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FATCA Reporting on U.S. Accounts: Recent Legal Developments

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Summary

Enacted in 2010, the Foreign Account Tax Compliance Act (FATCA) is intended to curb U.S. tax evasion occurring through the use of offshore accounts. Key among its provisions is the requirement that foreign financial institutions (FFIs), such as foreign banks and hedge funds, report information on their U.S. account holders to the Internal Revenue Service (IRS). FFIs that fail to comply will have tax withheld at a rate of 30% on many payments made to them from U.S. sources, including interest and dividends.

Since FATCA's passage, there has been international criticism of the FFI provisions, generally focused on whether the United States was correct to take FATCA's unilateral approach. Questions have arisen about whether FATCA's requirements are inconsistent with existing U.S. treaty obligations; how to handle potential conflict of law issues arising when an FFI is faced with complying with FATCA or its home country's domestic (e.g., banking and privacy) laws; and whether the United States has intruded into other countries' sovereignty.

Recognizing that these concerns could affect the success of FATCA, the United States has entered into bilateral intergovernmental agreements (IGAs) with numerous countries in order to implement the FFI requirements. Under some of these agreements, FFIs report information on their U.S. account holders to their home country, which then provides the information to the IRS. In general, for those FFIs that are not covered by such an agreement, FATCA requires that they report the information directly to the IRS.

As of August 1, 2016, there are 63 IGAs that are currently in force. Additionally, the United States treats certain countries as having an IGA in effect even though the country has not taken all the steps necessary to actually bring the agreement into force. In July 2016, the IRS made a significant announcement regarding these countries: they will stop being treated as having an IGA in effect in 2017 unless they comply with certain requirements by December 31, 2016. Among other things, the country must explain why the IGA is not yet in force and provide a step-by-step timeline for doing so. The Treasury Department and the IRS will then decide whether it is appropriate to continue to treat the country as having an IGA in effect.

Some praise the FFI reporting requirements as an effective tool to combat tax evasion and argue that using the IGAs leads to positive outcomes, including reduced compliance costs for FFIs and avoidance of international conflict of law issues. Others, meanwhile, have expressed concerns about the privacy of information reported by FFIs and the appropriateness of the IGAs. These concerns are illustrated in an ongoing lawsuit, *Crawford v. Department of the Treasury*, in which the plaintiffs argue that the executive branch does not have the power to enter into IGAs and that the FFI reporting requirements violate the Fourth Amendment's protections against unreasonable search and seizures by requiring FFIs to report information about U.S. account holders without any judicial oversight. In April 2016, a U.S. district court in Ohio dismissed the case after determining that the plaintiffs lacked standing. The plaintiffs have appealed the decision to the U.S. Court of Appeals for the Sixth Circuit, which has not yet issued a decision.

Finally, legislation has been introduced in the 114th Congress that would repeal much of FATCA (S. 663); modify FATCA with the intent of "strengthening" it (Stop Tax Haven Abuse Act, H.R. 297 and S. 174); or require that its effects on U.S. citizens living overseas be studied (Commission on Americans Living Abroad Act, H.R. 3078).

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One of the more controversial tax laws enacted in recent years is the Foreign Account Tax Compliance Act (FATCA).[1] FATCA is intended to curb U.S. tax evasion occurring through the use of offshore accounts. While the law was enacted in 2010 with a 2013 effective date,[2] the IRS delayed FATCA's implementation for several years in order to give entities time to comply.[3] The law is now fully in effect.

Key among FATCA's provisions is the requirement that foreign financial institutions (FFIs) report information on their U.S. account holders to the Internal Revenue Service (IRS).[4] In order to implement this requirement, the United States has entered into bilateral agreements with numerous countries. Under some of these agreements, FFIs report the information to their home country, which then provides the information to the IRS. For those FFIs that are not covered by such an agreement, FATCA generally requires they report the information directly to the IRS.

This report provides an overview of the FFI reporting requirements and examines the role of the intergovernmental agreements (IGAs) in implementing them. The report then discusses the confidentiality protections provided to the information reported by FFIs and litigation in which plaintiffs have raised concerns about privacy and the use of IGAs. It ends with a summary of FATCA legislation introduced in the 114th Congress. For further discussion of FATCA, as well as the related requirements known as Foreign Bank Account Reporting (FBAR), see CRS Report R43444, *Reporting Foreign Financial Assets Under Titles 26 and 31: FATCA and FBAR*.

Overview of FFI Reporting Requirements

FATCA generally requires that FFIs enter into agreements with the IRS under which the FFIs agree to report information about their U.S. account holders and comply with other requirements.[5] The financial institutions subject to these requirements include foreign banks, investment funds, hedge funds, private equity funds, broker-dealers, and certain types of insurance companies.[6] The requirements apply to the depository and custodial accounts maintained by the FFI, as well as equity and debt interests in the FFI (except publicly traded interests).[7]

FFIs that fail to comply will have tax withheld at a rate of 30% on many payments made to them from U.S. sources, including interest and dividends.[8] The withholding provision's relatively high rate and broad reach is significant because, as one commentator has explained, "[f]rom a practical perspective and due to the importance of U.S. banks to the global financial community, most foreign banks must comply or they may be effectively prevented from conducting business in many circumstances."[9] The reporting and withholding requirements are summarized in **Table 1**.

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[1] Hiring Incentives to Restore Employment Act, P.L. 111-147, tit. V, 124 Stat. 71, 97 (2010) (codified at 26 U.S.C. §§ 1471-1474 and various other sections in Title 26). For examples of the controversy surrounding FATCA, see sources cited *infra* notes 10, 11, and 24.

[2] P.L. 111-147, § 501(d), 124 Stat. 106 (26 U.S.C. § 1471 note) (also providing transition rules).

[3] *See* I.R.S. Notice 2011-53, 2011-2 C.B. 124; I.R.S., Announcement 2012-42, 2012-47 I.R.B. 561; I.R.S. Notice 2013-43, 2013-2 C.B. 113.

[4] P.L. 111-147, § 501, 124 Stat. 97 (codified at 26 U.S.C. §§ 1471-1474).

[5] 26 U.S.C. §§ 1471(b), 1473.

[6] 26 U.S.C. § 1471(d)(5) (defining "financial institution").

[7] 26 U.S.C. § 1471(d)(2).

[8] 26 U.S.C. §§ 1471(a), 1473(1). The person making the payment to the FFI, known as a withholding agent, is responsible for withholding the tax and remitting it to the IRS. 26 U.S.C. §§ 1471(a), 1473(4), 1474(a).

