



# **FATCA & The IGAs**

## **Issues Update**

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# The Basics

- **FATCA - Foreign Account Tax Compliance Act - entered US tax code in March 2010.**
- **Final Regulations (544 pages) published 17 Jan 2013.**
- **Original deadline for introduction was January 2013 but IRS now going for phased implementation.**
- **On-line Registration of FFIs from July 2013. Withholding starts January 2014.**



# Data Protection & the IGAs

- **Initially cool US response, but issue of EU Data Protection legislation leads to negotiations.**
- **Data protection issues also at heart of other FATCA deals – Swiss & Japanese agreements.**
- **Model 1: Data collected by domestic tax authorities and then passed to IRS – so avoiding data protection issues.**
- **Model 2: Effectively gives carve out from local data protection laws for FATCA data.**



# IGAs

- **Model 1a Treaty concluded with UK.**
- **Next phase - France, Germany, Italy, Spain, Japan, Switzerland, Canada, Denmark, Finland, Guernsey, Ireland, Isle of Man, Jersey, Mexico, the Netherlands, and Norway (IRS Press Release).**
- **Switzerland & Japan have Model 2 agreements.**
- **Model 1b Treaties will not have reciprocal information exchange.**
- **In total discussions, opened with over 50 jurisdictions.**



# FATCA – The Swiss Deal

- **Swiss FFIs report directly to US, but supplemented by information exchange on request. Tackles same issue – how does tax information exchange happen without breaching data protection rules?**
- **The sweeteners - small local Swiss FFIs 'deemed compliant', 'certain other appropriate measures' to reduce implementation burdens.**
- **All other Swiss FFIs to register with IRS and be exempt from Swiss privacy laws (Article 271 of Swiss Criminal Code).**
- **Swiss to 'accept and promptly' honour US information requests for recalcitrant account holders - FFIs do not have to close such accounts.**



# FATCA – The Japanese Deal

- **Same core model as Swiss deal. Japanese authorities 'to direct and enable' Japanese financial institutions to register with IRS and fulfill FFI obligations (although technically, they will not be FFIs!).**
- **Japan will 'accept and promptly' honour US information requests for recalcitrant account holders.**
- **The sweeteners – low risk institutions exempt, registered institutions do not have to enter into separate comprehensive FFI agreement.**



# FATCA vs UK IGA

- **IGA trumps FATCA – UK institutions do not have to concern themselves with US Regulations.**
- **No need for FIs (NB terminology) to enter into agreements with IRS - although they do need to register.**
- **All reporting via UK tax authorities.**
- **No need for withholding payments.**
- **No issues around 'passthru'.**



# Trusts & UK IGA

- **Trusts typically NFFEs. Do not have to register or report, will have to self-certify.**
- **“Trust & Company Service Providers” will be FIs – typically Custodial Institutions. Will report on the trust which is treated as Custodial Account.**
- **Trusts without TCSP – reported on by Bank.**
- **Issues**
  - **“Sponsored FFIs”.**
  - **Need for annual valuations**
  - **Registration bottleneck**





# Plus Points of IGA

- **IGA written in English – e.g. FATCA framed in terms of ‘Grantor Trusts’ – what are they?**
- **Tailored to suit local institutions - e.g. Annex II list of Non-reporting FIs & Products.**
- **Reporting simplified & reporting via HMRC seen as easier.**
- **Reduced legal risks to FIs.**
- **Major drawback is increased public sector costs, balanced by reduced private sector compliance costs.**



# What Next?

- **Over 50 jurisdictions have expressed interest in FATCA partner status.**
- **UK pressing for its own IGA with CDs and OTs.**
- **IGA deals to replace EU Savings Tax Directive?**
- **Model 1 IGA to be new international standard for tax data exchange?**
- **Large institutions indicating they only want to report to one standard!**

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Society of Trust and  
Estate Practitioners



**Questions?**