
US provides FATCA relief with expansion of intergovernmental agreements in effect and additional 10 days to register

April 3, 2014

In brief

With 89 days until many of the provisions of FATCA (Foreign Account Tax Compliance Act) take effect, a number of foreign financial institutions (FFIs) resident or organized in 20 different jurisdictions have been provided temporary intergovernmental agreement (IGA) FFI status until December 31, 2014. This 'in effect' status is the basis for determining the requirements for FFIs in these jurisdictions regarding IRS registration and the potential due diligence, withholding, and reporting obligations under FATCA. The 'in effect' status only applies to an institution resident in such country, but does not include branches located outside of such country. It also applies to any branch located in the IGA country.

This temporary status was provided in Announcement 2014-17 ([link](#)) released on April 2, 2014 by the US Department of the Treasury (Treasury) and the Internal Revenue Service (IRS). The announcement, which was accompanied by a separate Treasury press release ([link](#)), provides two significant changes:

- *An expansion of the circumstances in which the United States will treat a jurisdiction as having an IGA in effect through the end of 2014.* The US Treasury expanded the list of jurisdictions deemed to have an IGA in effect which provides FFIs in those jurisdictions with much needed clarity as they prepare to comply with FATCA. To be included on the Treasury's 'in effect' list (see [link](#)), the partner country must agree in substance to an IGA before July 1, 2014 and consent to have the status of its IGA disclosed. Treasury has noted on its website an additional 20 jurisdictions in which IGAs are now treated as being in effect. FFIs in these jurisdictions are permitted to register consistent with their treatment under the relevant model IGA and will be permitted to certify their status to withholding agents consistent with that treatment.
 - *Extending the time by which FFIs must register with the IRS in order to be included on the first IRS FFI list, which is slated to be released on June 2, 2014.* FFIs that must register with the IRS now have until May 5, 2014, instead of April 25, 2014 as originally announced, to register and be included on the first IRS FFI list. According to the announcement, FFIs that register by June 3, 2014 will be included on the second FFI list slated to be released on July 1, 2014.
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In detail

What countries are listed as having an IGA in effect?

The 20 jurisdictions listed as having reached an agreement in substance are: Australia, Austria, Belgium, Brazil, British Virgin Islands, Czech Republic, Gibraltar, Jamaica, Kosovo, Latvia, Liechtenstein, Lithuania, New Zealand, Poland, Portugal, Qatar, Slovenia, South Africa, South Korea and Romania. All of these are Model 1 IGAs except for Austria which is a Model 2.

What provisions are applicable before an official IGA text is released?

Consistent with its existing practice, Treasury will not release the text of any IGA before it is signed. The announcement makes clear that if an IGA is included on the Treasury's 'in effect' list because an agreement has been reached in substance (not signed) and the jurisdiction has consented to having the status of their IGA disclosed, the jurisdiction will be treated as having in effect the relevant model provisions.

Treasury further noted that it has a general policy of not deviating from the model text except in limited circumstances in Annex II (e.g., relating to exempt beneficial owners, deemed compliant FFIs, and excluded financial accounts). As a result, later deviations to Annex II categories will not be applicable until the IGA is signed.

What are the benefits to FFIs of this limited relief?

There are a number of benefits to FFIs resident or organized in the countries treated as having IGAs in effect:

- It eliminates the concern that these FFIs would not be able to timely register by April 25, 2014, consistent with their expected IGA

status. As stated above, FFIs now have until May 5, 2014 to register with the IRS.

- FFIs expecting to be in Model 1 IGA countries that want to ensure their inclusion on the first IRS FFI list can simplify the documentation of their status with their withholding agents. These FFIs now have until January 1, 2015 to register and provide their global intermediary identification numbers (GIINs) to their withholding agents.
- FFIs expecting to face legal impediments preventing them from agreeing to the terms of an FFI agreement can now potentially register and satisfy the new May 5, 2014 deadline.

When must agreement in substance be reached for inclusion on the Treasury list?

Treasury expects to add jurisdictions to its list in the coming weeks as additional agreements in substance are reached and additional jurisdictions consent to inclusion on the list. If a country negotiates with the US government but fails to reach an agreement with respect to the IGA in substance before July 1, 2014, then it must wait until its IGA is signed before the agreement is treated as being in effect.

What must countries do to ensure continued 'in effect' status?

Those jurisdictions that are listed on Treasury's 'in effect' list will be treated as such for a limited time through the end of 2014. By that time, jurisdictions must sign their IGAs in order for this status to continue. If the jurisdiction fails to sign its IGA by December 31, 2014, the jurisdiction will be removed from the 'in effect' list. In addition, FFIs (including branches) resident or organized in

such jurisdictions will not be entitled to their claimed IGA status effective January 1, 2015. These FFIs and branches will be required to update their status on the FATCA website accordingly.

The takeaway

Those companies that want more certainty with respect to their FATCA compliance plans in certain countries will benefit greatly from this new guidance. They should promptly review the additional 20 jurisdictions that have been added to the Treasury's 'in effect' list. Certain FFIs will be able to either push back their plans to register with the IRS until later this year or will have greater certainty around their status and register now to obtain a GIIN before approaching withholding deadlines.

FFIs will also have an extra 10 days to register with the IRS to be included in the first FFI list. The impact of this additional time will depend on the company and how far along they are with their FATCA analysis and compliance plans. Some taxpayers, particularly those in the financial services industry, will likely enjoy relief with these extra days.

For those companies that have not yet engaged in a legal entity analysis to determine what entities may be affected by FATCA, the 10-day delay may not yield much relief. Most notably, many multinational companies that are outside of the financial services industry may still need to assess their FATCA compliance obligations.

Let's talk

For more information on how FATCA might impact your MNC, please contact a member of the Global GIR Network. To view contacts for over 70 countries worldwide, click [here](#).

Additional information

For more information about the release of the new FATCA regulations, please see the previously released *Tax Insight* “*With only four months to go, do you know the impact of the latest FATCA guidance?*” (Click [here](#))

For other information regarding FATCA guidance and implementation, please click [here](#) for the *Global IRW Newsbrief* and *Tax Insights from Global Information Reporting* archive.

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