[9] Arthur J. Cockfield, *The Limits of the International Tax Regime as a Commitment Protector*, 33 VA. TAX REV. 59, 99-100 (2013).

Table 1. Summary of FATCA's FFI Requirements

	Requirement Under FATCA and Key Definitions
What does FATCA require of FFIs?	FFI must enter into an agreement with the IRS to identify accounts held by U.S. persons; report information on such accounts to the IRS; and withhold tax on payments it makes to anyone (account holders, other FFIs) who is not compliant with FATCA. Various special rules and exceptions exist (e.g., certain FFIs are deemed to meet the requirements). 26 U.S.C. § 1471(a), (b).
What must the FFI do with respect to identifying accounts held by U.S. persons?	FFI must obtain information on each account holder in order to determine which accounts are U.S. accounts and comply with related verification and due diligence procedures. 26 U.S.C. § 1471(b)(1)(A)-(B). **U.S. account:** a financial account held by at least one specified U.S. person or foreign entity with a substantial U.S. owner. Does not include depository accounts of natural persons if aggregate value is less than $50,000, unless FFI elects otherwise. 26 U.S.C. § 1471(d)(1), (3). **Specified U.S. person:** any U.S. person (e.g., U.S. citizen or domestic corporation), with exceptions for corporations whose stock is regularly traded on established markets, banks, governments, and tax-exempt organizations, among others. 26 U.S.C. §§ 1473(3), 7701(a)(30). **Substantial U.S. owner:** At least 10% owner of a corporation, partnership, or trust. For a financial institution engaged primarily in the business of investing or trading in securities and the like, the threshold is owning any percentage. 26 U.S.C. § 1473(2).
What information on U.S. accounts must the FFI report to the IRS?	FFI must annually report the name, address, and taxpayer identification number of each account holder who is a specified U.S. person; the account balance; the account's gross receipts and withdrawals/payments; and the identifying information of each substantial U.S. owner if the account holder is a U.S. owned foreign entity. 26 U.S.C. §1471(b)(1)(C), (c).
What if these requirements conflict with the laws of FFI's home country (e.g., privacy or banking laws)?	FFI must obtain a waiver of foreign law from account holder(s) or close the account. 26 U.S.C. § 1471(b)(1)(F).
What are the withholding requirements imposed on FFIs as part of the agreement with the IRS?	FFI must generally withhold 30% of the payments it makes to a recalcitrant account holder or a non-FATCA compliant FFI, and remit the amount to the IRS. 26 U.S.C. § 1471(b)(1)(D), (3). **Recalcitrant account holder:** An account holder who fails to comply with reasonable requests for information or fails to provide a waiver of foreign law described above. 26 U.S.C. § 1471(d)(6).
What if the FFI does not comply with the above requirements?	Income tax will be withheld at a 30% rate on many U.S. source payments made to the FFI, including interest, dividends, rents, and compensation, as well as the gross proceeds from the sale of property that can produce U.S. source interest or dividends. Various exemptions and special rules exist (e.g., withholding does not apply to income effectively connected with a U.S. trade or business, or if the payment's beneficial owner is a foreign central bank of issue, among others). 26 U.S.C. §§ 1471(a) & (f), 1473(1), 1474(b).
What if the amount withheld exceeds the FFI's U.S. income tax liability?	FFI will be credited or refunded for the overpayment if the overpayment is because a tax treaty provided for a rate lower than 30%; otherwise, no credit or refund is available. No interest is paid on the overpayment. 26 U.S.C. §§ 1474(b)(2), (3).

Source: CRS, based on 26 U.S.C. §§ 1471-1474 and Treas. Reg. §§ 1.1471-1 to 1.1474-7.

Intergovernmental Agreements

The United States has entered into bilateral intergovernmental agreements (IGAs) with numerous countries in order to implement the above FFI reporting requirements. In general, an FFI that is resident in, or organized under the laws of, a country that has entered into an IGA will be deemed to comply with FATCA's requirements so long as the terms of the agreement are met. This section examines the IGAs.

Purpose of the IGAs

Since FATCA's passage, there has been criticism of the FFI provisions and their application to entities outside the United States, generally focused on whether the United States was correct to take FATCA's unilateral approach.[10] Questions have arisen about whether FATCA's requirements are inconsistent with existing U.S. treaty obligations; how to handle potential conflict of law issues arising when an FFI is faced with complying with FATCA or its home country's domestic (e.g., banking and privacy) laws; and whether the United States has intruded into other countries' sovereignty.[11] These concerns, and the extent to which they may influence international views of FATCA, could be particularly important because it has been argued that FATCA's successful implementation will likely require the assistance of other countries.[12] In order to address these concerns, the Treasury Department and IRS developed the IGAs to provide other countries with a role in implementing the FFI reporting requirements.[13]

Different Types of IGAs

The Treasury Department and IRS have developed two model IGAs, which are used as the basis for all the IGAs currently in effect.[14] The main differences between the two models are summarized in **Table 2**. A list of the countries with IGAs in effect and whether they use a Model 1 or Model 2 agreement is found in the **Appendix**.

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[10] *See, e.g.*, Bruce W. Bean & Abbey L. Wright, *The U.S. Foreign Account Tax Compliance Act: American Legal Imperialism?*, 21 ILSA J INT'L & COMP L 334, 366-67 (2015) (calling FATCA "by far the most egregious example of extraterritorial overreach in history").

[11] *See, e.g.*, Cockfield, *supra* note 9, at 97-111 (discussing FATCA's unilateral approach and potential inconsistencies with existing treaties and laws, including Canada's privacy laws); Peter Nelson, *Note: Conflicts of Interest: Resolving Legal Barriers to the Implementation of the Foreign Account Tax Compliance Act*, 32 VA. TAX REV. 387, 399-410 (2012) (examining how FATCA might conflict with laws in Switzerland, the Cayman Islands, Japan, and Mexico); Scott D. Michel and H. David Rosenbloom, *FATCA and Foreign Bank Accounts: Has the U.S. Overreached?*, 2011 WORLDWIDE TAX DAILY 104-17 (May 30, 2011) (discussing international criticism of FATCA and possible implications of the negative reaction for the United States).

[12] *See, e.g.*, J. Richard Harvey, Jr., *Offshore Accounts: Insider's Summary of FATCA and its Potential Future*, 57 VILL. L. REV. 471, 488-89, 494-98 (2012); Susan C. Morse, *Ask for Help, Uncle Sam: The Future of Global Tax Reporting*, 57 VILL. L. REV. 529, 537 (2012); Joanna Heiberg, *Note: FATCA: Toward a Multilateral Automatic Information Reporting Regime*, 69 WASH & LEE L. REV. 1685, 1706-1710 (2012).

