



U.S. TREASURY DEPARTMENT

JOINT STATEMENT FROM THE UNITED STATES AND JAPAN REGARDING A FRAMEWORK FOR INTERGOVERNMENTAL COOPERATION TO FACILITATE THE IMPLEMENTATION OF FATCA AND IMPROVE INTERNATIONAL TAX COMPLIANCE

I. General Considerations:

- A. Building on their longstanding and close relationship with respect to mutual assistance in tax matters, the United States and Japan wish to intensify their co-operation in combating international tax evasion.
- B. On 18 March 2010 the United States enacted provisions commonly referred to as the Foreign Account Tax Compliance Act (FATCA), which introduce reporting requirements for foreign financial institutions (FFIs) with respect to certain accounts. FATCA, however, has raised some issues, including that financial institutions in Japan may not be able to comply with all of the reporting, withholding and account closure requirements of FATCA because of legal restrictions.
- C. Intergovernmental cooperation to facilitate FATCA implementation would address these legal impediments to compliance, simplify practical implementation, and reduce FFI costs.
- D. In furtherance of the policy objectives of FATCA, the United States is open to adopting with interested countries, either an intergovernmental approach to implement FATCA (which would involve reporting by FFIs to their own governments followed by the automatic exchange of this information with the United States), or a framework for intergovernmental cooperation to facilitate the implementation of FATCA (which would provide for reporting directly between the FFIs and the United States in a manner consistent with FATCA requirements, supplemented by exchange of information on request).
- E. Japan is supportive of the underlying goals of FATCA, and is interested in exploring a framework for intergovernmental cooperation to facilitate the implementation of FATCA

and improve international tax compliance. The United States affirms its willingness to cooperate with Japan by collecting and exchanging information under the existing income tax convention on accounts held in U.S. financial institutions by residents of Japan.

- F. The United States and Japan would be willing to work with other FATCA partners and the OECD in the medium term on developing a common model for automatic exchange of information, including the development of reporting and due diligence standards. Such collaboration ultimately would enhance compliance and facilitate enforcement to the benefit of all parties. The United States and Japan are cognizant of the need to keep compliance costs as low as possible for financial institutions and other stakeholders and are committed to working together and with other cooperative jurisdictions over the longer term towards achieving common reporting and due diligence standards.
- G. In light of these considerations, the authorities of the United States and Japan have agreed to explore a framework for intergovernmental cooperation to facilitate the implementation of FATCA and improve international tax compliance based on the existing bilateral tax treaty between the U.S. and Japan.

II. Key Elements of the Framework:

- A. The U.S. authorities (the Treasury Department and the Internal Revenue Service (IRS)) and the Japanese authorities (the Ministry of Finance (MOF), the National Tax Agency (NTA), and the Financial Services Agency (FSA)) would agree to a Framework pursuant to which, and subject to certain terms and conditions:
 - 1. The Japanese authorities would agree to:
 - a. Direct and enable financial institutions in Japan, not otherwise exempt or deemed compliant pursuant to the Framework, to register with the IRS and confirm their intention to comply with official guidance issued by the FSA that is consistent with the obligations of participating FFIs under FATCA, including: (i) applying the due diligence rules prescribed under FATCA to identify U.S. accounts; (ii) annually reporting, in the time and manner prescribed by the FATCA rules, the information required with respect to identified U.S. accounts directly to the IRS if consent is obtained from the U.S. account holders; and (iii) annually reporting, in the time and manner prescribed by the FATCA rules, the aggregate number and aggregate value of accounts held by recalcitrant account holders to the IRS.
 - b. Accept and promptly honor group requests made under the Framework by the U.S. competent authority for additional information about U.S. accounts identified as recalcitrant and reported on an aggregate basis by Japanese financial institutions. The Japanese competent authority would obtain the requested information from the identified Japanese financial institution and promptly exchange the information with the U.S. competent authority under Article 26 of

the Convention Between the Government of the United States of America and the Government of Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income, signed on November 6, 2003, at Washington, DC.

2. The U.S. authorities would agree to:
 - a. Eliminate the obligation of each FFI in Japan to enter into a separate comprehensive FFI agreement directly with the IRS, provided that each FFI is registered with the IRS or is excepted from registration pursuant to the Framework or IRS guidance;
 - b. Identify in the Framework specific categories of Japanese financial institutions or entities (including in particular certain Japanese Pension funds) that would be treated as deemed compliant or exempt due to presenting a low risk of tax evasion;
 - c. Eliminate U.S. withholding under FATCA on payments to Financial Institutions in Japan that have registered or entered into an FFI agreement with the IRS and conduct due diligence and reporting in a manner consistent with FATCA requirements or are treated as deemed compliant or exempt pursuant to the Framework (i.e., by identifying all such financial institutions as participating FFIs, deemed-compliant FFIs or exempt as appropriate); and
 - d. Provide certain other measures to reduce burdens and simplify the implementation of FATCA.

