

## Part IV – Items of General Interest

### Update on Jurisdictions Treated as Having an IGA in Effect and on FATCA Financial Institution Registration

#### Announcement 2014-17

Since the 2012 release of the Model 1 and Model 2 intergovernmental agreements (IGAs) to implement the Foreign Account Tax Compliance Act (FATCA), there has been robust and growing interest from jurisdictions worldwide to enter into IGAs. To date, the United States has signed IGAs with 26 jurisdictions and has reached agreements in substance or is in advanced discussions with many others. Foreign financial institutions (FFIs) and other stakeholders continue to express strong support for a broad IGA network as a way to facilitate FATCA compliance while avoiding legal conflicts, and to more effectively and efficiently implement cross-border tax information reporting. They have also expressed practical concerns about the status of FFIs in jurisdictions that are known to be in an advanced stage of concluding an IGA, but have not yet signed an agreement. For this reason, the U.S. Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) are issuing this announcement to provide FFIs in jurisdictions that already have reached an agreement in substance on the terms of an IGA with the clarity they need to prepare to comply with FATCA. This announcement also addresses stakeholders' practical concerns by allowing an FFI ten additional days to register in preparation for FATCA implementation on July 1 and still ensure that its Global Intermediary Identification Number (GIIN) will appear on the first public list of GIINs.

## **Background**

The final regulations provide that the IRS will publish a list identifying all countries that are treated as having a Model 1 or Model 2 IGA in effect. Reg. §§ 1.1471-1(b)(78) and (79). Notice 2013-43, 2013-31 I.R.B. 113, provides that this list is maintained on the Treasury website at <http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA-Archive.aspx>. A link to the list is also available on the IRS website at <http://www.irs.gov/Businesses/Corporations/Information-for-Foreign-Financial-Institutions>. Notice 2013-43 further provides that Treasury and the IRS intend to include on this list jurisdictions that have signed, but may not yet have brought into force, an IGA.

The final regulations generally provide that, in order for withholding not to apply, a withholding agent must obtain an FFI's GIIN for payments made after June 30, 2014, and must confirm that the GIIN appears on the IRS FFI List. A special rule, however, provides that a withholding agent does not need to obtain a reporting Model 1 FFI's GIIN for payments made before January 1, 2015. See Reg. § 1.1471-3(d)(4)(iv)(A). Notice 2013-43 and Announcement 2014-1, 2014-2 I.R.B. 393, indicate that FFIs must register on the FATCA registration website by April 25, 2014 (GMT -5), to ensure they are included on the first IRS FFI List, which is expected to be electronically available on June 2, 2014 (GMT -5).

Stakeholders generally have expressed concerns that FFIs located in jurisdictions that are expected to sign an IGA, but have not yet signed the agreement, are unable to plan effectively and efficiently for the July 1 implementation of FATCA

given the uncertainty regarding when the relevant IGA may be signed and therefore treated as being in effect. More specifically, stakeholders have expressed concern that certain jurisdictions will not have signed an IGA by April 25, 2014, and accordingly that FFIs in those jurisdictions will not be able to timely register consistent with their expected IGA status. For example, some FFIs that expect to be reporting Model 2 FFIs may not be able to register by April 25 if legal impediments would prevent them from agreeing to the terms of the FFI Agreement that would apply absent the modifications applicable to reporting Model 2 FFIs under a signed Model 2 IGA. Some FFIs that expect to be reporting Model 1 FFIs and therefore to rely on the special rule providing that withholding agents do not need to obtain GIINs of reporting Model 1 FFIs before January 1, 2015, are concerned about missing the April 25 deadline in case the relevant IGA is not in fact signed, and therefore treated as being in effect, by July 1. Other FFIs that expect to be reporting Model 1 FFIs wish to ensure their inclusion on the first IRS FFI List in order to simplify the documentation of their status with withholding agents (even though withholding agents should not require reporting Model 1 FFIs to provide GIINs until January 1, 2015), but are concerned that they will not be able to register as reporting Model 1 FFIs before April 25 if their jurisdiction's IGA is not signed, and therefore treated as being in effect, by that date.