[13] *See, e.g.*, Joint Statement From the United States, France, Germany, Italy, Spain and the United Kingdom Regarding an Intergovernmental Approach to Improving International Tax Compliance and Implementing FATCA (Feb. 7, 2012), https://www.treasury.gov/press-center/press-releases/Documents/020712%20Treasury%20IRS%20FATCA%20Joint%20Statement.pdf (noting the conflict of law issue and stating that "[a]n intergovernmental approach to FATCA implementation would address these legal impediments to compliance, simplify practical implementation, and reduce FFI costs").

[14] The model agreements are available on the Treasury Department's website at http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx (last visited on Aug. 22, 2016).

There are different versions of each model to account for whether the United States has an existing income tax treaty or tax information exchange agreement (TIEA) with the other country. In cases in which there is an existing tax treaty or TIEA, the model IGA generally uses the treaty or TIEA as the authority for the IGA's requirements and links its practices and procedures to those developed under the treaty or TIEA.[15] If there is no existing treaty or TIEA, then the agreement creates its own practices and procedures based on FATCA's reporting requirements.[16]

Additionally, there are different versions of Model 1, depending on whether the agreement calls for the reciprocal exchange of information between the United States and the other country.[17] Model 2 has no reciprocal exchange provision.

Table 2. Summary of Selected Differences Between FATCA IGAs Models 1 and 2

	Model 1	Model 2
To whom does the FFI report information?	To the home country's taxing authority, which then annually reports information to the IRS.	To the IRS. FFI must obtain consent of the account holder to disclose identifying information; if no consent is given, then FFI reports aggregate account information and the IRS can request additional information from the other country.
Is there a reciprocal exchange of information between the countries?	Agreement may call for it; if so, the information must be exchanged annually on an automatic basis.	No
Does the FFI enter into an agreement with the IRS?	No, but it must register on the IRS's website and comply with the IGA's reporting requirements.	Yes and register on the IRS's website.
Must the FFI withhold on payments to recalcitrant account holders or close their accounts?	No requirement so long as the IRS receives information from the other country.	No requirement unless the other country fails to respond within six months to a request from the IRS for information about non-consenting accounts—if that happens, the FFI is required to withhold on those accounts.

[15] *See, e.g.,* Agreement between the Government of the United States of America and the Government of [FATCA Partner] to Improve International Tax Compliance and to Implement FATCA, Model 1A IGA Reciprocal, Preexisting TIEA or DTC, art. 2, ¶1, art. 3, ¶6 (Nov. 30, 2014) (hereinafter IGA Model 1A); Agreement between the Government of the United States of America and the Government of [FATCA Partner] to Improve International Tax Compliance and to Implement FATCA, Model 1B IGA Non-Reciprocal, Preexisting TIEA or DTC, art. 2, ¶1, art. 3, ¶6 (Nov. 30, 2014) (hereinafter IGA Model 1B, Preexisting Treaty); Agreement between the Government of the United States of America and the Government of [FATCA Partner] to Improve International Tax Compliance and to Implement FATCA, Model 2, IGA, Preexisting TIEA or DTC, art. 2, ¶2 (Nov. 30, 2014).

[16] *See, e.g.,* Agreement between the Government of the United States of America and the Government of [FATCA Partner] to Improve International Tax Compliance and to Implement FATCA, Model 1B IGA Non-Reciprocal, No TIEA or DTC, art. 2, ¶1, art. 4 (Nov. 30, 2014) (hereinafter IGA Model IB, No Preexisting Treaty); Agreement between the Government of the United States of America and the Government of [FATCA Partner] to Improve International Tax Compliance and to Implement FATCA, Model 2 IGA, No TIEA or DTC, art. 2, ¶1, art. 4 (Nov. 30, 2014).

[17] *Compare* IGA Model 1A, *supra* note 15, at art. 2 (providing for the reciprocal exchange of information between the United States and the other country) *with* IGA Model 1B, Preexisting Treaty, *supra* note 15, and IGA Model IB, No Preexisting Treaty, *supra* note 16 (containing no provision for the reciprocal exchange of information).

	Model 1	Model 2
What happens if there is significant noncompliance by the FFI?	Other country applies its domestic laws to address the noncompliance, and if not resolved within 18 months, the IRS may treat the FFI as not compliant with FATCA.	If not resolved within 12 months, the IRS may treat the FFI as not compliant with FATCA.

Source: CRS, based on Model Agreements found at Dep't of Treasury, *Resource Center, Foreign Account Tax Compliance Act*, http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx (last visited on Aug. 30, 2016).

Countries with IGAs in Effect

As of August 1, 2016, there are 63 IGAs that are in force. Additionally, the Treasury Department and the IRS treat certain countries as having an IGA in effect even though the country has not taken all the necessary steps to actually bring the agreement into force. Such a country will be treated as having an IGA in effect if (1) it has signed an IGA and is taking steps to bring it into force within a reasonable time; or (2) it reached an agreement in substance with the United States on the terms of an IGA prior to November 30, 2014, and it continues to demonstrate intent to sign the IGA as soon as possible.[18] **Table 3** lists all the countries that the Treasury Department and IRS recognize as having an IGA in effect—either because the IGA is actually in force or because the country is treated as such under the above circumstances. (The **Appendix** provides more information about each of these countries, including the dates on which IGAs went into force, if applicable.)

In July 2016, the IRS made a significant announcement regarding the treatment of those countries without an IGA actually in force: such countries will stop being treated as having an IGA in effect in 2017 unless they comply with certain requirements by December 31, 2016.[19] Specifically, if any country in the final two columns of **Table 3** wants to continue to be treated as having an IGA in effect, it must provide the Treasury Department with a detailed explanation of why it has not yet brought the IGA into force and a step-by-step plan for doing so.[20]

The Treasury Department will then decide whether it is appropriate to continue to treat the country as having an IGA in effect, considering the explanation and plan, as well as the country's prior conduct.[21] If the agency determines that such treatment is not appropriate, then any affected FFI in that country will have at least 60 days to enter into the IRS agreement that is required in order to comply with FATCA (discussed above in **Table 1**) or be subject to withholding.[22] In those cases in which the Treasury Department decides it is appropriate to continue to treat the country as having an IGA in effect, the agency will monitor the country's progress toward bringing the IGA into force and will reconsider the country's treatment if it fails to comply with the step-by-step plan.[23]

[18] *See* I.R.S. Notice 2013-43, 2013-31 I.R.B.113; I.R.S. Announcement 2014-17, 2014-18 I.R.B. 1001; I.R.S. Announcement 2014-38, 2014-51 I.R.B. 951.

