

# IRS Offers FATCA Relief, Extending Registration Deadline and Expanding Intergovernmental Agreement List

**April 10, 2014**

On April 2, 2014, the U.S. Internal Revenue Service (IRS) issued [Announcement 2014-17](#) (the Announcement), which provides certain FATCA relief.[1] The Announcement extends from April 25, 2014 to May 5, 2014 the deadline by which an FFI must register with the IRS in order to appear on the first public list of "Global Intermediary Identification Numbers" (GIINs) maintained by the IRS, also known as the "FFI List." A GIIN is an identification number that will be assigned by the IRS to an FFI upon registration. The Announcement also expands the list of jurisdictions with intergovernmental agreements (IGAs) considered effective (Effective IGA List) by including jurisdictions with IGAs that have been agreed in substance, even if an IGA has not yet been signed.

## ***Extension of First Registration Deadline***

Treasury Regulations under FATCA generally provide that, in order for withholding under FATCA not to apply for certain payments made after June 30, 2014, a withholding agent must obtain a GIIN and confirm that the GIIN appears on the FFI List.[2] Prior guidance from the IRS indicated that an FFI had to register with the IRS by April 25, 2014 in order to ensure inclusion on the first FFI List.[3]

Under the Announcement, the deadline by which an FFI must register in order to appear on the first FFI List (to be published on June 2, 2014) is extended to May 5, 2014. Further, FFIs that register by June 3, 2014 will be included on the second FFI List to be published on July 1, 2014.

The Announcement points out that FFIs finalizing registration after these dates may still be included on the first or second FFI Lists, as applicable, but the IRS cannot provide assurance that this will be the case.

## ***Expansion of Effective IGA List***

In order to register for a GIIN for an FFI that is subject to an IGA, the IGA must be effective as of the registration date. With the first registration deadline approaching, concern had arisen that entities in jurisdictions engaged in discussions with the United States regarding IGAs, but which had not yet signed IGAs, would face uncertainty regarding their status for registration purposes. In order to address this concern, the Announcement provides that a jurisdiction that, prior to July 1, 2014, has reached an agreement in substance with the United States on the terms of an IGA and has consented to be included on the list will be included on the Effective IGA List, even if that IGA has not yet been signed.[4]

- These jurisdictions will be treated as having an IGA in effect from the date the jurisdiction consents to inclusion on the Effective IGA List (or April 2, 2014, if later) until December 31, 2014, the date by which the IGA must be signed in order for its effective status to continue without interruption.
- Jurisdictions that reach agreements in substance on or after July 1, 2014 will not be included in the Effective IGA List until an IGA is signed.
- The Effective IGA List will specify whether the relevant IGA will follow Model 1 or Model 2, but will have no further information regarding the specific details of the IGA discussions, and the jurisdiction will be treated as having the relevant model provisions in effect.
- As of the date of the Announcement, jurisdictions that will be treated as having Model 1 IGAs in effect include Australia, Belgium, Brazil, the British Virgin Islands, Croatia, the Czech Republic, Estonia, Gibraltar, Jamaica, Kosovo, Latvia, Liechtenstein, Lithuania, New Zealand, Poland, Portugal, Qatar, Slovenia, South Africa, South Korea and Romania. As of the date of the Announcement, Austria is the only jurisdiction that will be treated as having a Model 2 IGA in effect.

A jurisdiction may be removed from the Effective IGA List if Treasury determines that such jurisdiction is not taking the steps necessary to bring the IGA into force within a reasonable period of time, although the Announcement does not describe how this determination might be made. As it is not explicit in the Announcement, it is unclear whether this provision also applies to jurisdictions that have signed IGAs, but have not yet taken steps to bring the IGAs into force (e.g., formal ratification steps through the IGA partner jurisdiction's legislative processes).

The Announcement is generally favorable, as it expands the number of jurisdictions on the Effective IGA List to include a number of additional G20 countries and other U.S. trading and investment partners, and as such is a welcome development. However, there continue to be important questions about the implementation of FATCA in jurisdictions with IGAs, which may or may not be addressed in future guidance.

If you would like to discuss the Announcement or FATCA-related matters generally at any time, please contact any of the lawyers listed on this alert or the member of the Proskauer Tax Group with whom you normally consult on these matters.

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[1] "FATCA" is the common name for the withholding and information reporting regime codified at Sections 1471-1474 of the U.S Internal Revenue Code of 1986, as amended. FATCA generally requires foreign financial institutions (FFIs) and certain other foreign entities to undertake diligence to identify U.S. accounts, and report certain information to the IRS with respect to such U.S. accounts, or suffer 30% U.S. withholding on certain U.S. source "withholdable payments" and on foreign "passthru" payments that such foreign entities receive. An IGA is an agreement entered into by the United States and another jurisdiction that provides for an alternative method of implementing FATCA.

Please see our previous client alerts, including "[FATCA Deadlines Extended](#)" (July 15, 2013), "[U.S. Tax Authorities Issue Final FATCA Regulations](#)" (January 25, 2013), and "[IRS Announces Extended FATCA Deadlines](#)" (October 25, 2012).

[2] Pursuant to a special rule, a withholding agent does not need to obtain a GIIN from a "Model 1 FFI" for payments made before January 1, 2015. Two types of model IGAs have been released by the IRS and the Treasury Department: Model 1 and Model 2. A Model 1 FFI is an FFI in a jurisdiction with a Model 1 IGA in effect.

[3] See [Notice 2013-43](#) and [Announcement 2014-1, 2014-2 I.R.B. 393](#).

[4] The current list of jurisdictions that are treated as having an IGA in effect is available at the following address: <http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA-Archive.aspx>

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