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How the Model Intergovernmental Agreement Reduces FATCA Burdens

By Keith Lawson

The U.S. Treasury Department has made significant progress with its [July 26 release](#) of a model intergovernmental agreement (IGA) for implementing the [Foreign Account Tax Compliance Act](#) (FATCA). This model IGA—developed with the active cooperation of senior tax officials from France, Germany, Italy, Spain, and the United Kingdom—addresses many of the U.S. and global fund industries’ concerns with the substantial compliance burdens placed by FATCA on funds, their distributors, and their investors. ICI and ICI Global applaud this development and look forward to continuing our dialogue with these governments on the FATCA regulations and the IGAs they craft based on the model.

The Model IGA Addresses Many Significant FATCA Compliance Concerns

Local Data Privacy Law Issues Resolved. Under FATCA, as enacted, non-U.S. funds (and all other non-U.S. financial institutions) could be put in an impossible position: by complying with FATCA’s requirements to provide customer information directly to the Internal Revenue Service (IRS), they would violate local data privacy laws. Any country adopting the approach of this model will resolve the dilemma by requiring its local financial institutions to provide all FATCA-required customer information to its local tax authority. The local tax authority then will provide this information to the IRS under a preexisting information-exchange agreement with the United States.

Domestic Law Issues with Recalcitrant Account Holders Addressed. As enacted, FATCA requires non-U.S. funds and financial institutions to close accounts of “recalcitrant account holders”—customers who refuse to provide FATCA-required information. This account-closing requirement could cause these institutions to violate local law, their contractual obligations to their customers, or both. The model IGA eliminates this requirement if the individual account is subject to reporting requirements under the IGA.

Customer-Identification Procedures Simplified. The model IGA also simplifies the requirements that financial institutions must follow to determine whether an account belongs to a U.S. person. Among other things, the model IGA places increased reliance on information collected pursuant to applicable anti-money laundering (AML) and know-your-customer (KYC) rules.

Clarity on Retirement Plans Provided. The model IGA addresses substantial concerns that foreign retirement plans could be required to apply FATCA to their individual plan participants and beneficiaries. Specifically, the model IGA provides that foreign retirement plans identified in an annex to the agreement will be treated as deemed compliant (and therefore functionally exempt from FATCA).

The Model IGA Must Be Adopted Broadly and Uniformly

The benefits provided by IGAs will not be realized fully unless IGAs are adopted widely and relatively uniformly. A global fund business that has distributors operating in countries with IGAs and in countries without IGAs will find that FATCA’s more stringent regulatory regime applies to some accounts while IGA procedures apply to other accounts. Differing rules could impact compliance regimes, customer communications, and account maintenance procedures. Broad adoption of IGAs will simplify FATCA’s application to the global fund industry.

Next Steps

Negotiation of Individual IGAs. Countries that have expressed interest in an IGA now must negotiate one with the United States. Because the model IGA addresses so many FATCA concerns, it is likely that financial institutions (including retirement plans) will encourage their governments to negotiate IGAs promptly.

Global Coordination Effort at the OECD. The Organization for Economic Cooperation and Development (OECD) has announced that it will organize a briefing session in September, in cooperation with the Business and Industry Advisory Committee (BIAC) to the OECD, to discuss the model IGA. This OECD briefing session reflects a keen understanding of the need for common systems that reduce costs and increase benefits for governments and business alike from efforts to improve tax compliance and implement FATCA. We already are discussing, with officials from the United States, the OECD, and BIAC, ways in which ICI and ICI Global will contribute to the process by which these common systems are designed, built, and operated. The September briefing session is a key step in this process.

Release of a Second Model IGA. The model IGA envisioned by the joint statements that the United States issued with Switzerland and with Japan—often called “the second model IGA”—has not been released. This second model IGA will provide for reporting by financial institutions directly to the IRS, with local law addressing data privacy issues. The model also will require the other country to honor group requests from the IRS for information regarding recalcitrant account holders.

Finalization of FATCA Regulations. Government officials recently have stated that the FATCA regulations will be finalized in the fall, rather than in the summer (as announced previously). The industry needs final regulations before plans for implementing FATCA can be completed.

ICI and ICI Global will continue our active engagement on every aspect of FATCA and its ramifications for the fund industry by continuing to advance the industry’s concerns with senior Treasury Department and IRS officials. We also will remain at the forefront of the business community’s engagement with the OECD and BIAC as they develop common reporting systems for information required by FATCA and the IGAs.

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