[19] *See* I.R.S. Announcement 2016-27, 2016 IRB LEXIS 446 (July 29, 2016). The announcement also addresses an information exchange timing rule that the IRS announced in Notice 2015-66, 2015-41 I.R.B. 541.

[20] *See* I.R.S. Announcement 2016-27, *supra* note 19.

[21] *See id.*

[22] *See id.*

[23] *See id.*

Table 3. Countries with IGAs in Force or Treated as Having IGAs in Effect

IGAs in Force		Signed IGAs	Agreements in Substance
Australia	Jamaica	Algeria	Anguilla
Austria	Japan	Angola	Antigua & Barbuda
Azerbaijan	Jersey	Belgium	Armenia
Bahamas	Kosovo	Cambodia	Bahrain
Barbados	Kuwait	Chile	Cabo Verde
Belarus	Latvia	Costa Rica	China
Bermuda	Liechtenstein	Croatia	Dominica
Brazil	Lithuania	Georgia	Dominican Republic
British Virgin Islands	Luxembourg	Israel	Greece
Bulgaria	Malta	Montserrat	Greenland
Canada	Mauritius	Panama	Grenada
Cayman Islands	Mexico	Philippines	Guyana
Colombia	Moldova	Portugal	Haiti
Curaçao	Netherlands	San Marino	Indonesia
Cyprus	New Zealand	South Korea	Iraq
Czech Republic	Norway	St. Lucia	Kazakhstan
Denmark	Poland	Thailand	Macao
Estonia	Qatar	Turkey	Malaysia
Finland	Romania	United Arab Emirates	Montenegro
France	Singapore	Uzbekistan	Nicaragua
Germany	Slovak Republic		Paraguay
Gibraltar	Slovenia		Peru
Guernsey	South Africa		Saudi Arabia
Holy See	Spain		Serbia
Honduras	St. Kitts & Nevis		Seychelles
Hong Kong	St. Vincent & the Grenadines		Taiwan
Hungary	Sweden		Trinidad & Tobago
Iceland	Switzerland		Tunisia
India	Turks & Caicos Islands		Turkmenistan
Ireland	United Kingdom		Ukraine
Isle of Man	Vietnam		
Italy			

Source: CRS, based on Model Agreements found at Department of Treasury, *Resource Center, Foreign Account Tax Compliance Act*, http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx (last visited on August 30, 2016).

Confidentiality Protections

Some have expressed concerns about the privacy of the information that FFIs are required to collect and report under FATCA.[24] This section discusses the confidentiality protections contained in FATCA and the IGAs.

Statutory Protections

FATCA expressly provides confidentiality protections to the information obtained or used in connection with the FFI reporting requirements.[25] Specifically, no person may inspect or use any information obtained under the FFI reporting provisions for any purpose other than complying with the FATCA requirements or for purposes permitted under IRC Section 6103 (which allows the disclosure of taxpayer information collected by the IRS in certain circumstances, such as sharing it with law enforcement).[26]

If a person knowingly or negligently violates these confidentiality protections, the individual or entity whose information was inspected or used may bring a suit for civil damages against such person in U.S. district court.[27] The law provides for damages in an amount equal to the greater of (1) $1,000 per unlawful act or (2) the plaintiff's actual damages plus, if available, punitive damages.[28] The defendant may also be liable for court costs and attorney's fees.[29] Any such suit must be brought within two years of the plaintiff discovering the unlawful activity.[30]

IGAs

With respect to the confidentiality provisions contained in the IGAs, there are two basic frameworks. If the United States and the country in question have an existing income tax treaty or tax information exchange agreement (TIEA)[31] in place, then the IGA refers to the confidentiality protections in that treaty or TIEA and may further address such protections. For example, one model IGA provides:

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[24] *See, e.g.*, ARTHUR J. COCKFIELD, FATCA AND THE EROSION OF CANADIAN TAXPAYER PRIVACY (April 2014) (in a report to the Office of the Privacy Commissioner of Canada, the author argues that Canada should not implement the IGA until privacy concerns are addressed); *FATCA's flaws*, The ECONOMIST (June 28, 2014), http://www.economist.com/news/leaders/21605907-americas-new-law-tax-compliance-heavy-handed-inequitable-and-hypocritical-fatcas-flaws ("FATCA's intrusiveness raises serious privacy issues."); Sakshat Baral, *FATCA—A Case of Privacy Hypocrisy*, THE MARKET MOGUL (July 3, 2015), http://themarketmogul.com/fatca-case-privacy-hypocrisy/ (raising concerns about data breaches); Don Whiteley, *Canada Capitulates on FATCA Agreement*, BCBUSINESS (Feb 7, 2014), http://www.bcbusiness.ca/finance/canada-capitulates-on-fatca-agreement (characterizing the Canada-U.S. IGA as a "colossal surrender of financial sovereignty for Canada").

[25] 26 U.S.C. § 1474(c)(1); Treas. Reg. § 1.1474-7(a).

[26] 26 U.S.C. § 1474(c); Treas. Reg. §§ 1.1474-7, 31.3406-(f)(1)(a).

[27] 26 U.S.C. §§ 1474(c)(2), 7431.

[28] 26 U.S.C. § 7431(c). Punitive damages are only available in cases involving willful conduct or gross negligence. *See id.*

[29] *See id.*

[30] 26 U.S.C. § 7431(d).

[31] For a list of the U.S. income tax treaties currently in force, see the IRS's website at https://www.irs.gov/businesses/international-businesses/united-states-income-tax-treaties-a-to-z (last visited on Aug. 30, 2016). For a list of countries with which the United States has signed TIEAs, see the Organisation for Economic Co-operation and Development's website at http://www.oecd.org/tax/transparency/taxinformationexchangeagreementstieasunitedstates.htm (last visited on Aug. 30, 2016).

