

Comparison of IGA Model Agreements to Final FATCA Regulations



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Issue	Model 1	Model 2	Final regulations
FFI agreement	Not required for resident FFIs.	Resident FFIs must agree to comply with the requirements of an FFI Agreement. Article 2(a).	Subject to specified exceptions, all FFIs must enter into an FFI Agreement to avoid withholding. Requirement to withhold, on payments to FFIs, see Reg. §1.1471-2(a). FFI Agreement described, Reg. §1.1471-4.
Amendment of agreement	Intended prior to December 31, 2016. Article 10.	Expected to be the same as Model 1.	Unknown.
Registration with IRS	Required. See, e.g., HMRC Guidance Notes, Section 2.1.	Required. Article 2(1)(a).	Required. Reg. §1.1471-4(a).
Enforcement of compliance	Local/IRS. Article 5.	Local/IRS. Article 4.	Internal compliance program; certifications; IRS. Reg. §1.1471-4(f).
Significant non-compliance	Must be resolved within 18 months. Article 5(2)(b).	Must be resolved within 12 months. Article 4(2).	Rules provided to cure event of default. Reg. §1.1471-4(g).
Deemed-compliant/exempt entities	Annex I(VI)(B)(4), and Annex II (by mutual Agreement).	Annex I(VI)(B)(4), and Annex II (by mutual Agreement).	Reg. §§1.1471-5(e)(5), -5(f), -6; Reg. §1.1472-1(c).
Can resident FFIs be non-participating FFIs?	Limited to cases of unresolved significant non-compliance. Article 5(2)(b).	Limited to cases of unresolved significant non-compliance. Article 4(2).	Yes

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Due diligence requirements	Annex I	Annex I	Reg. §1.1471-4(c).
Election to follow due diligence provisions of the regulations rather than Annex I	Yes. Annex I(I)(C).	Yes. Binding subject to material modification rule. Annex I(I)(C).	N/A
Permitted to open undocumented individual accounts	No, except for de minimis accounts. Annex I(III)(B).	No, except for de minimis accounts. Annex I(III)(B).	Yes, but subject to a limited cure period. Reg. §1.1471-5(g)(ii).
Permitted to open undocumented entity accounts	No; however, self-certification may not be required. Annex I(V)(B), (C).	No; however, self-certification may not be required. Annex I(V)(B), (C).	Yes, but subject to a limited cure period. Reg. §1.1471-4(c)(3)(ii).
Required closing of recalcitrant account holders	No. Article 4(2).	No. Article 4(2)(a).	Yes, as specified. Reg. §1.1471-4(i). Required reduction. Reg. §1.1471-4(g)(1)(ii).
Required to provide financial services to specified U.S. persons	Limited to small financial institutions with a local client base. Annex II.	Limited to small financial institutions with a local client base. Annex II.	Limited to certain deemed-compliant FFIs. Reg. §1.1471-5(f)(1)(i)(A).

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Resolution of conflicts of law to permit reporting	Yes	Yes	No
Reporting of information to local authority or IRS	Local Authority, Article 2.	IRS, Article 2.	IRS, Form 8966: U.S. accounts, Reg. §1.1471-4(d)(3)(vii); recalcitrant, Reg. §1.1471-4(d)(6)(v).
Information reporting requirements	Specified in agreement. Article 2.	Based upon regulations. Article 2.	Provided in Reg. §1.1471-4(d).
Reporting of U.S. accounts	Automatic for reportable U.S. accounts. Article 2(1).	Consent to report required from each US Account. Article 2(1).	Waiver required from each U.S. account, if reporting is prevented under foreign law. Reg. §1.1471-4(i)(2).
Reporting of recalcitrant accountholders	Automatic for reportable U.S. accounts. Article 2(1).	Treated as U.S. accountholders, total number and value to be reported, and subject to group request by U.S. Article 2(2).	Reg. §1.1471-4(d)(6).
U.S. reciprocity	Yes*	Optional	No

* Reciprocal agreement only.

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Issue	Model 1	Model 2	Final Regulations
Resolution of conflicts of law to permit withholding	Yes. See, e.g., Article 4(1)(d).	Yes. See, e.g., Article 3(2)(b).	No
Withholding on resident FFIs	No, except in cases of unresolved significant non-compliance. Article 4.	No, except in cases of unresolved significant non-compliance. Article 3(1).	Yes, withholding applies to any non-participating FFI. Reg. §1.1471-4(b).
Withholding on nonresident, non-participating FFIs	Yes. Article 4(1).	Yes, subject to the withholding requirements of the regulations. Article 2(1)(a).	Yes, withholding applies to any non-participating FFI. Reg. §1.1471-4(b).
Withholding on foreign passthru payments and gross sales proceeds	No. Article 4.	No. Article 3.	Yes, 2017 at the earliest. Reg. §1.1471-4(b)(4).
Withholding on U.S.-source FDAP	No. Article 4.	No. Article 3.	Yes, begins in 2014, Reg. §1.1471-4(b).
Withholding on recalcitrant account holders	No. Article 4(2).	No. Article 3(2).	Yes. Reg. §1.1471-4(b).

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