

MEMO# 26706

November 20, 2012

Second Signed FATCA Intergovernmental Agreement (Between U.S. and Denmark) Released

[26706]

November 20, 2012

TO: BANK, TRUST AND RETIREMENT ADVISORY COMMITTEE No. 58-12
BROKER/DEALER ADVISORY COMMITTEE No. 64-12
INTERNATIONAL MEMBERS No. 51-12
INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 22-12
OPERATIONS MEMBERS No. 7-12
TAAC FATCA TASK FORCE No. 13-12
TAX MEMBERS No. 40-12
TRANSFER AGENT ADVISORY COMMITTEE No. 74-12 RE: SECOND SIGNED FATCA
INTERGOVERNMENTAL AGREEMENT (BETWEEN U.S. AND DENMARK) RELEASED

The U.S. and Denmark governments have released the second signed intergovernmental agreement to implement FATCA (the “Danish IGA”). A PDF of the agreement is available on the Treasury Department’s website. [\[1\]](#)

The Danish IGA closely follows the IGA that the U.S. signed with the U.K. in September. [\[2\]](#) Both the Danish IGA and the U.K. IGA are based on the Model 1 IGA that was released in July. [\[3\]](#)

Comparison to U.K. IGA

A few changes are made in the Danish IGA. Annex II, for example, provides an express deemed-compliant exemption for certain Collective Investment Vehicles (“CIVs”). CIVs can qualify under Annex II by either (i) meeting a definition similar to the Qualified Collective Investment Vehicle definition contained in the Proposed Regulations (and therefore must not have investors subject to FATCA reporting) or (ii) by undertaking reporting consistent with Article 5(3) of the Danish IGA.

Annex II also includes a deemed-compliant exception, similar to the exception in the Proposed Regulations for Small Financial Institutions with a Local Client Base. Importantly, to qualify for the exception, such institutions must not have policies or practices in place

that discriminate against U.S. customers.

The Danish IGA introduces the term “Danish TIN.” A U.S. TIN or a Danish TIN, rather than date of birth, generally would be reported for each Reportable Account of each Reporting Financial Institution. If such number is not in the records of a Reporting Financial Institution, then the date of birth, if available, shall be reported.

Finally, the definition of Passive NFFE in Annex I has been modified as below.

- A “Passive NFFE” means any NFFE that is not (i) an Active NFFE or (ii) a withholding foreign partnership or withholding foreign trust pursuant to relevant U.S. Treasury Regulations.

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endnotes

[1]
<http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Agreement-Denmark.pdf>

[2] See ICI Memo #[26508](#) discussing the release of the U.K. IGA.

[3] See ICI Memo #[26344](#) discussing the release of the Model 1 IGA. ICI Memo #[26694](#) discusses the release of the Model 2 IGA.