B. In addition, as a result of the Framework, financial institutions in Japan that comply with their obligations would not be required to:

1. Terminate the account of a recalcitrant account holder; or
2. Impose passthru payment withholding on payments to recalcitrant account holders, to FFIs organized in Japan that have registered or entered into an FFI agreement with the IRS, or are otherwise exempt or deemed compliant, or to FFIs in another jurisdiction with which the United States has in effect either an agreement for an intergovernmental approach to FATCA implementation or an agreement such as the Framework for intergovernmental cooperation to facilitate the implementation of FATCA and improve international tax compliance.

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U.S. TREASURY DEPARTMENT

JOINT STATEMENT FROM THE UNITED STATES AND SWITZERLAND REGARDING A FRAMEWORK FOR COOPERATION TO FACILITATE THE IMPLEMENTATION OF FATCA

I. General Considerations:

- A. The United States and Switzerland, building on their existing relationship with respect to mutual assistance in tax matters, seek to strengthen and improve their cooperation in combating international tax evasion.
- B. On 18 March 2010, the United States enacted provisions commonly referred to as the Foreign Account Tax Compliance Act (FATCA), which introduce reporting requirements for foreign financial institutions (FFIs) with respect to certain accounts. Because of certain legal or contractual restrictions in Switzerland, however, financial institutions in Switzerland may not be able to comply directly with all the reporting, withholding, and account closure requirements of FATCA.
- C. Intergovernmental cooperation to facilitate FATCA implementation would address these legal or contractual impediments to compliance, simplify practical implementation, and reduce FFI costs.
- D. In furtherance of the policy objectives of FATCA, the United States is open to adopting with interested countries, either an intergovernmental approach to implement FATCA (which would involve reporting by FFIs to their own governments followed by the automatic exchange of this information with the United States), or a framework for intergovernmental cooperation to facilitate FATCA implementation (which would provide for reporting directly between the FFIs and the United States according to the FATCA rules, supplemented by exchange of information on request).
- E. In the expectation of contributing to a solid basis for an enhanced co-operation in tax matters with the United States, Switzerland is supportive of negotiating a bilateral framework agreement to facilitate the implementation of FATCA.
- F. In light of these considerations, Switzerland and the United States declare their intent to negotiate an agreement providing a framework for cooperation to ensure the effec-

tive, efficient, and proper implementation of FATCA by financial institutions located in Switzerland.

II. Key Elements of the Framework:

- A. The United States and Switzerland would enter into an agreement (the “Cooperation Agreement”) pursuant to which, subject to certain terms and conditions, Switzerland would agree to:
 1. Direct all Swiss financial institutions, not otherwise exempt or deemed compliant pursuant to the Cooperation Agreement, to conclude an FFI Agreement with the U.S. Internal Revenue Service (IRS).
 2. Enable these Swiss financial institutions to comply with the obligations prescribed by the FATCA rules and set forth in such FFI Agreements, in particular regarding the reporting of information with respect to U.S. accounts to the IRS, by granting an exception from Article 271 of the Swiss Criminal Code.
 3. Accept and promptly honor, as foreseeably relevant without regard to any other condition, a group request by the U.S. competent authority for additional information about U.S. accounts identified as recalcitrant and reported by Swiss financial institutions on an aggregate basis, pursuant to Article 3 of the Protocol signed on September 23, 2009.
- B. In consideration of the foregoing, the United States would agree to:
 1. Identify in the Cooperation Agreement, specific categories of Swiss FFIs or schemes (in particular certain small, local FFIs and institutions/schemes in the field of the Swiss pension system) that would be treated as deemed compliant or exempt;
 2. Eliminate U.S. withholding under FATCA on payments to Swiss financial institutions (i.e., by identifying all Swiss financial institutions as participating FFIs or deemed-compliant FFIs, as appropriate); and
 3. Agree to certain other appropriate measures to reduce burdens and simplify the implementation of FATCA.
- C. In addition, as a result of the Cooperation Agreement, Swiss financial institutions would not be required to:
 1. Terminate the account of a recalcitrant account holder;
 2. Impose foreign passthru payment withholding on payments to recalcitrant account holders, or to other financial institutions in Switzerland, or in another jurisdiction with which the United States has in effect either an agreement for an intergovernmental approach to FATCA implementation, or an agreement for intergovernmental cooperation to facilitate FATCA implementation.
- D. A model Cooperation Agreement implementing this framework for intergovernmental cooperation to facilitate FATCA implementation will be developed and the terms and conditions established in the model agreement will be applied to Switzerland and other interested countries on an equivalent basis.

E. The United States and Switzerland agree to work swiftly and constructively to negotiate and conclude a Cooperation Agreement.

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