

## Part IV – Items of General Interest

### Update on Jurisdictions Treated as if They Had an IGA in Effect

#### Announcement 2014-38

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 widespread interest from jurisdictions around the world in entering into IGAs. Announcement 2014-17 (2014-18 I.R.B. 1001) was issued to provide certainty to foreign financial institutions (FFIs) and other stakeholders with respect to the status of FFIs in jurisdictions that reached an agreement in substance on the terms of an IGA on or before June 30, 2014, provided that the IGA is signed by December 31, 2014. In light of the large number of IGAs that were agreed in substance but have not yet been signed, however, stakeholders recently have expressed concern about the practical challenges presented by the requirement that all of these IGAs be signed by December 31, 2014, in order for jurisdictions with an agreed-in-substance IGA to continue to be treated as if they had an IGA in effect. This announcement provides additional guidance with respect to jurisdictions that are treated as if they had an IGA in effect pursuant to Announcement 2014-17 but that do not sign the IGA before December 31,

2014. It also provides guidance with respect to certain jurisdictions that reached an agreement in substance on the terms of an IGA after June 30, 2014.

## **Background**

On July 26, 2012, the U.S. Department of the Treasury (Treasury) released the Model 1 IGA (in both reciprocal and nonreciprocal versions) under which FFIs would satisfy their chapter 4 requirements by reporting information about U.S. accounts to their respective tax authorities, followed by the automatic exchange of that information on a government-to-government basis with the United States. On November 14, 2012, Treasury released the Model 2 IGA, under which FFIs would report specified information directly to the Internal Revenue Service (IRS) in a manner consistent with the final FATCA regulations, supplemented by government-to-government exchange of information on request. Treasury has periodically updated the model IGAs since their initial release, including by developing “standalone” versions of the nonreciprocal Model 1 IGA and the Model 2 IGA that can be implemented by jurisdictions with which the United States does not have a tax treaty or tax information exchange agreement. Treasury has also released new versions of each model IGA that have been updated to reflect the relevant timing of due diligence and transition rules for FFIs that will be the models for IGAs with jurisdictions reaching an agreement in substance after June 30, 2014, or signing an IGA after June 30, 2014, without having previously reached an agreement in substance, and to provide other clarifications. All versions of the models are available on Treasury’s website at <http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx>. The final FATCA regulations provide that the IRS will publish a list identifying all countries that are treated as if they had 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 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 provides that Treasury and the IRS will include on this list jurisdictions that have signed, but may not yet have brought into force, an IGA. Announcement 2014-17 further provides that Treasury and the IRS also will include on the list of jurisdictions treated as if they had an IGA in effect, jurisdictions that, on or before June 30, 2014, had reached agreements in substance with the United States on the terms of an IGA and consented to be included on the Treasury and IRS list of such jurisdictions, even though the jurisdiction had not yet signed the IGA. FFIs that are resident in, or organized under the laws of, or are a branch located in, a jurisdiction that is included on the Treasury and IRS list as having reached an agreement in substance are permitted to register on the FATCA registration website consistent with their treatment under the relevant model IGA, and are permitted to certify their FATCA status to withholding agents consistent with that treatment. Announcement 2014-17 also provides that a jurisdiction that is treated as having an IGA in effect must sign the IGA by December 31, 2014, in order for the FATCA status of FFIs (or branches) in such jurisdiction to continue without interruption.

As of July 1, 2014, 101 jurisdictions were treated as if they have an IGA in effect; 48 of these agreements have been signed, and 53 remain unsigned. The large number of jurisdictions that have reached agreements in substance demonstrates worldwide support for the IGA approach to effectively and efficiently implement FATCA, but it also

raises concerns about the practicality of getting all of the agreed-in-substance IGAs signed by December 31, 2014.

Stakeholders have expressed concerns that FFIs located in jurisdictions with IGAs that are agreed in substance, but not yet signed, are unable to plan efficiently for FATCA compliance given the uncertainty regarding whether the IGA will be signed by December 31, 2014. More specifically, FFIs have expressed concern that if an IGA that is agreed in substance is not signed by December 31, 2014, and an FFI in that jurisdiction has already registered with an IGA-based registration status, it would have to change its registration status. Similarly, withholding agents have expressed concern about re-documenting the FATCA status of FFIs in a jurisdiction that misses the December 31, 2014, signing deadline, including in particular with respect to withholding agents' reliance on the special rule providing that GIINs of reporting Model 1 FFIs do not need to be obtained before January 1, 2015.

