



FATCA UPDATE – Bahamas Agreement “In Effect”

On 18 April 2014 The Bahamas Government announced that it had approved in principle the Model 1 Agreement with the US Government to implement the Foreign Account Tax Compliance Act (“FATCA”). Accordingly, The Bahamas is now deemed by the US Department of The Treasury to have a FATCA agreement “in effect”

Background

On 17 January 2013, the United States Treasury (“US Treasury”) and the Internal Revenue Service (“IRS”) released the final regulations for FATCA.

On 18 March 2010, FATCA was signed into law in the United States of America (“US”) to target non-compliance with US taxpayers using foreign accounts. It requires US financial institutions to withhold a portion of certain payments made to foreign financial institutions (“FFIs”) that do not agree to identify and report information on US account holders.

Governments have two means of complying with FATCA, namely (1) by permitting their FFIs to enter into agreements directly with the IRS; or (2) they can themselves enter into one of two models of Intergovernmental Agreement (“IGA”) with the US.

The final regulations generally provide that, in order for withholding not to apply, withholding agents must verify the status of FFIs beginning on 01 July 2014, which is the effective start date of FATCA withholding.

Withholding agents will be able to verify the status of the FFI by checking the IRS’ FFI list. In order to be included on the first FFI list published by the IRS, FFIs will have to register with the US Government website referred to as the “FATCA Portal” to obtain a Global Intermediary Identification Number (“GIIN”) by 05 May 2014.

On 02 April 2014, the US Treasury and the IRS announced that jurisdictions that have reached agreements in substance with the US Government on the terms of the IGAs under FATCA prior to 01 July 2014 can be treated as having agreements in effect until 31 December 2014 and allows FFIs in such jurisdictions to register through the FATCA Portal consistent with that treatment. After 31 December 2014, only signed IGAs will be considered to be in effect.

Intergovernmental Model selected by The Bahamas

On 18 April 2014, the Ministry of Financial Services of The Bahamas (“Ministry of Financial Services”) issued a press release advising that Cabinet approved in principle



the Model 1 IGA.

This approval in principle by the Government of The Bahamas in turn means that for the purposes of the US Treasury The Bahamas is now deemed as having an agreement in effect, thereby allowing Bahamian financial institutions to register on the IRS FATCA Portal as Model 1 Participating Financial Institutions.

The significance of The Bahamas being deemed to have an Agreement in effect prior to the 01 July 2014 deadline is that:

- Bahamian Financial Institutions can register for a GIIN by the 05 May 2014 deadline which will allow them to be on the first IRS FFI List and thus allow them to simplify the documentation of their status with withholding agents; and
- Withholding agents should not require the reporting Model 1 FFIs (i.e. Bahamian FFIs) to provide GIINs until 01 January 2015, Bahamian FFIs have more time to register for a GIIN number if they cannot meet the 05 May 2014 deadline and will not be subject to FATCA withholding.

The Ministry of Financial Services advised in their press release that they will be issuing further guidance on FATCA in the coming days.

FATCA Model 1 IGA at a glance

The key characteristics of a Model 1 IGA¹ are as follows:

- The Bahamas agrees to report to the IRS specified information about the U.S. accounts maintained by all relevant FFIs located in The Bahamas.
- FFIs identify U.S. accounts pursuant to due diligence rules contained in Annex I of the IGA.
- FFIs report specified information about their U.S. accounts to the Bahamian Government.
- The Bahamas, in turn, reports such information to the IRS on an automatic basis.
- The exchange of information under a Model 1 IGA may be on a reciprocal or nonreciprocal basis.
- Bahamian FFIs are not required to enter into a separate FFI Agreement with US Government.

The Ministry of Financial Services stated in various forums that based on their experience, views of its FATCA Advisory Group, and interactions with the Industry, the Model 1 IGA was strongly preferred to a Model 2 IGA due to:

- Best treatment for key Bahamian products



- Lower costs and reporting burdens for Bahamian financial institutions

What are the implications for Bahamian law?

As the FATCA Model 1 IGA is an intergovernmental agreement, domestic legislation will have to be enacted to implement FATCA in The Bahamas. Further, existing Bahamian legislation, namely the *Banks and Trust Companies Regulation Act* and the *Data Protection Act*, may need to be amended in order reconcile our confidentiality and data protection laws with FATCA implementation.

What you need to do now!

1. Determine if your institution qualifies as an FFI². Generally, an FFI will be:

- a. Bank and/or Trust Companies
- b. Registered Firms with a license to deal in securities (Custodians)
- c. Certain Insurance Companies

2. Determine if your institution is treated as a deemed compliant FFI³. Generally, such institutions include:

- a. Investment Fund Managers and Advisors
- b. Investment Funds
- c. Registered Firms licensed to manage and/or advise only
- d. Foundations
- e. Trusts
- f. Private Trust Companies

3. If your institution does not fall under the category of a deemed compliant FFI take steps to register your institution through the FATCA Portal to obtain a GIIN. If you wish for your institution to be included on the IRS' First FFI list then you must ensure you register by 05 May 2014⁴. In any event, registration should be achieved by early December 2014.

How can we help?

Our team has leading expertise in Bahamian financial services laws and regulations, having had prior experience in policy, legislative and regulatory aspects of the Bahamian financial laws and extensive private industry experience in advising on every area creating a combination of qualifications which distinguishes us. In addition, we have correspondent arrangements with major US law firms with tax expertise to ensure that our Bahamian clients receive sound US tax advice.



We can ensure that you receive sound advice on all Bahamian and US issues related to FATCA, assist with issues arising in the course of your review of account holder information, and provide advice as to best practices going forward.

This information is provided for informational purposes only and does not constitute legal advice. For more information please contact: John K F Delaney QC at jdelaney@delaneypartners.com, Pamela Klonaris at pklonaris@delaneypartners.com, Samantha Knowles-Pratt at skpratt@delaneypartners.com or Sofia Papageorge spageorge@delaneypartners.com.

*Source <http://www.bahamas.com/Bahamas/Cooperation/FATCA/Governance> Please visit the US Treasury's FATCA IGA resource centre at <http://www.treasury.gov/resource-center/international/tax-policy/fatca.aspx> for further information.

*Please see Article 1 of the Model 1B IGA Non-Reciprocal Agreement, No TIEA or DTC found at the US Treasury FATCA IGA online resource centre for a detailed definition of FFI.

*Please see Annex II of the Model 1 IGA found at the US Treasury FATCA IGA online resource centre for a list of deemed compliant FFIs.

*Please see IRS published Announcement 2014-17, 'Update on Jurisdictions Treated as Having an IGA in Effect and on FATCA Financial Institution Registration' for key FATCA compliance dates at <http://www.irs.gov/efile/announcements/201417.pdf>