

Author: David W. Powell

If you have questions, please contact your regular Groom attorney or any of the attorneys listed below:

Elizabeth T. Dold
etd@groom.com
(202) 861-5406

David N. Levine
dnl@groom.com
(202) 861-5436

Mark L. Lofgren
mll@groom.com
(202) 861-6614

Louis T. Mazawey
ltm@groom.com
(202) 861-6608

David W. Powell
dwp@groom.com
(202) 861-6600

William F. Sweetnam, Jr.
wfs@groom.com
(202) 861-5427

Brigen L. Winters
blw@groom.com
(202) 861-6618

IRS Allows Retirement Funds and Other FFIs in Certain Countries to Act as Though a FATCA IGA was Already In Effect Even Though Not Yet Signed

The IRS and Treasury have announced that foreign financial institutions (FFIs) in certain countries with which a Foreign Account Tax Compliance Act (FATCA) Intergovernmental Agreement (IGA) has been agreed to in principle but not yet signed can act as though the IGA is in effect, at least through the end of 2014. This would include retirement funds which seek to be recognized as beneficial owners in those countries exempt from the 30% FATCA tax withholding on amounts paid by US payors beginning July 1, 2014. A current list of the countries for which this rule would apply can be found below. (More background on how FATCA applies to non-US retirement funds can be found here: <http://www.groom.com/resources-834.html>)

Background

To date, the US has signed FATCA IGAs with 26 jurisdictions, but has reached agreements in substance or is in advanced discussions with many others. With the deadline for initial FATCA withholding coming up on July 1, 2014, many FFIs have expressed practical concerns about their status and how to comply with FATCA in jurisdictions that are known to be in an advanced stage of concluding an IGA, but have not yet signed an agreement.

IRS Announcement

IRS Announcement 2014-17 aims to address these concerns by providing that the jurisdictions listed on the Treasury and IRS websites as having reached agreement on an IGA in substance will be treated as having an IGA in effect from the date that the jurisdiction provides its consent until December 31, 2014, the date by which the IGA must be signed in order for this status to continue without interruption. A list of these countries and the dates the IGA will be treated as in effect from the IRS website is below. Treasury stated in the announcement that it expects to add jurisdictions to this list in the coming weeks as additional jurisdictions consent to inclusion on the list and additional agreements in substance are reached. Jurisdictions that reach agreements in substance on or after July 1, 2014, however, will not be included in the list of jurisdictions that are treated as having an IGA in effect until the IGA is actually signed.

The actual text of the agreements in substance will not be disclosed until the agreement is signed. Instead, the list below only specifies only whether the relevant IGA is a Model 1 or a Model 2 IGA. Until the IGA is signed, the jurisdiction will be treated as having in effect the relevant model IGA provisions. This means that an FFI resident in, or organized under the laws of, a jurisdiction that is listed on the Treasury and IRS websites as having reached an

agreement in substance will be permitted to certify its status to a withholding agent consistent with the model IGA provisions (or register on the FATCA registration website consistent with its treatment under the relevant model IGA, though it is not expected many retirement plans would do so). Any modifications made in the relevant IGA to the model Annex II categories of exempt beneficial owners, deemed compliant FFIs, and accounts excluded from the definition of financial accounts, will not be applicable until the IGA is signed.

Retirement funds that are potential exempt beneficial owners and retirement savings and non-retirement savings accounts that potentially may not be treated as accounts in these deemed IGA countries will need to refer to the relevant model IGA exemptions and definitions to determine whether they may be exempt. Currently, however, the recently revised model IGAs provide exemptions that are substantially similar to the exemptions for such retirement funds and accounts provided in the final Treasury Regulations on FATCA. One of the useful aspects of actual IGAs where local pension regulators have had input over the model IGA language is that specific types of identified retirement plans can, and often have been, listed as exempt beneficial owners, thus resolving any ambiguities as to whether the regulatory exemption is met by a particular type of retirement plan. A summary of the model IGA exemptions can be found as Section XI of our Cumulative List of Non-US Pension Funds Exempted by FATCA Intergovernmental Agreements, which can be found here: <http://www.groom.com/resources-743.html>

The following list of jurisdictions to which this announcement applies is from the IRS website on April 3, 2014:

JURISDICTIONS THAT HAVE REACHED AGREEMENTS IN SUBSTANCE AND HAVE CONSENTED TO BEING INCLUDED ON THIS LIST (BEGINNING ON THE DATE INDICATED IN PARENTHESIS)

Model 1 IGA

Australia (4-2-2014)
Belgium (4-2-2014)
Brazil (4-2-2014)
British Virgin Islands (4-2-2014)
Czech Republic (4-2-2014)
Gibraltar (4-2-2014)
Jamaica (4-2-2014)
Kosovo (4-2-2014)
Latvia (4-2-2014)
Liechtenstein (4-2-2014)
Lithuania (4-2-2014)
Poland (4-2-2014)
Portugal (4-2-2014)
Qatar (4-2-2014)
Slovenia (4-2-2014)
South Africa (4-2-2014)
South Korea (4-2-2014)
Romania (4-2-2014)

Model 2 IGA

Austria (4-2-2014)

This publication is provided for educational and informational purposes only and does not contain legal advice. The information should in no way be taken as an indication of future legal results. Accordingly, you should not act on any information provided without consulting legal counsel. To comply with U.S. Treasury Regulations, we also inform you that, unless expressly stated otherwise, any tax advice contained in this communication is not intended to be used and cannot be used by any taxpayer to avoid penalties under the Internal Revenue Code, and such advice cannot be quoted or referenced to promote or market to another party any transaction or matter addressed in this communication.