Stakeholders also have expressed concerns about whether jurisdictions that had not signed or reached an agreement in substance on the terms of an IGA on or before June 30, 2014, but that did make significant progress in their IGA discussions, will be able to sign the IGA prior to 2015 in light of the significant number of agreed-in-substance IGAs that are being finalized for signature.

### **Extension of Time for Jurisdictions with Agreed-in-Substance IGAs to be Treated as if They Had an IGA in Effect**

This announcement addresses these concerns by providing that a jurisdiction that is treated as if it had an IGA in effect, but that has not yet signed an IGA, retains such status beyond December 31, 2014, provided that the jurisdiction continues to

demonstrate firm resolve to sign the IGA that was agreed in substance on or before June 30, 2014, as soon as possible. After December 31, 2014, Treasury will review the list of jurisdictions having an agreement in substance on a monthly basis to assess whether it continues to be appropriate to treat each jurisdiction included therein as if it had an IGA in effect or whether a jurisdiction should be removed from the list. This determination will be based on, among other factors, the responsiveness of a jurisdiction to communications from the United States regarding the IGA and whether the jurisdiction has raised concerns regarding its ability to sign or bring into force the text that was agreed to in substance. As stated in Notice 2013-43, a jurisdiction that has signed an IGA may also be removed from the list of jurisdictions that are treated as if they had 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.

#### **Additional Jurisdictions Treated as if They Had an IGA in Effect as of November 30, 2014**

Certain jurisdictions that were in advanced discussions on the text of an IGA prior to June 30, 2014, were unable to complete all the necessary steps to reach an agreement in substance on the IGA on or before June 30, 2014. Several of these jurisdictions subsequently have reached an agreement in substance with the United States on the terms of an IGA. This announcement provides that the following jurisdictions will be treated, as of November 30, 2014, as if they had a Model 1 IGA in effect: Angola, Cambodia, Greece, the Holy See, Iceland, Kazakhstan, Montserrat, the Philippines, Trinidad and Tobago, and Tunisia. In addition, Macao will be treated, as of November 30, 2014, as if it had a Model 2 IGA in effect. The Treasury and IRS list of

jurisdictions that are treated as if they had an IGA in effect will be updated to include these jurisdictions. Any jurisdictions that are not included on the updated list of jurisdictions that are treated as if they had an IGA in effect will not be treated as such until the IGA is signed. Based on the same criteria used for the jurisdictions that are treated as if they had an IGA in effect on or before June 30, 2014, Treasury will review this list on a monthly basis for whether these jurisdictions continue to demonstrate firm resolve to sign the IGA that was agreed in substance on or before November 30, 2014, or whether any should be removed from the list.

### **List of Jurisdictions Treated as having IGAs in Effect**

The text of the agreements in substance 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, and the date on which the relevant jurisdiction is treated as if it had an IGA in effect. Until the IGA is signed, the jurisdiction will be treated as if it had in effect the relevant model provisions, including in the case of the additional jurisdictions listed above, the “determination date” referenced in the new Model Annex I, which for IGAs agreed in substance after June 30, 2014, will be November 30, 2014. This means that an FFI resident in, or organized under the laws of, or a branch located in, 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 maintains its policy of not deviating from the model text except in limited circumstances in Annex II. As in Announcement 2014-17, 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 not be applicable until the IGA is signed.

If a jurisdiction is removed from the list of jurisdictions that are treated as if they had an IGA in effect, 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. Such FFIs should also notify withholding agents and financial institutions with which they maintain financial accounts of their change in FATCA status.

#### **EFFECT ON OTHER DOCUMENTS**

This Announcement supplements Notice 2013-43 and Announcement 2014-17 with respect to the expansion of jurisdictions that will be treated as if they had an IGA in effect and supersedes Announcement 2014-17 with respect to the treatment of FFIs in jurisdictions that are treated as if they had an IGA in effect on or before June 30, 2014.

#### **DRAFTING INFORMATION**

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