> All information exchanged shall be subject to the confidentiality and other protections provided for in the [Treaty/TIEA], including the provisions limiting the use of the information exchanged.
>
> Following entry into force of this Agreement, each Competent Authority shall provide written notification to the other Competent Authority when it is satisfied that the jurisdiction of the other Competent Authority has in place (i) appropriate safeguards to ensure that the information received pursuant to this Agreement shall remain confidential and be used solely for tax purposes, and (ii) the infrastructure for an effective exchange relationship….[32]

When there is no existing treaty or TIEA, the IGAs provide express confidentiality protections. For example, one of the model IGAs to be used when there is no treaty or TIEA provides that:

> The [FATCA Partner] Competent Authority shall treat any information received from the United States pursuant to Article 5 of this Agreement as confidential and shall only disclose such information as may be necessary to carry out its obligations under this Agreement. Such information may be disclosed in connection with court proceedings related to the performance of the obligations of [FATCA Partner] under this Agreement.
>
> Information provided to the U.S. Competent Authority pursuant to … this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) of the Government of the United States concerned with the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, U.S. federal taxes, or the oversight of such functions. Such persons or authorities shall use such information only for such purposes.
>
> Such persons may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person, entity, authority, or jurisdiction. Notwithstanding the foregoing, where [FATCA Partner] provides prior, written consent, the information may be used for purposes permitted under the provisions of a mutual legal assistance treaty in force between the Parties that allows for the exchange of tax information.[33]

U.S. law, meanwhile, expressly requires that tax treaty information be kept confidential unless such disclosure is permitted under the treaty's terms.[34] Protected information includes information exchanged under the treaty, applications for relief under the treaty, and documents relating to the treaty's implementation.[35] There are limited exceptions in which disclosure is permissible, such as providing information to law enforcement regarding terrorist activities.[36] If information is impermissibly disclosed, the individual disclosing it is subject to a penalty of up to $5,000 and imprisonment for up to five years.[37] Additionally, the person whose information was disclosed may sue for damages under the same authority discussed above.[38]

Tax Treaties and Privacy Concerns

[32] IGA Model 1A, *supra* note 15, at art. 3, ¶¶7, 8.

[33] IGA Model 1B, No Preexisting Treaty, *supra* note 16, at art. 9, ¶¶1, 2.

[34] 26 U.S.C. § 6105.

[35] 26 U.S.C. § 6105(c)(1).

[36] 26 U.S.C. § 6105(b)(3).

[37] 26 U.S.C. § 7213. *See also* 26 U.S.C. § 7213A (imposing a penalty for the unauthorized inspection of return information).

[38] 26 U.S.C. § 7431.

The United States has signed bilateral income tax treaties with numerous countries.[39] Among other things, the treaties provide for the two countries to exchange certain tax information. For example, the current version of the U.S. model income tax treaty provides that the United States and the other country "shall exchange such information as is foreseeably relevant for carrying out the provisions" of the treaty or each country's domestic laws "concerning taxes of every kind…."[40]

The treaties include provisions to address the confidentiality of the exchanged information. For example, the U.S. model treaty provides that the information "shall be treated as secret in the same manner as information obtained under the domestic law of that Contracting State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes…."[41]

Since 2011, Senator Rand Paul has placed a hold on the Senate's consideration of new tax treaties and protocols (which are agreements to amend an existing treaty) due to privacy concerns.[42] Because of the hold, new income tax treaties with Chile, Hungary, and Poland, and protocols amending existing treaties with Japan, Luxembourg, Spain, and Switzerland have yet to be ratified. All were approved in November 2015 by the Senate Foreign Relations Committee, but as of the date of this report it is unknown when the Senate may consider them.[43] Media reports indicate that Senator Paul is concerned that the exchange of information provisions are overly broad.[44] In a June 2016 letter to the Treasury Secretary, Senator Paul, along with Senators Lee and Cruz, requested that the exchange of information provisions "include a requirement that information about U.S. citizens be exchanged only for cause and with individualized suspicion."[45]

Litigation About IGAs

While some argue that the use of IGAs may have positive outcomes, including reduced compliance costs for foreign entities and avoidance of international conflict of law issues,[46] others have taken issue with them. Concerns about IGAs are illustrated in two lawsuits—one in the United States and one in Canada. These are discussed below.

[39] *See* I.R.S., *United States Income Tax Treaties-A to Z*, https://www.irs.gov/businesses/international-businesses/united-states-income-tax-treaties-a-to-z (last visited on Aug. 15, 2016).

[40] Convention Between the Government of the United States of America and the Government of _____ for the Avoidance of Double Taxation and the Prevention of Tax Evasion With Respect to Taxes on Income, art. 26, ¶1 (Feb. 17, 2016).

[41] *Id*. at art. 26, ¶2. *See also id*. at art. 26, ¶(3)(c) (further providing that neither country is required to supply information if such disclosure would be contrary to public policy or information regarding trade secrets).

[42] *See* Aaron E. Lorenzo, *Sen. Paul Still Won't Budge on Tax Treaty Holds*, DAILY TAX REP. (BNA), Mar. 10, 2016.

[43] *See* Aaron E. Lorenzo, *Senate Panel OKs Eight Tax Treaties but Floor Action in Doubt*, DAILY TAX REP. (BNA), Nov. 12, 2015. The Committee also approved a multinational convention on mutual assistance on tax matters. *See id.*

[44] *See* Lorenzo, *supra* note 42.

[45] Kevin A. Bell, *Rand Paul, Others Ask Treasury to Renegotiate Tax Treaties*, DAILY TAX REP. (BNA), June 22, 2016. Reportedly, Senator Paul has indicated that language in some older tax treaties that limited the exchange of information to cases with "evidence of fraud" addressed his privacy concerns. *See* Lorenzo, *supra* note 42.

[46] *See, e.g.*, Tracy A. Kaye, *Innovations in the War on Tax Evasion*, 2014 B.Y.U.L. REV. 363, 413 (2014) (discussing the role of FATCA in encouraging countries to work together to create universal reporting requirements and praising the IGA with Mexico as "an appropriate vehicle for the United States to demonstrate its renewed commitment to the exchange of information"); DEUTSCHE BANK DB RESEARCH, FATCA & INTERGOVERNMENTAL AGREEMENTS 1 (Jan. 16, 2013) (noting that the IGAs may reduce compliance costs, although arguing such costs will still be significant).

