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- Masters in Tax Law from New York University Law School
- Four years of U.S. Tax Court and Internal Revenue Service experience in Washington D.C.
- The firm regularly works with law firms, accountants, businesses and individuals struggling to find their way through the complexities of the tax law.
- In short, the firm is a valuable resource to each of these audiences.
- With over 38 years as a tax lawyer in Florida, Lehman has built a tax law firm with a national reputation for being able to handle the toughest tax cases, structure the most sophisticated income tax and estate tax plans, and defend clients before the IRS.

THIS SECTION:

Institutional Foreign Financial Reporting

Beginning in 2013

1. All Foreign Financial Institutions Complete Reporting all U.S. Accounts
2. Foreign Financial Institution to Withhold Tax on all U.S. Accounts Thirty (30%) Percent of Gross Income

The United States Taxpayer Required Reporting

Institutional Foreign Financial Reporting

1. All Foreign Financial Institutions Complete Reporting all U.S. Accounts
2. Foreign Financial Institution to Withhold Tax on all U.S. Accounts Thirty (30%) Percent of Gross Income
3. Refund Action Required to Collect on Over withholding
4. **(Effective 2013/2014)**

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**Latest Development
Tax Treaties for
FFI Reporting Purposes**

U.S. DEPARTMENT OF THE TREASURY

Press Center 7/26/2012

WASHINGTON: The U.S. Department of the Treasury today published a model intergovernmental agreement to implement the information reporting and withholding tax provisions commonly known as the Foreign Account Tax Compliance Act (FATCA). Enacted by Congress in 2010, these provisions target non compliance by U.S. taxpayers using foreign accounts. The model agreement announced today was developed in consultation with France, Germany, Italy, Spain and the United Kingdom and marks an important step in establishing a common approach to combating tax evasion based on the automatic exchange of information.

- ✓ These five countries, along with the United States, will, in close cooperation with other partner countries, the Organization for Economic Cooperation and Development, and, when appropriate, the European Commission, work towards common reporting and due diligence standards in support of a more global approach to effectively combating tax evasion while minimizing compliance burdens.

U.S. DEPARTMENT OF THE TREASURY

Press Center 7/26/2012

- ✓ The model agreement establishes a framework for reporting by financial institutions of certain financial account information to their respective tax authorities, followed by automatic exchange of such information under existing bilateral tax treaties or tax information exchange agreements.
- ✓ The model also provides for the United States to exchange information currently collected on accounts held in U.S. financial institutions by residents of partner countries and includes a policy commitment to pursue regulations and support legislation that would provide for equivalent levels of exchange by the United States

Summary

The answer for the Foreign Financial Institutions on how to avoid the withholding tax is to do as the I.R.S. requires and

- (i) to collect all of the information necessary to determine the U.S. payees of the Institution's accounts
- (ii) to report regularly in compliance with I.R.S. requirements on these U.S. accounts and
- (iii) withhold taxes on payment being made to a Nonparticipating FFI or a recalcitrant account.

The New Law

The New Law generally requires Foreign Financial Institutions (FFIs) to provide information to the Internal Revenue Service (IRS) regarding the Foreign Financial Institutions' United States accounts (U.S. accounts).

It also requires certain Nonfinancial Foreign Entities (NFFEs) to provide information on their substantial United States owners (substantial U.S. owners).

Fixed or Determinable Income

The types of U.S. income that are identified as being subject to the 30% withholding tax, when that income is paid to Foreign Financial Institutions, is the type of income known as fixed or determinable income.

Also included is gains from the sale of certain capital assets.

This is different than the withholding tax on payments by Americans to non resident aliens and foreign corporations because gains from the sales of capital assets are not included in the existing withholding rules.

I.R.S. Code Section

The New Law is codified in Internal Revenue Code Sections 1471 through 1474.

- Code Section 1471(a) of the Internal Revenue Code (“Section”) requires any person required to withhold taxes, (a “Withholding Agent”) to withhold 30 percent of any withholdable payment to a Foreign Financial Institution that does not meet certain requirements.

