
**Intergovernmental Agreement
Model 2
USA - Switzerland**

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Model 1 and 2 Intergovernmental Agreement (IGA)



- US Treasury published Model 1 + 2 IGA in July and November 2012
- Allow FFIs in countries with local law impediments to provide information on US accounts
- Predicated on existing Information Exchange Agreement
 - Tax information Exchange Agreement
 - Double Tax Treaty
 - Convention on Mutual Assistance in Tax Matters
- Joint statement signed between US and interested countries in June 2012,
 - Model 1 (UK, France, Germany, Italy and Spain)
 - Model 2 (Switzerland and Japan)

General Overview – 3 FATCA implementation systems



<p><u>PROPOSED REGULATIONS OF US TREASURY</u></p> <p><u>ORDINARY SYSTEM</u></p> <p>1. Standardized and complex system Based entirely on US laws</p> <p>2. Automatic unilateral reporting of US accounts and NPFFIs</p> <p>No reciprocity from the US to provide information to the countries where PFFIs are located</p> <p>3. Withholding and aggregate reporting for recalcitrant accounts</p> <p>4. Direct reporting by PFFIs to the IRS</p>	<p><u>FATCA SWISS MODEL IGA MODEL 2</u></p> <p><u>FACILITATING SYSTEM</u></p> <p>1. Based on an international agreement with references to US laws (relevant Treasury Regs) Will be completed by an FFI agreement subject to US laws</p> <p>2. Provides for automatic unilateral reporting of US accounts</p> <p>3. Aggregate reporting for non-consenting clients and NPFFIs Provides for unilateral reporting upon group request of recalcitrant and NPFFIs accounts Withholding after suspension period</p> <p>4. Direct reporting by PFFIs to the IRS</p> <p>5. Facilitation for implementation & extension of deadlines</p>	<p><u>FATCA EUROPEAN MODEL IGA MODEL 1</u></p> <p><u>INTERGOVERNMENTAL SYSTEM</u></p> <p>1. Based on international agreements with some references to US laws (relevant Treasury Regs) Will be completed by a separate international agreement for Information Exchange</p> <p>2. Reciprocal model provides for automatic Information Exchange between FATCA partners (US accounts, recalcitrant accounts and NPFFIs)</p> <p>3. No withholding</p> <p>4. Intergovernmental exchange of information (no direct reporting by PFFIs to the IRS)</p> <p>5. Facilitation for implementation & extension of deadlines</p>
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Architecture of the Swiss Model



- Agreement between Switzerland and USA for Cooperation to Facilitate the Implementation of FATCA
 - Annex 1 – Due Diligence Obligations for Identifying and Reporting on US Accounts and on Payments to certain Non Participating Financial Institutions
 - Annex 2 – Non-Reporting Swiss Financial Institutions and Exempt Products
- Relevant US Treasury Regulations (Final)
 - US Internal Revenue Code
 - New Sections of relevant Treasury Regs (§ 1.1471-1474)

Mainlines of the Swiss Model – Obligations of Switzerland



- Requires registration with the IRS by each non-exempt FFI resident in Switzerland
- Registered PFFI must enter into an FFI Agreement with the IRS by January 1, 2014 in relation with:
 - Due diligence procedures for identifying and documenting US accounts
 - Reporting of US accounts
 - Potential withholding on US Accounts
 - Status of Reporting Swiss Financial Institution (RSFI)
- Treatment of non-consenting US accounts (equivalent to recalcitrant accounts definition of US Treasury Proposed Regs but not with full overlap)

Mainlines of the Swiss Model – Obligations of Switzerland



- Treatment of non-participating FFIs
- Transmission of information in the frame of group requests
- Treatment of Swiss deemed-compliant FIs
- General Provisions

Non-Consenting US Accounts



Definition

- **Definition of a non-consenting account**

- US person without secrecy waiver to report (consent);
- Non-US account with US indicia
- Dormant accounts included in the above

Reporting

- **Reporting**

- Consent to report to be obtained at the latest by January 31 following the year for which reporting is required
- Consent is automatically renewed for subsequent years unless revoked before January 31 of any year
- Reporting of non-consenting US accounts on an anonymous basis requires :
 - Aggregate number of accounts, and
 - Aggregate value of all such accounts
 - In the time and manner required by the FFI Agreement and relevant US Treasury Regulations
 - Potential Group Request by IRS

- **Consent to report required as a condition to open any new US account on or after January 1, 2014**