Crawford v. Department of Treasury

The case in the United States is *Crawford v. Department of the Treasury*.[47] It was brought in 2015 by several U.S. citizens living abroad and Senator Rand Paul, who argue that IGAs are unconstitutional, among other claims.[48] The plaintiffs characterize IGAs as sole executive agreements (in contrast to treaties submitted to the Senate for its advice and consent) that are only permissible if they "fall within the President's independent constitutional authority to make international agreements."[49] As such, the plaintiffs argue that the President is without such authority here because IGAs deal with tax issues and thus fall within the taxing power reserved to Congress under the Constitution.[50] The plaintiffs further argue that IGAs are unconstitutional because they override the statutory provisions passed by Congress in FATCA. Their argument is that FATCA and IGAs are incompatible because (1) FATCA requires FFIs to report directly to the IRS, while IGAs allow FFIs to report to their home government; and (2) FATCA requires FFIs to get a waiver of local privacy laws from account holders, which IGAs circumvent by having foreign governments collect the information.[51]

In April 2016, a U.S. district court in Ohio dismissed the case after determining that the plaintiffs lacked standing.[52] Standing is required by Article III of the U.S. Constitution, which provides that federal courts may only decide actual cases or controversies.[53] The Supreme Court has interpreted this provision to mean that, in order to bring suit in federal court, a plaintiff must establish that (1) he or she suffered an injury; (2) there is a causal connection between the injury and the defendant's action; and (3) it is likely the injury will be redressed by a favorable court decision.[54] The court in *Crawford* ruled that none of the plaintiffs had met all three requirements. For example, the court determined that injuries based on privacy concerns were insufficient because

[47] No. 3:15-CV-00250, 2016 U.S. Dist. LEXIS 55395 (S.D. Ohio April 26, 2016).

[48] The plaintiffs' other claims are that (1) the FFI reporting requirements violate the Fourth Amendment's protections against unreasonable search and seizures by requiring FFIs to report information about U.S. account holders without any judicial oversight; (2) FATCA violates the Fifth Amendment's equal protection guarantees by treating U.S. citizens living abroad more harshly than those in the United States; and (3) the FATCA penalties for non-compliance (and a related FBAR penalty) violate the Eighth Amendment's prohibition against excessive fines. Plaintiffs' Motion for Preliminary Injunction at 19-33, Crawford v. Dep't of Treasury, No. 3:15-CV-00250, 2016 U.S. Dist. LEXIS 55395 (S.D. Ohio April 26, 2016).

[49] *Id.* at 5.

[50] *See id*. at 9-13. The Constitution gives Congress the "Power to lay and collect Taxes, Duties, Imposts and Excises, … and provide for the common Defence and general Welfare of the United States…." U.S. CONST. art. I, § 8, cl. 1.

[51] *See* Plaintiffs' Motion, *supra* note 48, at 14-18.

[52] *See Crawford*, 2016 U.S. Dist. LEXIS 55395, at *41-42. The court had issued a similar decision in 2015, *Crawford v. Dep't of Treasury*, No. 3:15-cv-2502015, U.S. Dist. LEXIS 131496 (S.D. Ohio 2015), but then allowed the plaintiffs to amend their complaint to attempt to establish standing. In another decision issued in April 2016, a federal district court in California similarly dismissed a constitutional challenge to FATCA due to the plaintiff's lack of standing. *See* Alsheikh v. Lew, No. 3:15-cv-03601-JST, 2016 U.S. Dist. LEXIS 47986 (N.D. Cal. Apr. 7, 2016). The court held that the plaintiff in that case—a U.S. citizen working in Saudi Arabia—had not established standing because he had only articulated generalized private concerns about FATCA. *See id.* at *5-7. It appears that this decision and *Crawford* are the only reported cases challenging FATCA at this time.

[53] *See* Clapper v. Amnesty Int'l USA, 133 S. Ct. 1138, 1146 (2013); DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 341 (2006). The Supreme Court has explained that "[t]he law of Article III standing, which is built on separation-of-powers principles, serves to prevent the judicial process from being used to usurp the powers of the political branches" and therefore the Court's "'standing inquiry has been especially rigorous when reaching the merits of the dispute would force us to decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional.'" *Clapper*, 133 S. Ct. at 1146-47 (quoting Raines v. Byrd, 521 U.S. 811, 819-20 (1997)).

[54] *See* Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992) (internal quotations and citations omitted).

the reporting requirements were not "an invasion of a legally protected interest,"[55] and that none of the plaintiffs had alleged a concrete, non-hypothetical injury because none had actually been subject to the 30% withholding or any other penalty.[56] Plaintiffs have appealed the decision to the U.S. Court of Appeals for the Sixth Circuit, and that court has not yet issued a decision.

Possible Implications of a Ruling on the Merits

If a court were to rule in the plaintiffs' favor on the merits of the IGA issue, such a ruling would likely affect the way in which FATCA is administered but might not change the law itself. FATCA's reporting and enforcement provisions are not legally dependent on the use of IGAs,[57] and these provisions would appear to still have legal force even if IGAs were found to be unconstitutional. Thus, FFIs and other entities would still be subject to FATCA, but would no longer be able to report information to their home country under the IGA or take advantage of other provisions in the IGAs.

Possible implications for Congress of a ruling that IGAs are outside the President's authority could include passing legislation to authorize these types of agreements; potentially reexamining FATCA, particularly in light of compliance issues that might arise without the use of IGAs; or taking no action and letting the law continue without IGAs. If Congress chose not to make any legislative changes, possible options for the Treasury Department and IRS, should they conclude that IGAs are a useful tool, might include implementing the agreements through the regular treaty process, which would require the Senate's approval.[58]

Hillis v. Attorney General of Canada

The litigation in Canada concerns the validity of that country's FATCA IGA. In the case, *Hillis v. Attorney General of Canada*, dual U.S.-Canadian citizens have raised two arguments against the Canadian legislation implementing the IGA: (1) the information exchange authorized by the IGA is inconsistent with the U.S.-Canada income tax treaty and Canadian tax law; and (2) it runs afoul of Canada's constitution.[59] In September 2015, the Federal Court of Canada held that there was no legal impediment to implementation of the IGA under the income tax treaty or Canadian tax law, and allowed the first exchange of information under the IGA.[60] The court permitted the plaintiffs to continue to assert their constitutional claim,[61] but the status of such claim is unclear.

Possible Implications of a Ruling on the Merits

If the court were to hold that the IGA is invalid under Canada's constitution, this would not appear to change FATCA's underlying requirements. That is, banks and other financial entities in Canada would still be subject to FATCA reporting requirements, which might then lead to potential conflict of law questions. One possible outcome of such a ruling might be for the United

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[55] *Crawford*, 2016 U.S. Dist. LEXIS 55395, at *30.

[56] *See id.* at *28, 30, 32, 35-36, 39.

