

# *Global IRW Newsbrief*

Information reporting and withholding (IRW)

December 19, 2012

*FATCA IGA update: How the Mexico and Denmark agreements compare to the model*

## *In brief*

The expected onslaught of intergovernmental agreements (IGAs) implementing the tax reporting and withholding procedures associated with the Foreign Account Tax Compliance Act (FATCA) has begun. This is not surprising considering the recent US Department of Treasury (US Treasury) announcement that it is engaged with more than 50 countries around the world to combat offshore tax evasion.

The US Treasury signed IGAs on November 19, 2012 with Mexico (the [US/Mexico IGA](#)) and on November 15, 2012 with Denmark (the [US/Denmark IGA](#)). Although the Articles and Annexes for the Mexico and Denmark IGAs follow a similar format as the Model IGA, some differences do exist. As expected, the most significant differences are contained in Annex II which is customized to identify the local entities, accounts, and products that present a low risk of being used by US persons to evade US tax.

Since the signing of the Mexico agreement, the governments of Spain, Switzerland, and Ireland have also announced agreement on the terms of separate IGAs with the US Treasury.



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## More details

### What model is used for the Mexico and Denmark IGAs?

The Mexico and Danish IGAs are both based on the Model 1A Agreement which is intended to be a long-term solution to reduce the cost and to address legal impediments that could have prevented compliance with FATCA (for a link to all of the model agreements and differences between the reciprocal and non-reciprocal version, click [here](#) for the US Treasury FATCA Resource Center). Under a Model 1A Agreement, a foreign financial institution (FFI) in a respective partner country is required to report US-owned account information directly to their local tax authority, rather than to the Internal Revenue Service (IRS). The local authority would then automatically share that information with the IRS. Moreover, the Mexico and Danish IGAs provide that the United States will reciprocate with the sharing of information.

**PwC observation:** *The US Treasury intended that each IGA conform to one of the model agreements, with Annex II being the only part of an IGA that varies. It remains to be seen how much conformity there will be, given that some IGAs promulgated so far contain differences. These differences may have been specifically negotiated between the governments or could represent an evolutionary process of updating and improving the agreements. Moreover, the IGAs will likely be implemented differently by each jurisdiction. To the extent the IGAs vary from country-to-country, multinational organizations could experience additional complexity and administrative burden when complying.*

### So how do the recent IGAs compare to the Model 1A Agreement?

#### Mexico

The following is an overview of the major differences between the US/Mexico IGA and the Model 1A Agreement:

- **Reporting.** The US/Mexico IGA provides that Mexican financial institutions will be required to report the average monthly balance or value of each US reportable account. This requirement differs from the Model 1A Agreement and the proposed FATCA regulations which only require the reporting of balances at the end of the year or other appropriate reporting period.

**PwC observation:** *It appears that the Mexican government specifically negotiated this term to synchronize the FATCA reporting with obligations currently required under Mexican law. Specifically, financial institutions have monthly income withholding obligations on interest derived from certain investments managed by them. They must also report accumulated real interest/gain (nominal interest less the inflationary effect) on an annual basis to the Mexican tax authorities. Both of these calculations involve monthly*

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*account balances and thus, financial institutions in Mexico are already tracking this information.*

- **Entry into force.** The US/Mexico IGA enters into force on January 1, 2013. Under the Model 1A Agreement, the agreement enters into force on the later of January 1, 2013 or the date on which the parties each notify the other in writing that their necessary internal procedures for entry into force have been completed.

***PwC observation:** The Mexican government believes that it has the needed legislation in place to implement the IGA, as noted in the preamble to the US/Mexico IGA.*

- **Minor and administrative errors.** The US/Mexico IGA provides that where the Mexican competent authority (CA) has reason to believe that administrative or other minor errors have occurred, it may make an inquiry directly to a US financial institution. In contrast, if the US CA has a similar concern, it must make a request to the Mexican CA which would then make an inquiry to the Mexican financial institution. This latter provision is similar to the agreement of both countries in a Model 1A Agreement.

***PwC observation:** In other words, the US CA would not contact a Mexican financial institution directly, whereas Model 1A permits the US CA to contact the foreign reporting financial institution directly.*

## Denmark

Unlike the Mexican IGA, the Denmark IGA does not contain any significant differences from the Model 1A Agreement.

***PwC observation:** Although the differences in the Denmark IGA are minor, it is expected that minor refinements will continue to be included in future IGAs. Treasury regularly updates the models (mainly Model 1), that appears on the Treasury [website](#).*

## Some actions to think about

How do you plan to keep up-to-date with the release of these IGAs and some of their unique differences? **[Access our FATCA IGA Website Monitor](#)** that includes:

- a high-level overview of signed IGAs
- the latest inter-governmental developments
- potential actions to think about as you look at the impact of the IGAs to your FATCA program.

## Additional background

For additional background, please see these previous Global IRW Newsbriefs:

- [US Treasury expects finalization of more FATCA intergovernmental agreements by year-end](#)
- [HMRC guidelines on new UK-US FATCA Agreement provide insights and invite comments](#)
- [United States and United Kingdom Sign First Bilateral FATCA Intergovernmental Agreement](#)
- [Treasury releases model intergovernmental agreement for implementing FATCA](#)

*For more information, please do not hesitate to contact:*

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