

**Chief Executive**

Brussels, 29 July 2015

Mr B. Stack  
Deputy Assistant Secretary (International Tax Affairs)  
Office of the International Tax Counsel  
Department of the Treasury  
1500 Pennsylvania Avenue, NW, Room 3058  
Washington, DC 20220, USA  
[robert.stack@treasury.gov](mailto:robert.stack@treasury.gov)

Mr M. Danilack  
Deputy Commissioner (International)  
Internal Revenue Service  
1111 Constitution Avenue,  
NW Large Business and International Division  
Attn: SE:LB:IN  
Washington, DC 20224, USA  
[michael.danilack@irs.gov](mailto:michael.danilack@irs.gov)

**Subject: FATCA - Request for transitional measures applicable to Financial Institutions established in jurisdictions that are considered as having an IGA in effect but have not yet adopted implementing legislation**

Dear Sirs,

I am writing to you as Chief Executive of the European Banking Federation (EBF) which is the voice of European banks. The EBF appreciates the efforts of the Department of the Treasury and the Internal Revenue Service (IRS) to provide Financial Institutions (FIs) with regulatory guidance on FATCA. However, I would like to draw your attention to some serious implementation concerns along with suggested ways to mitigate them, which I respectfully urge you to consider.

According to intelligence gathered by our members, a number of the Intergovernmental Agreements (IGAs) for FATCA signed to-date have not yet entered into force. The applicable internal approval process by the relevant partner jurisdictions has not yet been completed and implementing legislation in a number of countries has not yet been issued. Considering the parliamentary recess usually observed during the summer period, there is a real risk that these IGAs will not enter into force before 30 September 2015, which is the expiration date set in Reciprocal Model 1A IGA in case where the exchange of information provisions of a given IGA are not in effect for either Contracting State by that date. Save for the application of specific transitional measures, a termination of the relevant IGAs on 30 September 2015 according to a literal application of their terms would certainly constitute a source of concern for EBF member institutions, which either are based in the relevant Partner Jurisdictions or have operations in the said jurisdictions. Such an outcome would indeed not only jeopardize the Model 1 Foreign Financial Institution (FFI) status of the financial institutions concerned but would also potentially have implications for the rest of their respective group in the context of an Expanded Affiliated Group (EAG) given they may revert to limited FFI status.

On the top of this comes the fact that, out of the 44 IGAs currently agreed in substance, the vast majority of them are Model 1 IGAs and are thus, in the current stand of the drafting, subject to similar termination provisions. In the case of a Reciprocal Model 1 Agreement currently agreed in substance, the aforementioned

provisions might cause the said agreement to become virtually stillborn upon its formal signature failing sufficient lead-time for its subsequent ratification by the relevant Partner Jurisdiction. Even in the event of an entry into force before 30 September 2015, it seems very unlikely that the first exchange of information under a given Model 1 IGA can be completed by that date considering the fact that implementing legislation needs to be introduced locally and the information to be exchanged will need to be processed and reported beforehand by FIs to their local tax authorities.

We would like to think that the early termination of a certain number of IGAs, potentially coupled with a late exchange of information under a further number of IGAs, would constitute a concern shared by the Department of the Treasury, not least from a political perspective.

In the light of the above, we respectfully suggest that the Department of the Treasury provides for transitional measures which would apply in respect of (1) signed IGAs that have not yet entered into force by a predetermined date (e.g. 1 September 2015) and (2) IGAs that have been agreed in substance but not yet signed by the same predetermined date. These transitional measures should provide in essence that any information that would have been reportable under a given IGA had such IGA been into force by 30 September 2015 is owed on the 30 September next following the date of entry into force of the said IGA. As currently foreseen in a dedicated addendum to at least one existing IGA, the application of the above transitional rules could be subjected to certain qualifications. The relevant Partner Jurisdiction could for instance be required to provide credible assurances that the delay in the internal process for entry into force of the IGA is likely to be resolved in a reasonable period of time and that this jurisdiction is therefore likely to be able to send to the Department of the Treasury a notification of entry into force by 30 September 2016. This would enable FIs established in such jurisdiction to collect and hold the data until the entry into force of the IGA and to report these data according to the implementing legislation as soon as this law has entered into force. These transitional measures should also provide that, in the meantime, the Department of the Treasury and the IRS will treat these FIs as Model 1 FFIs.

We also note that in respect of all the IGA's / IGA model that there is a commitment that "The Parties shall, prior to 31 December 2016, consult in good faith to amend this Agreement as necessary to reflect progress on the commitments set forth in Article 6", which discusses pass-thru amongst other issues. Given the challenges seen to date in signing and implementing the current version, we strongly suggest that this requirement is delayed for 5 years to allow global FI's time to implement the OECD Common Reporting Standard (CRS), and the IRS to consider synergies with it, before further changes are required under FATCA.

We finally take the opportunity of this letter to remind you of our precedent letter dated 30 April 2015 requesting the extension of the Limited FFI deadline after 31 December 2015 under the Treasury Regulations.

Whenever appropriate, this issue, and possibly other issues of relevance for our members could be perhaps discussed in the course of a physical meeting during the week starting on 9 November 2015, during which delegates from EBF and other member associations will travel to Washington.

Bearing the applicable timeframe in mind, we would welcome in the meantime the opportunity to discuss with you beforehand the issue that constitutes the focus of the present letter.

Yours sincerely,



Wim MIJS