[57] *See* 26 U.S.C. §§ 1471-1474 (containing no reference to IGAs or any other type of international agreement).

[58] *See* U.S. CONST. art. II, § 2, cl. 2 (The President "shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur….").

[59] *See* Peter Menyasz, *Canadian FATCA Lawsuit Tackles Rights, Sovereignty*, DAILY TAX REP. (BNA), Sept. 9, 2015.

[60] Hillis v. Canada (Att'y Gen.), 2015 F.C. 1082 (Can. Fed. Ct.). *See also* Peter Menyasz, *Canadian FATCA Challenge Fails First Legal Test*, DAILY TAX REP. (BNA), Sept. 18, 2015; Peter Menyasz, *Canada Court Rejects Injunction to Block FATCA Data Transfer*, DAILY TAX REP. (BNA), Oct. 1, 2015.

[61] *See* Hillis, 2015 F.C. 1082, at ¶77.

States and Canada to attempt to find a mechanism that would be consistent with both countries' laws (e.g., amending the existing income tax treaty, which would require U.S. Senate approval). Another possible consequence of such a ruling is that it might encourage U.S. expatriates living in other countries to challenge those countries' IGAs, particularly since many have similar bilateral income tax treaties with the United States.

FATCA Legislation in the 114th Congress

Several bills have been introduced in the 114th Congress that would amend or otherwise address FATCA. First, S. 663, whose stated purpose is "[t]o repeal the violation of sovereign nations' laws and privacy matters," would repeal many of FATCA's provisions, including the FFI reporting and withholding requirements.[62]

The Stop Tax Haven Abuse Act (H.R. 297 and S. 174) includes a provision with the stated purpose of "strengthening" FATCA.[63] Among other things, the bill provision would expand the reporting requirement for passive foreign investment companies; expand the definition of "financial account" to include transaction accounts; expressly include entities engaged in investing in derivatives and swaps in the definition of "financial institution"; and include beneficial owners within the definition of "substantial U.S. owner."[64] The provision would also make it easier for information to be disclosed in certain circumstances.[65]

Finally, the Commission on Americans Living Abroad Act (H.R. 3078) would establish a commission to study how federal laws and policies, including FATCA, affect U.S. citizens living in foreign countries.[66]

[62] S. 663, 114th Cong. § 1(a) (2015).

[63] H.R. 297, 114th Cong. § 102 (2015); S. 194, 114th Cong. § 102 (2015).

[64] H.R. 297 § 102(b), (d), (f); S. 194 § 102(b), (d), (f).

[65] H.R. 297 § 102(e); S. 194 § 102(e).

[66] H.R. 3078, 114th Cong. § 4(a)(2)(B) (2015).

Appendix. Countries with IGAs in Effect

The countries that have IGAs in effect—either because the IGA is actually in force or because the country is treated as such—are listed in **Table A-1**. As discussed above, Treasury and the IRS treat certain countries as having an IGA in effect even though the country has not taken all the steps necessary to actually bring the agreement into force under two circumstances: (1) it has signed an IGA and is taking steps to bring it into force within a reasonable time; or (2) it has reached an agreement in substance with the United States on the terms of an IGA prior to November 30, 2014, and it continues to demonstrate intent to sign the IGA as soon as possible.[67] In addition to providing such status information for each country, **Table A-1** also notes whether each country uses a Model 1 or Model 2 IGA and provides relevant dates.

Table A-1. Countries with IGAs in Effect

Country	Status	Date of entry into force (if applicable)	Type	Date treated as having IGA in effect
Algeria	Signed	n/a	Model 1	June 30, 2014
Angola	Signed	n/a	Model 1	Nov. 30, 2014
Anguilla	Agreement in Substance	n/a	Model 1	June 30, 2014
Antigua & Barbuda	Agreement in Substance	n/a	Model 1	June 30, 2014
Armenia	Agreement in Substance	n/a	Model 2	June 30, 2014
Australia	In Force	June 30, 2014	Model 1	June 30, 2014
Austria	In Force	Dec. 9, 2014	Model 2	June 30, 2014
Azerbaijan	In Force	Nov. 5, 2015	Model 1	June 30, 2014
Bahamas	In Force	Sept. 17, 2015	Model 1	June 30, 2014
Bahrain	Agreement in Substance	n/a	Model 1	June 30, 2014
Barbados	In Force	Sept. 25, 2015	Model 1	June 30, 2014
Belarus	In Force	July 29, 2015	Model 1	June 30, 2014
Belgium	Signed	n/a	Model 1	June 30, 2014
Bermuda	In Force	August 19, 2014	Model 2	June 30, 2014
Brazil	In Force	June 26, 2015	Model 1	June 30, 2014
British Virgin Islands	In Force	July 13, 2015	Model 1	June 30, 2014
Bulgaria	In Force	June 30, 2015	Model 1	June 30, 2014
Cabo Verde	Agreement in Substance	n/a	Model 1	June 30, 2014
Cambodia	Signed	n/a	Model 1	Nov. 30, 2014
Canada	In Force	June 27, 2014	Model 1	June 30, 2014
Cayman Islands	In Force	July 1, 2014	Model 1	June 30, 2014
Chile	Signed	n/a	Model 2	June 30, 2014
China	Agreement in Substance	n/a	Model 1	June 30, 2014

[67] Notice 2013-43, 2013-31 I.R.B.113; Announcement 2014-17, 2014-18 I.R.B. 1001; Announcement 2014-38, 2014-51 I.R.B. 951.

