

ICI VIEWPOINTS

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Regulators and Industry Exchange FATCA Insights at ICI and ICI Global Webinar

By Keith Lawson

Senior officials from the U.S. Treasury Department and the Organization for Economic Cooperation and Development (OECD), along with industry experts, recently engaged in [a very informative webinar discussion](#) regarding a model intergovernmental agreement (IGA) for implementing the Foreign Account Tax Compliance Act (FATCA). The model IGA, as discussed [in an earlier ICI Viewpoints post](#), was developed by the Treasury Department with the active cooperation of senior tax officials from France, Germany, Italy, Spain, and the United Kingdom.

A few of the webinar highlights are detailed below.

Strong Majority of Webinar Audience Sees Model IGAs as Very Useful

A diverse audience from 15 countries watched the webinar live and responded to polling questions regarding the usefulness of the IGAs and the time necessary, after FATCA regulations are finalized, to implement the law. Thirty percent of the audience was from outside the United States: 15 percent from Europe, 10 percent from the Americas (non-U.S.), and 5 percent from the Asia-Pacific region.

Audience polling question: How useful are the IGAs?

| | |
|-----------|-----|
| Extremely | 22% |
| Very | 48% |
| Somewhat | 28% |
| Not | 2% |

Webinar Panelists Provide Detailed IGA Explanations

The webinar panelists included two Treasury Department officials: Manal Corwin, Treasury Deputy Assistant Secretary for International Tax Affairs, and her colleague Michael Plowgian, Attorney Advisor in the Office of the International Tax Counsel. These two officials have been most directly involved in the IGA discussions with other governments.

The other panelists were Grace Perez-Navarro, Deputy Director of the OECD's Centre for Tax Policy and Administration; Mary Bennett, a Partner at Baker & McKenzie; Rebecca English, an Associate Tax Counsel with T. Rowe Price; and me.

Manal and Michael provided a detailed explanation of the model, [released on July 26](#), that provides for reporting by financial institutions to their home-country tax authorities. Under this model, information about U.S. investors will be provided by the home-country tax authority to the Internal Revenue Service (IRS). Under the "reciprocal" version of this model (known as Model I), the IRS

would provide information to the partner country's tax authorities about the accounts of its taxpayers held by U.S. institutions. Under the "nonreciprocal" version of Model I, the IRS would receive, but not provide, tax information. The model includes an important annex (Annex II) that will identify certain financial institutions, such as retirement plans, that will be treated as "deemed compliant" for FATCA purposes.

A second model (Model II) is being developed with the active cooperation of senior tax officials from Switzerland and Japan. Under Model II, a partner country's financial institutions would report tax information about U.S. investors directly to the IRS.

Both models contemplate that a partner country will enact legislation or adopt rules to implement FATCA reporting and address data privacy concerns. Under Model I, a financial institution will apply local laws (rather than IRS regulations) to determine an investor's identity and report an investor's income, assets, and other information, to its home-country tax authority. Under Model II, a financial institution will apply the IRS's FATCA regulations.

Treasury Provides IGA Timing Guidance

The first IGAs most likely will be signed in September, and a significant number of signed IGAs are expected by the end of October. Many countries have expressed strong interest in signing IGAs. The IGA signing process is not expected to be too time-consuming, however, as Treasury does not intend to negotiate customized IGAs. The one place where customization is likely involves the types of institutions that will be exempt or deemed compliant under Annex II.

Industry Indicates Need for More Guidance, More Time

The industry requested guidance on several IGA-related issues, and the Treasury Department acknowledged that clarifications on several matters are necessary. One such issue involves the obligation, if any, to apply the FATCA regulations by a financial institution in a country that has signed an IGA but has not yet enacted enabling legislation.

The panel also discussed a number of variances between the IGAs and the FATCA proposed regulations and the prospects for enhanced consistency when the FATCA regulations are finalized. Treasury is considering guidance, for example, to harmonize the effective dates for withholding and reporting by U.S. institutions, IGA partner institutions, and non-IGA partner institutions.

Manal acknowledged the business community's need for guidance and stated that the FATCA regulations should be finalized this fall. The industry responded that after the regulations are finalized, significant lead time will be required before FATCA can be implemented. Here are the polling results.

Audience polling question: How much time will you need to implement FATCA after the regulations are finalized?

| | |
|--------------------------------|-----|
| More than twenty-four months | 7% |
| Eighteen to twenty-four months | 42% |
| Twelve to eighteen months | 48% |
| Less than twelve months | 3% |

Education Efforts and Coordination with the OECD

U.S. government officials are reaching out to the business community (for example, through this webinar) and to other governments to explain the IGAs and seek broad adoption. Many industry groups are encouraging their governments to enter into IGA discussions because of the various benefits provided by an IGA. Model I is particularly attractive, the industry noted, because it eliminates the need to master the detailed FATCA regulations; instead, institutions will look to the IGA and the local law requirements to implement the agreement.

Grace discussed the OECD's ongoing efforts to facilitate implementation of FATCA and to improve global standards for automatic exchange of tax information. She also described [a session](#) that will be held at the OECD's headquarters on September 20, at which Treasury representatives will discuss the IGAs and solicit feedback from the global business community. Separately, a small ad hoc business advisory group will work with the OECD and governments on standards (such as database schema and transmission protocols) for implementing the IGAs. ICI Global is leading the business community's ad hoc working group, which will meet with the OECD and its government members for the first time on September 19 and 20.

Keith Lawson is Senior Counsel, Tax Law, for ICI and ICI Global.

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