

Revised Models of FATCA Intergovernmental Agreements

Closing the distance

Global Financial Services Industry



The U.S. Treasury has released revised models of FATCA Intergovernmental Agreements (IGAs).

On November 4, 2013, the U.S. Treasury released revised versions of the Model 1A, Model 1B, Model 2 (with preexisting TIEA or DTC¹) IGAs as well as for their respective Annexes I and II.

The revised versions of the Model IGAs and Annexes introduce changes to the last version released August 29, 2013 and July 12, 2013 and are summarized below.

¹ Tax Information Exchange Agreement or Double Tax Convention

- **Revised Model 1A and Model 1B (with or without TIEA or DTC) IGAs. Main differences based upon August 29, 2013 version.**
 - The definition of a Financial Account is extended by including the following provisions:
 - An Interest in a Financial Institution (FI) is considered a Financial Account when not “regularly traded” if the holder of the interest (other than the FI acting as an intermediary) is registered on the books of the FI.
 - An Interest registered on the books before July 1, 2014 will not be considered a Financial Account.
 - For interests that first register on or after July 1, 2014, the FI is not required to apply the Financial Account treatment until January 1, 2016.
 - For these purposes, interests are treated as “regularly traded” if “there is a meaningful volume of trading with respect to the interests on an ongoing basis” and an “established securities market” is an exchange that is officially recognized and supervised by the governmental authority in which the market is located provided a meaningful annual value of shares are traded on the exchange.
 - The definition of a Specified U.S. person is amended to exclude any tax-exempt trust established under a plan that is described in Sections 403(b) or 457(b) of the U.S. Internal Revenue Code.
 - It is clarified that a FATCA Partner FI can continue to be in compliance even though it has related entities and branches that are Nonparticipating FIs due to the expiration of the 2 year transitional period for Limited FFIs and branches.
 - Similar to the French IGA, article 5 related to the collaboration on compliance and enforcement is modified to require compulsory notification when a Competent Authority has detected administrative or other minor errors. There will not be direct inquiries made to the Reporting FI.
- **Annex I of Model 1 IGAs. Main differences based upon July 12, 2013 version.**
 - **Time for the determination of balance or value**
 - The Annex I is modified to permit that when a balance or value threshold is required to be determined by June 30, 2014, such balance or value can be determined either (i) the last day of the reporting period ending immediately before June 30 (as provided in the prior version) or (ii) on that day (i.e. June 30).
 - Likewise, when a balance or value threshold is to be determined as of the last day of a calendar year, the Annex I has been modified to clarify that the relevant balance or value shall be determined as of the last day of the calendar year or other appropriate reporting period.
- **Annex II of the Model 1 IGAs. Main differences with August 29, 2013 version.**
 - Annex II is modified to require a written decision between the Competent Authorities and the U.S., for the purposes of adding or removing entities or accounts covered in such Annex II.

- **Model 2 (with or without TIEA or DTC) IGAs. Main differences based upon August 29, 2013 version.**
 - Similar to the Model 1 Agreement, the definition of a Specified U.S. person is amended to exclude any tax-exempt trust established under a plan that is described in Sections 403(b) or 457(b) of the U.S. Internal Revenue Code.
 - Article 3, has been modified to expressly require that the Reporting FIs must register with the IRS via the IRS FATCA registration website in order to be treated as compliant and not subject to withholding.
 - As in the Model 1 IGA, it is clarified that a FATCA Partner FI can continue to be in compliance even though it has related entities and branches that are Nonparticipating FIs due to the expiration of the 2 year transitional period for Limited FFIs and branches.
 - Verification and enforcement provisions are modified to:
 - Allow the U.S. Competent Authority to make inquiries whether or not they are in accordance with the competent authority agreement.
 - In the instance of a Model 2 IGA with a TIEA or DTC, it does not require the U.S. Competent Authority to notify the FATCA Partner Competent Authority about an inquiry made to a FI.
 - In the instance, of a Model 2 IGA with no TIEA or DTC (in which notification was not foreseen), the U.S. Competent Authority may need to notify the country Competent Authority in accordance with the competent authority agreement or arrangement.

- **Annex I of Model 2 IGAs. Main differences based upon July 12, 2013 version.**
 - The definition of Active NFFE is modified to include a clarification of what is considered “regularly traded” on an “established securities market” in the same manner described for Model 1 IGAs.

- **Annex II of Model 2 IGAs. Main differences based upon August 29, 2013 version.**
 - Annex II is modified to require a written decision between the Competent Authorities and the U.S. for the purposes of adding or removing entities or accounts covered in such Annex II.
 - Section D of Annex II related to Investment advisors and Investment managers is modified to clarify that investment entities that are FIs solely because they render investment advice or manage portfolios whose funds are deposited in accordance with certain conditions established in the Annex, are considered Non-Reporting FATCA Partner FIs.

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