



**Industry Briefing Note  
Ministry of Financial Services**

**BAHAMAS-UNITED STATES  
MODEL I FATCA IGA**

**FREQUENTLY ASKED QUESTIONS (FAQs)**

**Introduction**

On 17<sup>th</sup> April, 2014, the Government of The Bahamas entered into an Agreement, in substance, with the Government of the United States to comply with the United States Foreign Accounts Tax Compliance Act (FATCA) through a Model I Inter-Governmental Agreement (“IGA”) on a non-reciprocal basis. The agreement is now considered “in effect” which allows Reporting Bahamas Financial Institutions (“Reporting FIs”), as defined under the IGA, to register with the United States Internal Revenue Services (“IRS”) to obtain a Global Intermediary Identification Number (“GIIN”).

The Ministry of Financial Services has now prepared a listing of frequently asked questions (FAQs) to assist entities and individuals affected by FATCA in their compliance with the IGA.

**Question 1: What is FATCA?**

FATCA was signed into United States law in 2010 through the US Hiring Initiatives to Restore Employment Act. FATCA came into force on 1<sup>st</sup> January, 2013 and has the effect of imposing information reporting requirements to the IRS on financial institutions throughout the world with respect to certain information on US persons. Financial institutions that do not comply with the FATCA requirements face a 30% withholding tax on all of their US payments and will be deemed “non-Participating Foreign Financial Institutions”.

## **Question 2: How Does a Country Comply with FATCA?**

There are two (2) broad approaches for compliance with FATCA:

- (1) Financial institutions can enter into a Foreign Financial Institution Agreement (“FFI Agreement”) directly with the United States IRS to comply with FATCA under the FATCA Regulations; or
- (2) Governments may enter into agreements with the United States government through an IGA to allow their financial institutions to comply with FATCA. There are two (2) Model IGAs:
  - (a) In the Model I IGA approach, a country’s government agrees to require its financial institutions to collect and report the relevant information on US Account Holders required under FATCA to its Competent Authority. The Competent Authority of the country then collates and shares the information with the IRS. The Model I approach can be on a reciprocal or non-reciprocal basis.
  - (b) The Model II IGA approach results in a government mandating its financial institutions affected by FATCA to enter into FFI agreements individually and directly with the IRS.

## **Question 3: How Will The Bahamas Comply with FATCA?**

After extensive consultation with industry and government stakeholders, the Cabinet of The Bahamas approved a Model I, non-reciprocal approach for FATCA compliance for The Bahamas. This means that through statute, the Government of The Bahamas will require financial institutions in The Bahamas, to perform due diligence for FATCA compliance in its operations, to collect the necessary information on US persons as agreed in the Model I IGA and to transmit this information to the Ministry of Finance, also referred to as The Bahamas Competent Authority (“BCA”). The BCA will then be responsible for passing that information on to the IRS. By virtue of this IGA, Reporting FIs in The Bahamas are not required to enter into separate agreements with the IRS, but will report to the BCA instead of the IRS.

As of 17<sup>th</sup> April, 2014, The Bahamas entered into a Model I IGA with the United States “in substance”. The IGA is considered to be “in effect” by The Government of The Bahamas and the Government of the United States. The IGA is scheduled to be signed before the end of 2014. The listing of countries that are regarded as having an IGA in effect with the United States is available on the US Treasury’s website at: <http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA-Archive.aspx>

**N.B.:** While the Bahamas-US FATCA IGA is not yet publicly available, the public may wish to review the Model 1 IGA (No TIEA) as a reference. While some changes to the text have been negotiated, this Model IGA is very similar to the negotiated Bahamas-US IGA. The Model I IGA may be viewed at the US Department of the Treasury website at: <http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Nonreciprocal-Model-1B-Agreement-No-TIEA-or-DTC-11-4-13.pdf>.

#### **Question 4: Who is a Bahamas Reporting Financial Institution?**

The Bahamas-United States FATCA Intergovernmental Agreement defines four (4) categories of Bahamas Reporting FIs. These Reporting FIs will be required to report certain information on their U.S. Accountholders to the BCA under Bahamian law and in compliance with the FATCA IGA. The four categories of Reporting FIs are summarized below:

- (1) Custodial Institution** – any entity which, as a substantial portion of its business, holds financial assets for the account of others.
- (2) Depository Institution** – any entity accepting deposits in the ordinary course of banking or similar business.
- (3) Investment Entity** – any entity that primarily conducts as a business, or is managed by an entity that conducts as a business, one or more of the following activities, for or on behalf of a customer (e.g. an account holder):
  - (a)** trading in money market instruments (cheques, bills, certificates of deposit, derivatives etc.), foreign exchange, interest rate and index instruments, transferable securities and commodity futures trading,
  - (b)** individual and collective portfolio management; or
  - (c)** otherwise investing, administering or managing funds or money on behalf of other persons.

