

MEMO# 26345

July 26, 2012

Model FATCA Intergovernmental Agreement ("IGA") Released

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TO: ICI GLOBAL TAX COMMITTEE No. 7-12 RE: MODEL FATCA INTERGOVERNMENTAL AGREEMENT ("IGA") RELEASED

The U.S. Treasury Department today released two versions of a model intergovernmental agreement ("IGA") to improve tax compliance and implement the Foreign Account Tax Compliance Act ("FATCA"). This model is based upon the approach discussed in the Joint Statement between the U.S. and France, Germany, Italy, Spain and the United Kingdom. Both versions of this model envision reporting by financial institutions to their respective tax authorities; relevant tax information would be exchanged automatically (within the time frames provided by the IGA).

The first version of this model IGA (referred to as the "reciprocal version") calls for reciprocal exchanges of information. This version would be available only to jurisdictions that meet two tests. First, the country must have in place a tax treaty or a tax information exchange agreement ("TIEA") with the U.S. Second, the country must have in place protections and practices that are determined by the U.S. Treasury Department and the IRS to be sufficiently robust to ensure that the exchanged information remains confidential and is used solely for tax purposes.

The second version of this model IGA provides for reporting only to the U.S. (the "nonreciprocal version"). In most respects, the nonreciprocal version of this model IGA is identical to the reciprocal version of this model; for example, the reciprocal version of this model IGA is only two pages longer than the nonreciprocal version (31 pages compared to 29 pages).

The model IGA envisioned by the Joint Statements that the U.S. issued with Switzerland and Japan (often called "the second model IGA") has not been released. This second model IGA will provide for reporting directly to the IRS with the other country honoring group requests from the IRS for information regarding recalcitrant accounts.

Accompanying the model IGA release was a joint communiqué by France, Germany, Italy, Spain, the United Kingdom and the U.S., in which these six countries discuss their collaboration in developing the model. The communiqué also discusses working with the

Organization for Economic Cooperation and Development (“OECD”) and others towards common reporting and due diligence standards to support a move to a more global system for combating tax evasion while minimizing compliance burdens.

The OECD issued a statement today welcoming multilateral efforts to improve international tax compliance and transparency. The OECD also announced that, in cooperation with the Business and Industry Advisory Committee (“BIAC”) to the OECD, it will organize a briefing session on the “Model Intergovernmental Agreement for Improving Tax Compliance and Implementing FATCA” at its headquarters in September 2012. The OECD’s goal is the design of common systems that reduce costs and increase benefits for both governments and business.

Model IGA Articles

Article 1 contains relevant definitions, including the following:

- A “financial institution” is defined to mean a custodial institution, a depository institution, an investment entity, or a specified insurance company.
- An “investment entity” means any entity that conducts as a business (or is managed by an entity that conducts as a business) one or more of the following activities or operations for or on behalf of a customer:
 - trading in money market instruments; foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures;
 - individual and collective portfolio management; or
 - otherwise investing, administering, or managing funds or money on behalf of other persons.
- The term “financial account” means an account maintained by a financial institution. The term includes, among others, any equity or debt interest (other than interests that are regularly traded on an established securities market) in an entity that is a financial institution solely because it is an investment entity.

Article 2 discusses obligations to obtain and exchange information with respect to reportable accounts. Paragraph 1 of Article 2 requires each jurisdiction to obtain the information specified in this Article with respect to all Reportable Accounts and exchange it automatically pursuant to the relevant provisions of the applicable tax treaty or TIEA.

Article 3 discusses the time and manner of exchanging the information. This Article has specific rules regarding the dates by which specified types of information must be provided to the IRS. In general, the information shall be exchanged within nine months after the end of the calendar year. Calendar year 2013 information, however, may be exchanged as late as September 30, 2015.

Article 4 discusses the application of FATCA to financial institutions in the FATCA partner (non-U.S.) jurisdiction. Each reporting financial institution in a FATCA partner country will be treated as complying with, and not subject to withholding under, FATCA if the FATCA partner jurisdiction complies with its obligations and the reporting financial institution satisfies certain requirements for identifying U.S. reportable accounts and reporting relevant information annually to its tax authorities. In addition, a reporting financial institution will not be required to withhold on recalcitrant accounts so long as all relevant information about the accounts is provided to the IRS.

Article 4 also provides specific rules for retirement plans that are identified in an annex to

the IGA. For this purpose, an eligible retirement plan includes an entity established or located in and regulated by the foreign jurisdiction, or a predetermined contractual or legal arrangement, operated to provide pension or retirement benefits or earn income for providing such benefits under the laws of the foreign jurisdiction and regulated with respect to contributions, distributions, reporting, sponsorship, and taxation.

Articles 5 through 7 provide details of the intergovernmental agreements including collaboration on compliance and enforcement, mutual commitment to continue to enhance the effectiveness of information exchange and transparency, and the terms of the agreement.

The Model IGA also contains two annexes. Annex I describes the due diligence obligations for identifying and reporting on U.S. reportable accounts and on payments to certain nonparticipating financial institutions. Annex 2 will identify exempt beneficial owners, deemed-compliant financial institutions, and exempt products.

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[Attachment](#)

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