

MEMO# 27012

February 14, 2013

First Signed Model 2 FATCA Intergovernmental Agreement (Between U.S. and Switzerland) Released

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TO: TAX MEMBERS No. 10-13
INTERNATIONAL MEMBERS No. 13-13
INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 5-13
TRANSFER AGENT ADVISORY COMMITTEE No. 19-13
BROKER/DEALER ADVISORY COMMITTEE No. 10-13
ICI GLOBAL TAX COMMITTEE No. 4-13 RE: FIRST SIGNED MODEL 2 FATCA
INTERGOVERNMENTAL AGREEMENT (BETWEEN U.S. AND SWITZERLAND) RELEASED

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

The Swiss IGA is the first signed IGA to be released that follows the draft Model 2 IGA, which was released November 2012. [\[2\]](#) The Model 2 IGA, like the Model 1 IGA, [\[3\]](#) generally eliminates the possibility of FATCA partner financial institutions being subject to withholding or being required to conduct withholding on recalcitrant accounts. In most respects, such as the steps that must be taken to identify U.S. taxpayers, the models are comparable. [\[4\]](#) The primary differences between these two models are that:

- tax information about U.S. persons is provided by an FFI: (1) to its local tax authority, which then provides the information to the IRS (under Model 1); and (2) directly to the IRS (under Model 2); and
- FFIs located in Model 1 countries satisfy FATCA’s requirements by complying with local law, whereas FFIs located in Model 2 countries, [\[5\]](#) may be required to comply with the FATCA statute and the Final Regulations.

Comparison to Draft Model 2 IGA

The Swiss IGA builds on the Model 2 IGA in certain key respects. First, the Swiss IGA specifies that FFIs will (i) annually report information on Non-Consenting U.S. Accounts [\[6\]](#)

to the IRS as required by their FFI Agreement, or (ii) report to the IRS the aggregate number and aggregate value of all Non-Consenting U.S. Accounts no later than January 31 of the year following the year to which the information relates.

Second, the Swiss IGA requires that Swiss FFIs obtain consent to report all information required by the FFI Agreement as a condition of opening any new U.S. Accounts.

Third, the Swiss IGA details the group request procedure by which the IRS can obtain information on Non-Consenting U.S. Accounts or Nonparticipating FFIs. When the Swiss competent authority (the “FTA”) receives a group request from the U.S. for such information, the FTA shall require the FFI holding the relevant information to identify the Account Holders or Nonparticipating FFIs concerned and to provide the required information to the FTA within 10 days. The FTA shall then issue a notice to alert persons whose information will be disclosed on an anonymous basis. Such persons may appeal the information disclosure with the FTA within 30 days, at which time the Federal Administrative Court will have the authority to overrule the FTA decision to disclose the information. Disclosure will generally be required within 8 months of the group request by the United States.

Comparison to Annex II in the Model 1 IGAs

Annex II to the Swiss IGA contains some provisions that depart from those in the previously released IGAs based on Model 1. For example, Swiss Investment Advisers can, in accordance with the Final Regulations, qualify as registered deemed-compliant FFIs under Annex II.

Annex II also modifies and expands the scope of the exemption available to collective investment vehicles (“CIVs”). Under the rules, certain CIVs that have issued bearer shares can qualify as deemed compliant. If the information required to be reported by a CIV with respect to its interests is reported by such CIV or another investment entity, then the reporting obligations of any other investment entities that are Swiss FFIs (including certain Swiss investment advisors) will be deemed to be fulfilled with respect to such interests in the CIV.

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endnotes

[1] <http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Agreement-Switzerland-2-14-2013.pdf>

[2] See Institute Memo No. [26694](#), dated November 16, 2012 regarding the release of the second Model FATCA IGA (the “Model 2 IGA”).

[3] See Institute Memo No. [26344](#), dated July 26, 2012 regarding the release of the first Model FATCA IGA (the “Model 1 IGA”).

[4] However, the Swiss IGA states that any account treated as a recalcitrant account under the Final Regulations shall be treated as a U.S. Account for purposes of the Swiss IGA.

[5] The Swiss IGA indicates that Swiss financial institutions must enter into FFI agreements with the IRS by January 1, 2014; the Joint Statement issued by Japan and the U.S. regarding the Model 2 agreement they are negotiating, in contrast, indicates that Japanese financial institutions will comply with official guidance issued by the Japanese authorities.

[6] Non-Consenting U.S. Accounts are any account with respect to which (i) it is determined to be a U.S. Account, (ii) the laws of Switzerland prohibit the reporting required by an FFI Agreement, (iii) consent to report has not been obtained from the Account Holder, and (iv) an FFI was required to report aggregate account information to the IRS.

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