Additionally, most investment funds (other than certain regulated funds with restricted categories of investors and most pension funds), administrators and some advisors/managers may be regarded as Reporting FIs.

*[Note: Trusts and Foundations also fall under this category]*

- (4) Specified Insurance Company** – when the insurance company has products classified as Cash Value Insurance or Annuity Contracts written by the company or if payments are made with respect to such contracts.

Please review the Model I IGA, Article 1 for a full definition of Financial Institution under FATCA. See Question 13 for a listing of the relevant websites.

#### **Question 5: Are Some Financial Institutions Exempt Under FATCA?**

Yes. The Bahamas FATCA IGA designates some classes of Bahamas Financial Institutions as Non Reporting Financial Institutions (“Non-Reporting FI”) under FATCA because they have exempt beneficial owners or are deemed to be compliant under FATCA.

The criteria for assessing whether a financial institution is a Non-Reporting FI are outlined in Annex II of the IGA. The criterion is based on whether that institution:

- (a) has an exempt beneficial owner (i.e. the Government of The Bahamas, an international organization, Central Bank, certain retirement or pension funds, etc), or
- (b) is a deemed compliant financial institution, (i.e. certain small and/or local FIs, etc); or
- (c) has a sponsor that has registered with the IRS and is reporting on their behalf (i.e. Trustee-documented trusts, sponsored investment entities<sup>1</sup>, etc).

Annex II also specifically outlines the criteria for certain accounts which are excluded from the definition of reportable accounts. These include certain savings accounts, certain term life insurance contracts, accounts held by an estate, escrow accounts and partner jurisdiction accounts.

Please review Annex II of the Model IGA for a full overview of the FATCA exemptions.

#### **Question 6: Who is a “US Person” for FATCA Reporting Purposes?**

Under FATCA, Reporting FIs will be required to report certain information on U.S. persons on an annual basis. For the purposes of determining a US Reportable Account, in general, a US person includes:

- A citizen or resident of the United States;
- A US domestic partnership;
- A US domestic corporation;
- Any estate other than a foreign estate in the United States;
- Any Trust if:
  - a court within the United States is able to exercise primary supervision over the administration of the Trust; and
  - one or more United States persons have the authority to control all substantial decisions of the Trust.
- Any other person that is not a foreign person to the United States.

#### **Question 7: How Will I Determine Who is a US Person?**

Annex I of the IGA provides the indicia to determine if an account holder is a US person. In general, indicia of being a US Account Holder includes the following:

- Identification of an investor as a U.S. resident or citizen;
- U.S. place of birth;
- U.S. resident mailing address (including a U.S. post office box);
- U.S. telephone number (and no non-U.S. telephone number on file);
- Standing instructions to transfer funds to an account maintained in the United States;

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<sup>1</sup> Sponsored investment entities may include foundations, private trust companies and master feeder fund structures which meet the requirements of Annex II.

- Power of Attorney or signatory authority granted to a person with a U.S. address;
- An “*in care of*” or “*hold mail*” address that is the sole address the fund has identified for the investor.

<b>Question 8: I am a Reporting FI. What Must I do and by When?</b>
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If you have determined that you are a Reporting FI you must:

**1. Register<sup>2</sup>**

Register as a Registered Deemed-Compliant FFI (Model 1) on the IRS FATCA Registration Portal, using FORM 8957 to obtain a GIIN.<sup>3</sup>

**Key Dates:**

- To be included on the first FFI list to be published in June, 2014 register by 5<sup>th</sup> May, 2014;
- To be included on the second FFI list to be published on 1 July, 2014, register by 3<sup>rd</sup> June, 2014;
- To be included on the FFI list to be published on 1<sup>st</sup> January, 2015, register by 22<sup>nd</sup> December, 2014.<sup>4</sup>

**2. Review Account Holders**

**Existing Accounts:** Perform the required due diligence requirements in the manner and timeframes prescribed in Annex I of the Model 1 IGA on pre-existing accounts (i.e. accounts existing as at 30<sup>th</sup> June, 2014) to determine if there is US indicia, i.e. evidence that the account holder may be a US person.

**New Accounts:** Reporting FIs will be required to undertake certain procedures as outlined in Annex I of the Model 1 IGA with respect to new accounts (i.e. an account opened on or after 1<sup>st</sup> July, 2014) when the account is opened (or within 90 days of it ceasing to be exempted) to identify reportable accounts.

