

Insurance Europe comments on extending the Model Intergovernmental Agreement (the Model IGA) provisions into the final FATCA regulations.

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Referring to:	Proposed FATCA Regulations (REG-121647-10); The Model IGA		
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Insurance Europe welcomes the approach to FATCA implementation provided by the Model Intergovernmental Agreement (the Model IGA) concluded between the US and five European States (France, Germany, Italy, Spain and the United Kingdom). We believe that this approach will allow the European insurance industry to overcome the existing impediments to comply with FATCA requirements.

Consistency between the Model IGA and final FATCA regulations

In particular, Insurance Europe welcomes the US Department of Treasury stated intention to "*continue to work with other governments and with businesses to implement FATCA and to achieve maximum consistency and standardisation*". In order to achieve this objective, Insurance Europe believes that the following provisions of the Model IGA should be extended to the final FATCA regulations:

1. Inclusion of the \$ 50,000 de minimis rule for Cash Value Life insurance Contracts.

Insurance Europe welcomes the inclusion in the Model IGA of a \$ 50.000 de minimis threshold for cash value life insurance contracts. For individual policies that do not exceed the de minimis threshold, on-going administrative and FATCA monitoring costs related to the policies will be reduced by excluding them from FATCA reporting regime. Furthermore, for the reasons explained in our previous submissions on FATCA, insurance contracts with a cash value of \$ 50,000 or less do not present any realistic risk of United States tax evasion.

However, by not having the same de minimis rule with non-IGA countries, Foreign Financial Institutions (FFIs) carrying on insurance business in both IGA and non-IGA countries will have an extra compliance burden. Therefore, we believe that the final FATCA regulations should include a \$ 50,000 de minimis rule for cash value life insurance contracts.



2. Relief for Expanded Affiliated Groups with Non-participating Foreign Financial Institutions.

We are pleased by the inclusion in the Model IGAs of a rule that provides relief to “expanded affiliated groups” (EAG) with one or more qualifying “non-participating FFIs.” Insurance Europe considers that it is essential that the EAG is able to retain its FFI compliant status even if there is a non-compliant affiliate member within the EAG, so long as the non-compliant affiliate meets the requirements enlisted in the Model IGA.

We are concerned that some countries will not amend their laws or enter into IGAs and thus FFIs located in these countries that are part of EAGs will find themselves unable to retain FFI status despite their best efforts to comply. Therefore, we recommend that the final FATCA regulations should include the same rule for EAGs.

Furthermore, we would appreciate to include a rule stating that certain de minimis non-compliance due to “unwanted errors” does not affect an EAG status.

3. Exclusion of Indemnity Reinsurance Agreement from definition of Cash Value Insurance Contract.

Insurance Europe welcomes the explicit statement in the Model IGAs that cash value life insurance contract does not include an indemnity reinsurance agreement.

In our opinion, the final FATCA regulations should not rely solely on the definition of “cash value” to exclude reinsurance contracts from its scope. This approach causes uncertainty. Having regard that the Model IGAs contains such exclusion, we recommend that the final regulations should exclude indemnity reinsurance contracts completely from treatment as cash value insurance contracts.

4. The definition of life insurance and annuity contract.

In our view, the Model IGA provides an easily understandable definition of an insurance and annuity contract.

We believe that the definitions of a life insurance and annuity contracts included in the final FATCA regulations needs to be clear and easy to apply in practice given that compliance with FATCA reporting obligations will fall on non-US FFI operations personnel not versed in United States tax law.

Therefore, we recommend that the final regulations adopt that definition of an insurance and annuity contract included in the Model IGA.

5. Renewal of documentation and ability to rely on third party service providers.

Insurance Europe welcomes the principles set out in the Model IGA which enable FFIs to rely on a third party service provider to fulfil the obligations imposed on them by the FATCA partner and does not oblige FFIs to renew their documentation on identity of an account holder every three years.

It is worth mentioning that, insurance companies should be able to rely on third party documentation since they frequently work with financial intermediaries and agents which verify individual’s identity. Furthermore, from a cost-benefit perspective, the likelihood of a client changing its status within three years is exceptionally low. However, the complexity and cost of re-documenting all new clients every three years is very high, and the customer reaction to this inconvenience is likely to be exceptionally negative.

Insurance Europe is, however, concerned that these principles benefit FFIs and their third party service providers only where they are all located in a FATCA partner country and are complying with FATCA under an IGA. Therefore, we recommend that the above principles on renewal of documentation and ability to rely on third party service providers should be included in the final regulations.



6. Standardized Identification System

Annex I of the draft IGA foresees a due diligence identification system, including reference to the AML/KYC procedures. Insurance Europe recommends adopting this system in the final Regulations so that for instance "US specified persons", "Financial Institutions" and "NPFFI" can be identified in a standardized way. That will be easier for both the IRS and the participating FFIs across the world.

7. Timelines

The model IGA introduces a more realistic timeline for FFIs to comply with their requirements under FATCA than the proposed FATCA regulations. We are pleased that under the Model IGA new account on-boarding processes must begin by January 1, 2014 and the individual pre-existing account entered into on or before December 31, 2013 are excluded from due diligence procedures, where US law or the law of the FATCA partner effectively prevents the sale of such contracts to US residents.

Insurance Europe considers that it is essential that the timelines of the final FATCA regulations are aligned with those specified in the Model IGA to ensure that FFIs can implement FATCA successfully. This difference results in companies within EAGs having different implementation deadlines with respect to their FFIs in IGA and non-IGA jurisdictions. We are concerned that this might lead to erroneous reporting and withholding.

Therefore, we recommend that the final FATCA regulations include qualifying date for pre-existing individual insurance or annuity contracts to December 31, 2013 as well as statement that the new account on-boarding processes begin from January 1, 2014.

Furthermore, we suggest extending the rule from in Art. 3 (5) of the Model IGA which provides that information shall be exchanged within 9 months after the end of the calendar year to which it relates to. Therefore, information that relates to calendar year 2013 does not have to be exchanged before September 30, 2015.

Other final FATCA regulations issues

Furthermore, we urge Treasury and the IRS to take into consideration the below points in the final FATCA regulations:

1. Insurance holding companies should not be treated as financial institutions for FATCA purposes.

In our comments on the proposed FATCA regulations (memo TAX-12-066 of 11 May), we requested that an insurance holding company should not be considered as an FFI for FATCA purposes. We explained that there is no policy or other justification for imposing that treatment on insurance holding companies, but not on the holding companies of other financial institutions. Furthermore, an insurance holding company would be considered an FFI although it does not maintain any financial accounts.

Accordingly, we suggest deleting the insurance holding company rule from the final FATCA regulations.

2. Option to nominate a lead FFI and a single "Responsible Officer" for each EAG.

Insurance Europe considers that each EAG should have the option of identifying a lead FFI for the EAG and a single Responsible Officer who would act on behalf of all members of the EAG, including registering each member of the EAG and executing necessary FATCA documentation on behalf of each member, but who also could delegate some of his or her responsibilities under FATCA to officers or employees of EAG members.



3. Explicit exclusion of Property/Casualty contracts

In our comments on the proposed FATCA regulations, we requested in order to provide greater legal certainty for the insurance sector the final FATCA regulations explicitly state that property and casualty contracts are outside the scope of definition of cash value insurance contracts. Accordingly, we suggest to state explicitly in the final FATCA regulations that property and casualty contracts are outside the scope of definition of cash value insurance contracts.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Michaela Koller".

Michaela Koller
Director General
Insurance Europe

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