

Part IV—Items of General Interest

Update on Jurisdictions Treated as If They Have an IGA in Effect

Announcement 2016-27

I. BACKGROUND

In 2012, the U.S. Department of the Treasury (Treasury) released Model 1 and Model 2 intergovernmental agreements (IGAs) to facilitate implementation of the Foreign Account Tax Compliance Act (FATCA). Notice 2013-43 (2013-31 I.R.B.113) provides that a jurisdiction that has signed but not yet brought into force an IGA is treated as if it has an IGA in effect as long as the jurisdiction is taking the steps necessary to bring the IGA into force within a reasonable period of time. Announcement 2014-17 (2014-18 I.R.B. 1001) and Announcement 2014-38 (2014-51 I.R.B. 951) provide that jurisdictions treated as if they have an IGA in effect also include jurisdictions that, before November 30, 2014, had reached an agreement in substance with the United States on the terms of an IGA as long as the jurisdiction continues to demonstrate firm resolve to sign the IGA as soon as possible. Notice 2015-66 (2015-41 I.R.B. 541) announced that foreign financial institutions (FFIs) in partner jurisdictions

with a signed or “agreed in substance” Model 1 IGA that had not entered into force as of September 30, 2015, would continue to be treated as complying with, and not subject to withholding under, FATCA so long as the partner jurisdiction continues to demonstrate firm resolve to bring the IGA into force and any information that would have been reportable under the IGA on September 30, 2015, is exchanged by September 30, 2016, together with any information that is reportable under the IGA on September 30, 2016.

An FFI that is resident in, or organized under the laws of, a jurisdiction that is treated as if it has an IGA in effect is permitted to register on the FATCA registration website and to certify to a withholding agent its status as an FFI covered by an IGA. Jurisdictions that are treated as if they have an IGA in effect, even though the IGA is not yet signed, are treated as if they have in effect the relevant model provisions.

The list of jurisdictions treated as if they have an IGA in effect (the “IGA List”) may be found at <https://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx>. As of the date of publication of this Announcement, the United States has signed IGAs with 83 jurisdictions; of those IGAs, 61 are in force. The United States has also reached agreements in substance with 30 jurisdictions.

II. EVALUATION OF JURISDICTIONS TREATED AS IF THEY HAVE AN IGA IN EFFECT

This Announcement provides that, on January 1, 2017, Treasury will begin updating the IGA List to provide that certain jurisdictions that have not brought their IGA into force will no longer be treated as if they have an IGA in effect. Each jurisdiction with an IGA that is not yet in force and that wishes to continue to be treated as having

an IGA in effect must provide to Treasury by December 31, 2016, a detailed explanation of why the jurisdiction has not yet brought the IGA into force and a step-by-step plan that the jurisdiction intends to follow in order to sign the IGA (if it has not yet been signed) and bring the IGA into force, including expected dates for achieving each step. In evaluating whether a jurisdiction will continue to be treated as if it has an IGA in effect, Treasury will consider whether: (1) the jurisdiction has submitted the explanation and plan (with dates) described above; and (2) that explanation and plan, as well as the jurisdiction's prior course of conduct in connection with IGA discussions, show that the jurisdiction continues to demonstrate firm resolve to bring its IGA into force. With respect to the timing of the exchange of prior year information upon entry into force of a Model 1 IGA, Treasury does not intend to find FFIs to be in significant non-compliance with the IGA as long as any information for prior years is exchanged before the next September 30th after the obligation under the IGA to exchange information has taken effect.

Jurisdictions that are initially determined to have demonstrated firm resolve to bring an IGA into force will not retain that status indefinitely. For example, failure to adhere to the expected timeline set out in the jurisdiction's explanation could result in a determination that the jurisdiction is no longer demonstrating firm resolve to bring its IGA into force and therefore will no longer be treated as if it has an IGA in effect.

In order to provide notice to FFIs, a jurisdiction will not cease to be treated as having an IGA in effect until at least 60 days after the jurisdiction's status on the IGA List is updated. FFIs in a jurisdiction that ceases to be treated as if it has an IGA in effect will no longer be able to rely on the IGA to be treated as complying with, and

exempt from withholding under, FATCA. Unless they qualify for an exemption under the FATCA regulations, such FFIs generally will have to enter into FFI Agreements (see <https://www.irs.gov/businesses/corporations/fatca-foreign-financial-institution-registration-tool>) in order to comply with their FATCA obligations, including reporting information to the IRS and withholding pursuant to the terms of the FFI Agreement.

III. DRAFTING INFORMATION

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