### **Expansion of IGAs Treated as Being in Effect to Include Agreements in Substance**

This announcement aims to address these concerns by providing that the jurisdictions listed on the Treasury and IRS websites as jurisdictions that are treated as having an IGA in effect will also include jurisdictions that, before July 1, 2014, have reached agreements in substance with the United States on the terms of an IGA and

have consented to be included on the Treasury and IRS list, even if those agreements have not yet been signed. Such jurisdictions will be treated as having an IGA in effect from the date that the jurisdiction provides its consent (or April 2, 2014, the date of the public release of this announcement, if later) until December 31, 2014, the date by which the IGA must be signed in order for this status to continue without interruption. Treasury expects to add jurisdictions to this list in the coming weeks as additional jurisdictions consent to inclusion on the list and additional agreements in substance are reached. Jurisdictions that reach agreements in substance on or after July 1, 2014, will not be included in the list of jurisdictions that are treated as having an IGA in effect until the IGA is signed.

The text of the agreements in substance that are treated as being in effect will not be published by the IRS or Treasury until the IGA is signed. Instead, the list will specify only whether the relevant IGA is a Model 1 or a Model 2 IGA. Until the IGA is signed, the jurisdiction will be treated as having in effect the relevant model provisions. This means that an FFI resident in, or organized under the laws of, a jurisdiction that is listed on the Treasury and IRS websites as having reached an agreement in substance will be permitted to register on the FATCA registration website consistent with its treatment under the relevant model IGA and will be permitted to certify its status to a withholding agent consistent with that treatment. Treasury generally has a policy of not deviating from the model text except in limited circumstances in Annex II. Any modifications made in the relevant IGA to the model Annex II categories of exempt beneficial owners, deemed compliant FFIs, and accounts excluded from the definition of financial accounts will therefore not be applicable until the IGA is signed.

A jurisdiction may be removed from the list of jurisdictions that are treated as having an IGA in effect if Treasury determines that the jurisdiction is not taking the steps necessary to bring the IGA into force within a reasonable period of time, and, as noted above, a jurisdiction will be removed from the list if the jurisdiction fails to sign the IGA by December 31, 2014. If a jurisdiction is removed from the list, FFIs that are resident in, or organized under the laws of, that jurisdiction, and branches that are located in that jurisdiction, will, from the first day of the month following the month of removal, no longer be entitled to the status that would be provided under the IGA, and will be required to update their status on the FATCA registration website accordingly.

#### **New Dates for Registering to Ensure GIIN Inclusion on the IRS FFI List**

As described in Notice 2013-43, FFIs resident in, or organized under the laws of, a jurisdiction that is treated as having an IGA in effect, which, pursuant to this announcement includes jurisdictions listed on the Treasury and IRS websites as having reached agreements in substance on IGAs before July 1, 2014, should register on the FATCA registration website as a registered deemed-compliant FFI (which would include all reporting Model 1 FFIs) or a participating FFI (which would include all reporting Model 2 FFIs), as applicable. Importantly, withholding agents are still not required to obtain the GIINs of FFIs that are treated as reporting Model 1 FFIs before January 1, 2015.

Based on the IRS experience with the registration system and GIIN generation process to date, the IRS now believes that it can ensure registering FFIs that their GIINs will be included on the June 2 IRS FFI List if their registrations are finalized by May 5,

2014 (GMT -5), rather than April 25, 2014, as originally announced. Further, the IRS believes it can ensure registering FFIs that their GIINs will be included on the July 1 IRS FFI List if their registrations are finalized by June 3, 2014 (GMT -5). FFIs that finalize their registrations after May 5 or June 3 may still be included on the June 2 or July 1 IRS FFI List, respectively; however, the IRS cannot provide assurance that this will be the case. The IRS will continue processing registrations in the order received; however, processing times may increase as the May 5 and June 3 dates approach.

Finally, Treasury and the IRS remind all withholding agents that, in accordance with Reg. §1.1471-3(e)(3), a withholding agent that receives a Form W-8 from a payee with a GIIN that does not yet appear on the published IRS FFI List has 90 days to verify that the GIIN appears on the list before the withholding agent will be treated as having reason to know that the chapter 4 status of the payee is unreliable or incorrect. In addition, a withholding agent that receives a Form W-8 from a payee indicating that the payee has applied for a GIIN has 90 days to obtain the GIIN from the payee and verify it against the IRS FFI List before the withholding agent will be treated as having reason to know that the chapter 4 status of the payee is unreliable or incorrect.

#### **DRAFTING INFORMATION**

The principal author of this announcement is Michael Kaercher of the Office of Associate Chief Counsel (International). For further information regarding this announcement, contact Mr. Kaercher at 202-317-6942 (not a toll-free call).