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<sup>2</sup> Please note that if you are a Bahamas financial institution which registered with the IRS prior to 17<sup>th</sup> April, 2014, you may need to re-register as a Model 1 Registered Deemed Compliant Financial Institution.

<sup>3</sup> Please note that withholding for unregistered and therefore Non-Participating Bahamas Financial Institutions will commence from 1<sup>st</sup> January 2015. Registered Bahamas Financial Institutions who have obtained the GIIN through registration or have been sponsored will not face withholding by US paying agents.

<sup>4</sup> The United States IRS will be publishing updated FFI listings on a monthly basis.

### 3. Develop and Maintain On-going FATCA Compliance Systems

Implement and maintain systems to ensure compliance with the reporting obligations of FATCA.

#### **Question 9: What is the Role of the Responsible Officer Under the Model I IGA?**

The Responsible Officer (“RO”) under the Model I IGA is treated as a certifying agent for the registration process and acts to certify that the registration information submitted is accurate and complete. The RO does not have any continuing FATCA obligations directly with the IRS. Domestic legislation will prescribe the role of the RO or other authorised individuals.

#### **Question 10: What Information Must I Collect on US Reportable Accounts?**

Article 2 of The Bahamas FATCA IGA outlines, in detail, the information on US Reportable Accounts which should be collected by a Reporting FI and ultimately reported to the BCA for onward transmission to the IRS.

In general, Reporting FIs will be required to report the identity and the account balance or value at year end of US Reportable Accounts. The accounts of Non-participating FIs are not themselves reportable, but any payments to Non-participating FI’s are reportable.

With respect to 2014 reportable accounts, only basic information about the account holder and account balance or value is reportable. More detailed information will be required for 2015 and 2016 US Reportable Accounts.

**Note:** The Ministry will be issuing specific guidance notes on the due diligence and reporting requirements under the Model 1 IGA in June 2014.

#### **Question 11: What Must I Do With the Information on US Accountholders?**

Reporting FIs will be required, by Bahamian statute, to report the specified information required under FATCA to the BCA in 2015. The first reporting of US Account Holder information by the BCA to the IRS will be on or before September, 2015.

Articles 2 and 3 of The Bahamas-US FATCA IGA (see Note referenced in Q.3 above) outlines the obligations which have been agreed with respect to obtaining the information on all US Reportable Accounts and the timeframes for sharing that information with the United States by the BCA.

**Question 12: What Happens When an Account Holder Does Not Provide the Required Information?**

There is no requirement in the Bahamas IGA to close or withhold from a recalcitrant account (i.e. an account holder who does not provide the required information). However, The Bahamas government has a duty to ensure compliance with Bahamian legislation and its obligations under the FATCA IGA.

Article 5 of The Bahamas IGA obligates the Government of The Bahamas to apply its domestic law to:

- obtain corrected and or complete information from a Reporting FI in the case of identified minor and administrative errors; and
- address instances of significant noncompliance. Where the instance of significant non-compliance by a Reporting FI has not been resolved within a period of 18 months, the United States shall treat the Reporting FI as a Non-participating FI and withholding can commence on US sourced payments to that institution.

**Question 13: What Are Some Useful Websites on FATCA?**

Issue	Website Information
Information on the Model IGAs	<a href="http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx">http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx</a>
While The Bahamas-FATCA Agreement is not yet published, the most relevant Model IGA is the Model I IGA, No TIEA found here:	<a href="http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Nonreciprocal-Model-1B-Agreement-No-TIEA-or-DTC-11-4-13.pdf">http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Nonreciprocal-Model-1B-Agreement-No-TIEA-or-DTC-11-4-13.pdf</a>
Annex I and II	<a href="http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Annex-I-to-Model-1-Agreement-11-4-13.pdf">http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Annex-I-to-Model-1-Agreement-11-4-13.pdf</a> and <a href="http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Annex-II-to-Model-1-Agreement-11-4-13.pdf">http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Annex-II-to-Model-1-Agreement-11-4-13.pdf</a>
IRS Notice 2014-17 on IGAs “In Effect”	<a href="http://www.irs.gov/pub/irs-drop/a-14-17.pdf">http://www.irs.gov/pub/irs-drop/a-14-17.pdf</a>
IRS FATCA Registration Resource Website	<a href="http://www.irs.gov/Businesses/Corporations/FATCA-Registration">http://www.irs.gov/Businesses/Corporations/FATCA-Registration</a>
Listing of Countries with signed IGAs or IGAs in Effect	<a href="http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA-Archive.aspx">http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA-Archive.aspx</a>

**Disclaimer:** *The contents of this Industry Briefing Note is not intended to replace tax and legal advice with respect to compliance with FATCA.*