



FATCA – Bahamas Implementation Update

THE BAHAMAS AND THE UNITED STATES OF AMERICA FOREIGN ACCOUNT TAX COMPLIANCE AGREEMENT BILL, 2015 (the “Bill”) was passed by the Bahamian Parliament on 7th August 2015 and now only awaits the Assent of the Governor-General before becoming an Act of Parliament. It is expected to enter into force imminently and will thereby implement the US FATCA regime in The Bahamas.

“FATCA” refers to the US’ Foreign Account Tax Compliance Act. In November 2014 The Bahamas entered into with the United States a Model 1 Intergovernmental Agreement (“Bahamas-US FATCA Agreement”) for implementing FATCA in The Bahamas.

Guidance notes for the intended legislation had been issued in May 2015 and a Bahamas Tax Information Exchange Portal is up and running. An instructional guide on registering for access and processing FATCA files has been published.

This Update is a briefing on the Bill which has 5 parts and a Schedule. The Schedule sets out the Bahamas-US FATCA Agreement.

Reporting Bahamas Financial Institution

A Bahamian financial institution within the definition of “Bahamas Financial Institution” under the Bill is deemed to be a “Reporting Bahamas Financial Institution (“RBF”) where it carries on business in The Bahamas as –

- a) a Custodial Institution;
 - b) a Depository Institution;
 - c) an Investment Entity;
 - d) a Specified Insurance Company
- unless it meets the requirements of an *exempt beneficial owner* or *deemed-compliant financial institution*.

Registration requirements of a RBF

A RBF is required to register in accordance with requirements outlined on the United States Internal Revenue Service’s FATCA registration website and any other requirements determined by the Minister of Finance within the following time periods:



- no later than thirty (30) days after the Act enters into force; or
- where a financial institution is not a RBFi on the date of enforcement, no later than thirty (30) days after the financial institution becomes a RBFi.

Accounts that must be classified as a US Reportable Account¹

Lower Value Accounts:

Accounts that pre-existed as of 30 June 2014 with a balance in excess of US\$50,000.00 (US\$250,000.00 for a Cash Value Insurance Contract or Annuity Contract) where an electronic search reveals that there is a US indicia are required to be treated as US reportable account unless the account holder can provide evidence of non-US status. The following are considered to be US indicia:

- i. Account holder is identified as a US citizen or resident;
- ii. Identification of a US birthplace is unambiguous;
- iii. Current US mailing or residence address;
- iv. Current US telephone number;
- v. Standing instructions to transfer funds to a US maintained account;
- vi. Current effective power of attorney or signatory authority granted to a person with a US address; and
- vii. A US "In-care-of" or "hold mail" address is the sole address on the file of the RBFi for the account holder.

High Value Accounts:

Accounts with a balance in excess of US\$1,000,000.00 as at 30 June 2014, 31 December 2015 or any subsequent year where an electronic or paper record search reveals a US indicia are required to be treated as a US reportable account unless the account holder provides evidence of non-US status. In addition, if the relationship manager of the account has actual knowledge that the account holder is a Specified US Person, the account must be treated as reportable regardless of whether the electronic or paper search does not reveal same.

Account Holder information that must be exchanged with The Bahamas



Competent Authority

Account holder information of the US reportable account must be exchanged with The Bahamas Competent Authority and are as follows:

Reporting Year	Required information	Information Exchange Deadline
2014	<ul style="list-style-type: none">• Name• Address;• Tax Identification Number;• Date of Birth;• Account number or equivalent;• The name, Global Intermediary Identification Number (“GIIN”) of the RBF; and• The account balance or value as of the end of the calendar year or other appropriate period or at the time of closing.	17 August 2015
2015	<ul style="list-style-type: none">• The information required to be reported for the year 2014 (stated above);• <i>Custodial Account</i> – the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generate with respect to the assets held in the account which are paid or credited to the account during the	31 May 2016



calendar year or other appropriate reporting period.

- *Depository Account* – the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period
- *Other Account (not described above)* – the total gross amount paid or credited to the account holder in relation to the account during the calendar year or other appropriate reporting period with respect to which the RBF is the obligor or debtor, including the aggregate amount of any redemption payments made to the account holder during the calendar year or other appropriate reporting period.

2016

- The information required to be reported in 2015 (stated above);
- *Custodial Account* – the total gross proceeds from the sale or redemption of property paid or

31 May 2017



credited to the account during the calendar year or other appropriate reporting period with respect to which the RBFi acted as custodian, broker, nominee, or otherwise as an agent for the account holder.

Information Return

A RBFi with no reportable US accounts in a calendar year must submit a nil return to The Bahamas Competent Authority for that year which must state the following:

- Name of the Institution;
- Address of the registered office;
- GIIN; and
- Any other information stated in the FATCA regulations.

Electronic Exchange of Information with The Bahamas Competent Authority

The Bahamas Government's FATCA website was launched in June 2015. The website will facilitate the exchange of information between the RBFi and The Bahamas Competent Authority by the use of an online portal. RBFis ought to have registered already on this portal as they were encouraged to do so by 31 July 2015. Approval for user registration must be granted by the RBFi's Key or Responsible Officer on record.

Registered users would electronically upload the reportable information in the required format (Excel file or Comma Separate Value file). Once information is uploaded on the portal it cannot be viewed or edited because the data transmission is one way. If the uploaded file has an error, the portal would list the number of rows in error. Moreover, if the registered user wishes to amend the uploaded file he or she has to upload another file which would replace the previously uploaded file.

After the file is uploaded on the portal, the final step is submission. Once the file has been submitted, a confirmation email and onscreen message would list the file's name



and number of rows submitted.

17 August 2015 is the targeted date by which data for the year 2014 is to have been uploaded.

Note: The Bahamas Competent Authority will not have responsibility for the audit of the information provided by the RBFi.

Confidentiality

The information exchanged by the RBFi with The Bahamas Competent Authority is confidential. The Bahamas Competent Authority would only disclose information that is necessary to carry out its obligations under FATCA.

Penalties for non-compliance with FATCA

The Bill provides that the Bahamas Competent Authority would apply domestic law, inclusive of penalties, to a RBFi that makes minor and administrative errors in FATCA reporting. However, if there is significant non-compliance the RBFi will receive a notification of the significant non-compliance by the US Competent Authority and The Bahamas Competent Authority would apply domestic law inclusive of applicable penalties. If after eighteen (18) months from the date of the notification the RBFi continues in non-compliance, the RBFi would be treated as a Nonparticipating Financial Institution. This would result in the RBFi being subject to a withholding of thirty (30) percent on US source payments.

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