Non-Consenting US Accounts & Non-participating FFIs



Group requests

- Group requests to disclose names of non-consenting US account holders ;
- Procedure
 - Group requests are to be made to Swiss Competent Authorities – FTA (not directly to the SFIs) based on the aggregate reporting from the SFIs
 - **Requests shall be made pursuant to Article 26 of OECD Model Convention under the applicable Double Tax Treaty and shall apply for the time period beginning on or after the entry into force of the DDT**
 - 8 months overall to end the procedure and report the relevant accounts
 - No withholding (and no foreign passthru withholding) during this 8 months period
 - If judicial delays after the 8 months period:
 - → **withholding** required including foreign passthru withholding, and
 - → obligation to close the account as soon as possible (problem for insurance companies and banks with mortgages or illiquid assets)
 - → **considered a breach of the Agreement !**

- Request for consent to report from NPFFIs existing as of December 31, 2013
- Withholding on US source payment (No suspension)
- Reporting on Foreign Reportable Amounts paid to NPFFIs in 2015 and 2016
 - « Foreign Reportable Amounts » are payments of income that would be « fixed or determinable and annual or periodical (« FDAP ») income » if paid from a US Source
- If no consent to report :
- Aggregate reporting (Number of NPFFIs and total of Foreign Reportable Amounts)
- Potential Group Request by IRS
- Starting January 1, 2014, consent to report is condition to open account for NPFFI

Swiss Financial Institutions and foreign affiliates of SFIs



Undesired discrepancies in the FATCA approaches

- The US Final Regulations set the need to participate in the FATCA system on a group level for an international financial group.
- Foreign PFFIs affiliates (subsidiaries and/or branches) of RSFIs will be subject to one of the three possible FATCA systems accepted/negotiated by their competent authorities.
- **Thus, a Swiss financial group could potentially be subject to three different FATCA regimes having to deal differently with various obligations of FATCA !**

Example of recalcitrant/non-consenting US account holders of BANK B group:

- Affiliate of BANK B in Paris will be subject to automatic exchange of information (Model 1 France/USA);
 - Headquarters of BANK B in Switzerland will be subject to group requests with information to be provided within 8 months (Model 2 USA/CH); and
 - Affiliate of BANK B in the Bahamas could potentially be subject to the ordinary FATCA system fully based on final US Treasury Regulations (aggregate reporting with withholding or closure of accounts)
- **Need to decide strategically for SFIs, and based on political decisions of financial centers jurisdictions, which foreign affiliate of a Swiss financial group could operate US accounts and which won't (deemed-compliant foreign affiliate with no US accounts)**
 - **Need to encourage on a political level by Switzerland other financial centers (ex. Singapore, Hong-Kong, Luxembourg) to enter also in an Intergovernmental Agreement with the USA preferably based on the Model 2 to ensure consistency with the FATCA operational approach**

Other relevant provisions



- **Benefit for Switzerland of more favorable terms if granted to another FATCA partner jurisdiction under a signed Model 2 Bilateral Agreement in relation with:**
 - Suspension of rules related to non-consenting US accounts (suspension of withholding)
 - Treatment of retirement plans, other deemed-compliant SFIs and exempt beneficial owners as defined in Annex 2
 - Special rules regarding related entities and branches
 - Documentation and curing US indicia provisions under Annex 1

- **Related Entities and branches**
 - Maintenance of a participating or deemed-compliant status for SFIs in case their foreign affiliates are prevented by local relevant laws to fulfill their requirements of a participating or deemed-compliant FFI and provided such affiliates
 - are not soliciting US clients or NPFFIs resident outside its jurisdiction, and
 - are not used by the PSFI to circumvent its obligations under the Agreement and relevant US Treasury regulations

- **Significant non-compliance by a RSFI**
 - if not resolved within 12 months after notification by the US → RSFI is treated as a NPFFI

- **Termination of the Agreement within 12 months after termination notice**

Annex 2 : NON-REPORTING SWISS FI & EXEMPT PRODUCTS



- **Exempt Beneficial Owners**
 - Swiss Government Entities
 - Swiss National Bank
 - International Organizations
 - Retirement Funds
 - Entities wholly owned by other Exempt BOs

- **Registered Deemed-Compliant FIs**
 - FI with local Client Base
 - Entities subject to Swiss Collective Investment Schemes Act
 - Certain collective investment vehicles (ex. contractual funds, variable or fixed capital)
 - Swiss investment advisers

- **Certified deemed-compliant FIs**
 - Non-profit organizations under Swiss law

- **Exempt Products**