Withholding Requirements under the FFI Agreement

- Identification of Account Holders under the FFI Agreement
- Reporting Requirements of Participating FFIs
- Expanded Affiliated Group Requirements

“FFI Agreement”

The U.S. Treasury has now made foreign banks, brokers and companies similar to U.S. bankers and brokers, when it comes to supplying information about U.S. taxpayers.

The FFI can avoid the responsibility to withhold these taxes – if they comply.

The withholding on payments to and by a (FFI) Foreign Financial Institution or a Non Financial Foreign Entity can be avoided if the Foreign entities comply with new U.S. Treasury requirements.

- To comply, the U.S. now wants full disclosure of every U.S. account holder in that Foreign Institution and on every substantial shareholder in the Non Foreign Financial Enterprise.

Definitions

The best way to provide an understanding of the overall purpose of the new statute and what it is all about is to start off with a list of new terms that are now going to show up as a result of this new law.

Definitions

- U.S. Account
- Financial Account
- Depository Account
- Debt/Equity
- U.S. Owned Foreign Entity
- Financial Institution (FFI)
- Excluded Foreign Entities
- Recalcitrant Account Holder
- Pass thru Payments
- Substantial U.S. Owner
- Specified U.S. Person
- Withholdable Payments to Non Financial Foreign Entities (NFFEs)

A withholdable payment is defined to mean

(i) any payment of interest, dividends rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income if such payment is from sources within the United States (Fixed Income) and

(ii) any gross proceeds from the sale or other disposition of any property of a type which can produce interest or dividends from sources within the United States. (“Sale Income”).

The Term *Financial Account* Means

With respect to any financial institution, **any depository** account maintained by such financial institution; **any custodial** account maintained by such financial institution; and any **equity or debt interest** in such financial institution (other than interests which are regularly trade on an established securities market).

Helpful Definitions

A Foreign Financial Institution

A foreign financial institution is a financial institution that is a foreign entity that:

- 1) Accepts deposits in the ordinary course of a banking or similar business;
- 2) Holds financial assets for the account of others as a substantial portion of its business; or
- 3) Is engaged, or holds itself out as being engaged, primarily in the business of investing, reinvesting, or trading in securities, or any other financial interest such as forward contracts or options on securities, partnership interests, or commodities

Excluded Foreign Entities

Many Foreign Entities are excluded from the definition of a financial institution or are treated as Non-Financial Institutions that do not need to meet any of the withholding and/or reporting requirements.

These entities include certain nonfinancial holding companies, certain startup companies, non-financial entities that are liquidating or emerging from reorganization or bankruptcy, hedging/financial centers of a nonfinancial group, and charitable entities.

