, that pursuant to existing law already must be reported to the IRS about accounts held by their residents in the United States. Accordingly, the Model Agreement includes a reciprocal version, which contemplates information sharing by the United States with appropriate jurisdictions, as described below.

Section 6103(k)(4) of the Internal Revenue Code authorizes the IRS to share information it collects with a foreign government, but only if the United States has in effect an income tax treaty or tax information exchange agreement with the foreign jurisdiction. Therefore, the Treasury Department will only enter into the reciprocal version of the Model Agreement with jurisdictions with which the United States has in effect such an agreement. Additionally, among those jurisdictions, the reciprocal version will be used only with foreign governments that the Treasury Department and the IRS have determined have robust protections and practices in place to ensure that exchanged information will remain confidential and will be used solely for tax purposes.

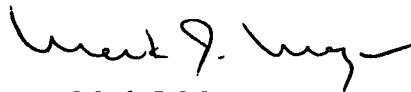
The information that the United States would agree to exchange under the reciprocal version of the Model Agreement differs in scope from the information that foreign governments would agree to provide to the IRS. In fact, the information specified to be exchanged by the IRS under the reciprocal version of the Model Agreement is limited to the information that U.S. financial institutions will be required under existing regulations to report to the IRS about nonresident accounts for 2013. While the reciprocal version of the Model Agreement includes a policy commitment to pursue equivalent levels of reciprocal automatic exchange in the future, no additional obligations will be imposed on U.S. financial institutions unless and until additional laws or regulations are adopted in the United States.

Treasury and the IRS will continue to work closely with businesses and foreign governments to implement FATCA in a manner that reasonably balances the administrative burdens with the

compliance goals. Entering into bilateral intergovernmental agreements based on the Model Agreement will be an important part of achieving that end. By allowing foreign financial institutions to participate in FATCA by reporting information to their own government (followed by the automatic exchange of the reported information from the foreign government to the IRS), bilateral intergovernmental agreements will substantially reduce the potential burdens imposed by FATCA on financial institutions, avoid foreign legal impediments to reporting, and build on existing exchange practices and common international norms for transparency.

At your request, we have attached copies of the reciprocal and nonreciprocal versions of the Model Agreement. We appreciate your interest in and attention to this important effort to reduce tax evasion.

Sincerely,



Mark J. Mazur
Assistant Secretary (Tax Policy)

Enclosures

Identical letter sent to:

The Honorable Jim DeMint
The Honorable Mike Lee
The Honorable Saxby Chambliss