

FATCA Update

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

Global Financial Services Industry



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 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 information please [click here](#) or please contact:

Denise Hintzke

Director, Global FATCA Tax Leader
Deloitte Tax LLP
+1 212 436 4792

Anne Mericle

Global FATCA PMO Senior Manager
Deloitte Tax LLP
+1 212 436 3908

Americas

John Rieger

Partner, National Tax Financial
Services Industry
Deloitte Tax LLP
+1 212 436 6934

Matthew Cahill

Partner, Global Information Reporting
Deloitte Tax LLP
+1 212 436 3420

James Dockeray

FATCA Leader,
Caribbean/Bermuda
Deloitte & Touche Ltd.
+1 441 299 1399

Patty Florness

Partner, Global Information
Reporting
Deloitte Tax LLP
+1 212 436 7413

John Kocjan

Partner, FATCA Consulting Leader,
U.S.
Deloitte Consulting LLP
+1 212 618 4181

Dennis Metzler

FATCA Leader, Canada
Deloitte & Touche LLP
+1 416 601 6144

Helda Rock

Director, FATCA Enterprise Risk
Services Leader, U.S.
Deloitte & Touche LLP
+1 973 602 6052

Michael Shepard

Principal, Deloitte Transactions and
Business Analytics LLP
+1 215 299 5260

Greg Thomas

Principal, FATCA Enterprise
Risk Services Leader, U.S.
Deloitte & Touche LLP
+1 415 783 5211

Mike Wade

Director, FATCA Enterprise Risk
Services Leader, U.S.
Deloitte & Touche LLP
+1 804 697 1537

Jon Watts

Director, FATCA Enterprise Risk
Services Leader, U.S.
Deloitte & Touche LLP
+1 212 436 6561

Asia-Pacific

Jim Calvin

FATCA Leader, Asia-Pacific
Deloitte & Touche LLP
+65 9662 3014

Anna Bleazard

FATCA FAS Leader, Asia-Pacific
Deloitte & Touche Financial Advisory
Services Pte Ltd.
+65 6216 3277

Marie Gervacio

FATCA Regional Consulting
Leader, Asia-Pacific (excl.
Japan)
Deloitte Consulting (Hong
Kong) Limited
+852 9104 7451

Europe, Middle East & Africa

Brandi Caruso

FATCA Leader, Switzerland
Deloitte AG
+41 58 279 6397

Claire Dawson

FATCA Tax Leader, Middle East
Deloitte LLP
+971 4 5064900

Humphry Hatton

FATCA Co-Leader, Middle
East
Deloitte LLP
+971 4 5064730

Umair Hameed

FATCA FAS Leader, Middle East
Deloitte Corporate Finance Ltd
+971 4 5064878

Piero Molinaro

FATCA FAS Leader, Europe
Deloitte & Touche, S.p.A
+39 02 8332 5102

Nick Sandall

FATCA Consulting Leader,
EMEA
Deloitte LLP
+ 44 20 7007 1850

Chris Tragheim

FATCA Tax Leader, EMEA
Deloitte LLP
+ 44 20 7303 2848

Markus Weber

Financial Services Industry Tax
Leader, Switzerland
Deloitte AG
+41 58 279 7527

Global Information Reporting

Matthew Cahill

+1 212 436 3420

Terence Coppinger

+1 212 436 6412

Patty Florness

+1 212 436 7413

Denise Hintzke

+1 212 436 4792

Anthony Martirano

+1 973 602 6986

Susan Segar

+1 703 885 6328

Kristen Starling

+1 212 436 4281

Faye Tannenbaum

+1 212 436 2968

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