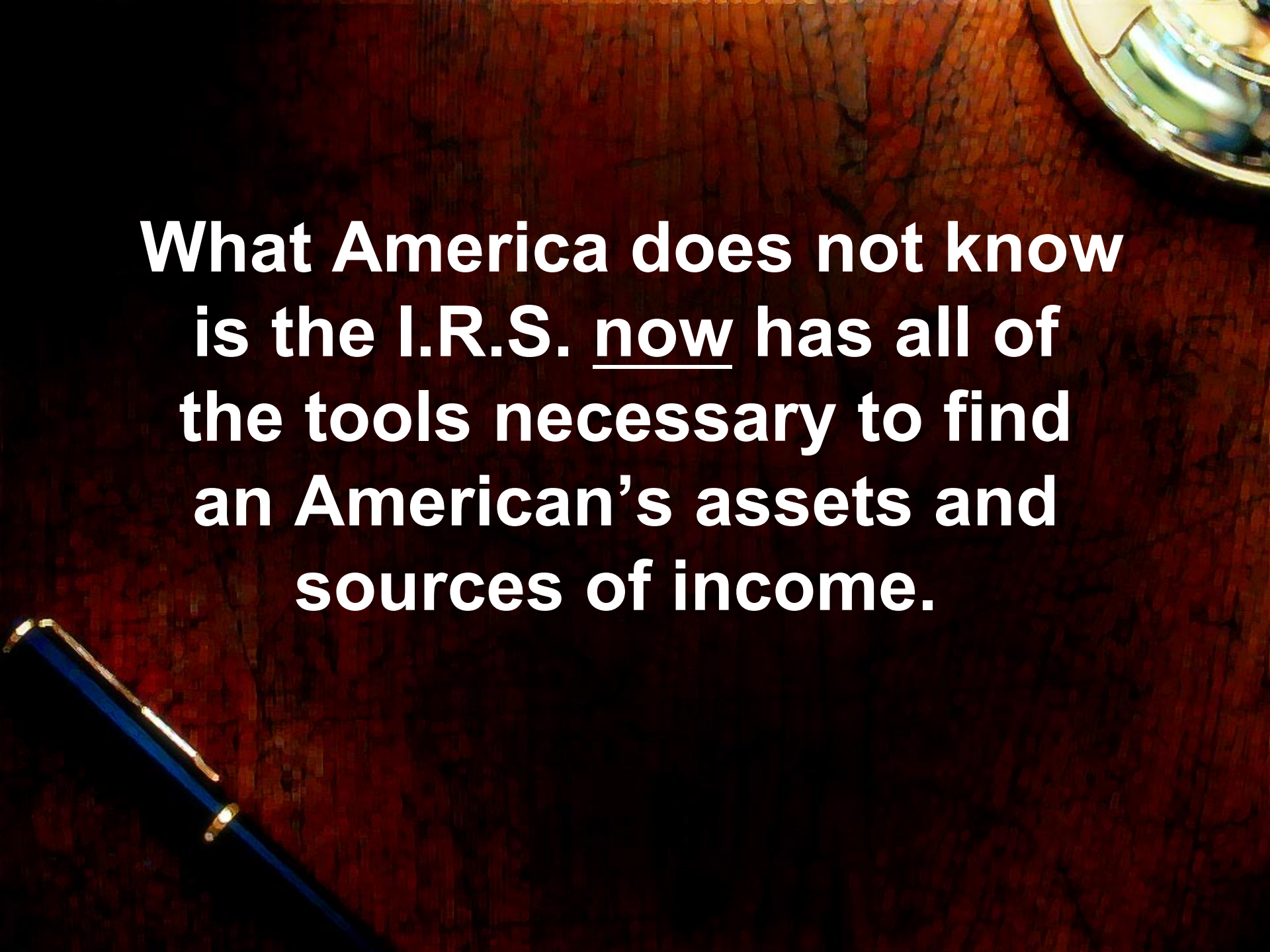
Recalcitrant Account Holder

- A recalcitrant account holder is defined as any holder of an account maintained by a Participating FFI if the account holder is not an FFI and the account holder either
 - (i) fails to comply with the Participating FFI's request for documentation or information to establish whether the account is a U.S. account,
 - (ii) fails to provide a valid Form W-9 upon the request of the Participating FFI,
 - (iii) fails to provide a correct name and TIN upon request of the FFI after the Participating FFI receives notice from the IRS indicating a name/TIN mismatch or
 - (iv) fails to provide a valid and effective waiver of foreign law if foreign law prevents reporting with respect to the account holder by the Participating FFI.

Substantial U.S. Owner

Generally, the term substantial U.S. owner means any specified U.S. person that owns, directly or indirectly, more than ten percent of the stock of a corporation, or with respect to a partnership, more than ten percent of the profits interests or capital interests in such partnership.

For trust, a substantial U.S. owner is any specified U.S. person that holds, directly or indirectly, more than ten percent by value of the beneficial interests in such trust, or with respect to a grantor trust, any specified U.S. person that is an owner of such grantor trust. There are attribution rules to determine indirect ownership of stock.

A dark wood desk with a blue pen and a glass. The text is centered on the desk.

**What America does not know
is the I.R.S. now has all of
the tools necessary to find
an American's assets and
sources of income.**

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**Value can be lost without good
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