Country	Status	Date of entry into force (if applicable)	Type	Date treated as having IGA in effect
Colombia	In Force	Aug. 27, 2015	Model 1	June 30, 2014
Costa Rica	Signed	n/a	Model 1	June 30, 2014
Croatia	Signed	n/a	Model 1	June 30, 2014
Curaçao	In Force	Aug. 3, 2016	Model 1	June 30, 2014
Cyprus	In Force	Sept. 21, 2015	Model 1	June 30, 2014
Czech Republic	In Force	Dec. 18, 2014	Model 1	June 30, 2014
Denmark	In Force	Sept. 30, 2015	Model 1	June 30, 2014
Dominica	Agreement in Substance	n/a	Model 1	June 30, 2014
Dominican Republic	Agreement in Substance	n/a	Model 1	June 30, 2014
Estonia	In Force	July 9, 2014	Model 1	June 30, 2014
Finland	In Force	Feb. 20, 2015	Model 1	June 30, 2014
France	In Force	Oct. 14, 2014	Model 1	June 30, 2014
Georgia	Signed	n/a	Model 1	June 30, 2014
Germany	In Force	Dec. 11, 2013	Model 1	June 30, 2014
Gibraltar	In Force	Sept. 17, 2015	Model 1	June 30, 2014
Greece	Agreement in Substance	n/a	Model 1	Nov. 30, 2014
Greenland	Agreement in Substance	n/a	Model 1	June 30, 2014
Grenada	Agreement in Substance	n/a	Model 1	June 30, 2014
Guernsey	In Force	Aug. 26, 2015	Model 1	June 30, 2014
Guyana	Agreement in Substance	n/a	Model 1	June 30, 2014
Haiti	Agreement in Substance	n/a	Model 1	June 30, 2014
Holy See	In Force	June 10, 2015	Model 1	Nov. 30, 2014
Honduras	In Force	Feb. 19, 2015	Model 1	June 30, 2014
Hong Kong	In Force	July 6, 2016	Model 2	June 30, 2014
Hungary	In Force	July 16, 2014	Model 1	June 30, 2014
Iceland	In Force	Sept. 22, 2015	Model 1	Nov. 30, 2014
India	In Force	Aug. 31, 2015	Model 1	June 30, 2014
Indonesia	Agreement in Substance	n/a	Model 1	June 30, 2014
Iraq	Agreement in Substance	n/a	Model 2	June 30, 2014
Ireland	In Force	April 2, 2014	Model 1	June 30, 2014
Isle of Man	In Force	Aug. 26, 2015	Model 1	June 30, 2014
Israel	Signed	n/a	Model 1	June 30, 2014
Italy	In Force	Aug. 17, 2015	Model 1	June 30, 2014
Jamaica	In Force	Sept. 24, 2015	Model 1	June 30, 2014
Japan	In Effect	June 11, 2013	Model 2	June 30, 2014
Jersey	In Force	Oct. 28, 2015	Model 1	June 30, 2014

Country	Status	Date of entry into force (if applicable)	Type	Date treated as having IGA in effect
Kazakhstan	Agreement in Substance	n/a	Model 1	Nov. 30, 2014
Kosovo	In Force	Nov. 4, 2015	Model 1	June 30, 2014
Kuwait	In Force	Jan. 28, 2016	Model 1	June 30, 2014
Latvia	In Force	Dec. 15, 2014	Model 1	June 30, 2014
Liechtenstein	In Force	Jan. 22, 2015	Model 1	June 30, 2014
Lithuania	In Force	Oct. 7, 2014	Model 1	June 30, 2014
Luxembourg	In Force	July 29, 2015	Model 1	June 30, 2014
Macao	Agreement in Substance	n/a	Model 2	Nov. 30, 2014
Malaysia	Agreement in Substance	n/a	Model 1	June 30, 2014
Malta	In Force	June 26, 2014	Model 1	June 30, 2014
Mauritius	In Force	Aug. 29, 2014	Model 1	June 30, 2014
Mexico	In Force	April 10, 2014	Model 1	June 30, 2014
Moldova	In Force	Jan. 21, 2016	Model 2	June 30, 2014
Montenegro	Agreement in Substance	n/a	Model 1	June 30, 2014
Montserrat	Signed	n/a	Model 1	Nov. 30, 2014
Netherlands	In Force	April 9, 2015	Model 1	June 30, 2014
New Zealand	In Force	July 3, 2014	Model 1	June 30, 2014
Nicaragua	Agreement in Substance	n/a	Model 2	June 30, 2014
Norway	In Force	Jan. 27, 2014	Model 1	June 30, 2014
Panama	Signed	n/a	Model 1	June 30, 2014
Paraguay	Agreement in Substance	n/a	Model 2	June 30, 2014
Peru	Agreement in Substance	n/a	Model 1	June 30, 2014
Philippines	Signed	n/a	Model 1	Nov. 30, 2014
Poland	In Force	July 1, 2015	Model 1	June 30, 2014
Portugal	Signed	n/a	Model 1	June 30, 2014
Qatar	In Force	June 23, 2015	Model 1	June 30, 2014
Romania	In Force	Nov. 3, 2015	Model 1	June 30, 2014
San Marino	Signed	n/a	Model 2	June 30, 2014
Saudi Arabia	Agreement in Substance	n/a	Model 1	June 30, 2014
Serbia	Agreement in Substance	n/a	Model 1	June 30, 2014
Seychelles	Agreement in Substance	n/a	Model 1	June 30, 2014
Singapore	In Force	March 28, 2015	Model 1	June 30, 2014
Slovak Republic	In Force	Nov. 9, 2015	Model 1	June 30, 2014
Slovenia	In Force	July 1, 2014	Model 1	June 30, 2014
South Africa	In Force	Oct. 28, 2014	Model 1	June 30, 2014
South Korea	Signed	n/a	Model 1	June 30, 2014

Country	Status	Date of entry into force (if applicable)	Type	Date treated as having IGA in effect
Spain	In Force	Dec. 9, 2013	Model 1	June 30, 2014
St. Kitts & Nevis	In Force	April 28, 2016	Model 1	June 30, 2014
St. Lucia	Signed	n/a	Model 1	June 30, 2014
St. Vincent & the Grenadines	In Force	May 13, 2016	Model 1	June 30, 2014
Sweden	In Force	March 1, 2015	Model 1	June 30, 2014
Switzerland	In Force	June 2, 2014	Model 2	June 30, 2014
Taiwan	Agreement in Substance	n/a	Model 2	June 30, 2014
Thailand	Signed	n/a	Model 1	June 30, 2014
Trinidad & Tobago	Agreement in Substance	n/a	Model 1	Nov. 30, 2014
Tunisia	Agreement in Substance	n/a	Model 1	Nov. 30, 2014
Turkey	Signed	n/a	Model 1	June 30, 2014
Turkmenistan	Agreement in Substance	n/a	Model 1	June 30, 2014
Turks & Caicos Islands	In Force	July 25, 2016	Model 1	June 30, 2014
Ukraine	Agreement in Substance	n/a	Model 1	June 30, 2014
United Arab Emirates	Signed	n/a	Model 1	June 30, 2014
United Kingdom	In Force	Aug. 11, 2014	Model 1	June 30, 2014
Uzbekistan	Signed	n/a	Model 1	June 30, 2014
Vietnam	In Force	July 7, 2016	Model 1	July 7, 2016

Source: CRS, based on Model Agreements found at Department of Treasury, *Resource Center, Foreign Account Tax Compliance Act*, http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx (last visited on August 30, 2016).

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