



IRS Announcement 2014-38 Provides Guidance on Agreed-in-Substance IGAs

FATCA Update

On December 1, 2014 the IRS released Announcement 2014-38 to address growing concern over the approaching December 31, 2014 deadline for jurisdictions with FATCA agreements in substance to sign an Intergovernmental Agreement (“IGA”). Pursuant to Announcement 2014-17 (released April 2, 2014), a jurisdiction that reached an agreement in substance with the United States related to the terms of an IGA by June 30, 2014 would be treated as if an IGA was in effect, provided the jurisdiction signed the IGA by December 31, 2014.

Under the newly-issued Announcement 2014-38, such a jurisdiction will retain its status beyond December 31, 2014 as long as it demonstrates a firm resolution to sign the IGA as soon as possible. On a monthly basis, the U.S. Department of the Treasury (“Treasury”) will review each jurisdiction with an agreement in substance in order to determine whether it should continue to be treated as having an IGA in effect or to be removed from the list of countries published by Treasury and the IRS as having an agreement in substance. Treasury will assess jurisdictions by using several factors particularly, the responsiveness of the jurisdiction in terms of communications from the U.S. related to the IGA and whether there are any

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concerns regarding the jurisdiction's ability to sign or bring into force the text that was agreed to in substance.

This relief has also been extended to certain jurisdictions that have reached an agreement in substance after June 30, 2014. Specifically, the list will be updated to reflect Angola, Cambodia, Greece, The Holy See, Iceland, Kazakhstan, Montserrat, The Philippines, Trinidad and Tobago, and Tunisia as having Model 1 IGAs, and Macao as having a Model 2 IGA, in effect as of November 30, 2014. These jurisdictions will be subject to the same monthly review mentioned above.

Any jurisdiction not included within the updated list will not be treated as having an IGA in effect until the IGA is actually signed. When a jurisdiction is removed from the list, Foreign Financial Institutions ("FFIs") resident in or organized under the laws of that jurisdiction as well as branches located therein are, from the first day of the month following the month of removal:

- No longer entitled to the status provided under the IGA;
- Required to update their status on the FATCA registration website; and
- Required to notify any applicable withholding agents and financial institutions of the change in FATCA status (i.e., provide new Forms W-8 or other updated tax documentation.)

For more details please contact our FATCA Leadership for Azerbaijan.

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