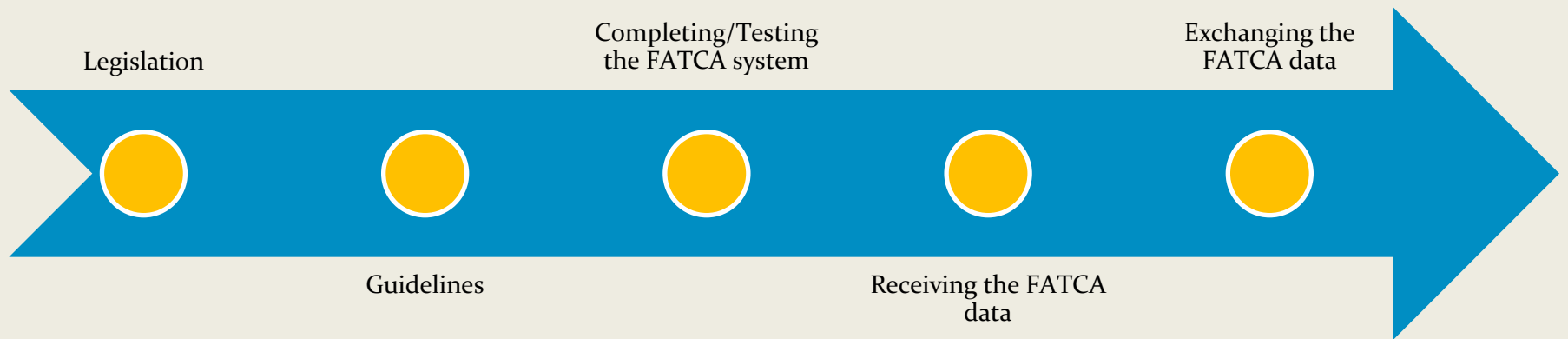


FATCA: Towards the Finish Line

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Industry Briefing on FATCA
16th April, 2015



FATCA: The Road Ahead: Now to September



FATCA

- FATCA evolved from a concept in 2009 to a reality in 2015.
- Bahamas followed the matter from 2009
 - 2012 awareness raising events
 - 2013 policy began to be formulated
 - 2014 IGA signed
 - 2015 FATCA being implemented



The Legislation

- Part I: Preliminary
 - Date of enforcement: date the Minister of finance appoints by notice published in the Gazette
 - Interpretation section:
 - A selection of key definitions important for the legislation or the regulations
 - Bahamas Financial Institution:
 - FI organized under the laws of the Bahamas
 - FI which is a branch but located in The Bahamas
 - Competent Authority
 - Financial Secretary in the Ministry of Finance
 - 4 types of Fis (Depository, Custodial, Investment Entity, Specialized Insurance Company)



Interpretation section, cont'd

- Non-Reporting Bahamas Financial Institutions
 - BFIs that are listed in Annex II, deemed compliant, exempt beneficial owner;
- Reporting Officer
 - Certifies during the registration process.
- US Reportable Account
 - Account held by a BFI held by a Specified US person or a Non-US Entity with one or more controlling persons that is a Specified US Person
 - Controlling person: trust – the settlor, trustees, the protector, the beneficiary or class of beneficiaries or any other natural person exercising ultimate effective control over the trust; legal person-persons with effective control



Part I cont'd

- Legal effect of this Act
 - Confers powers on the Competent Authority to obtain information, administer the Act, ensure the performance of the obligations of the Agreement;
 - The law remains in effect for the duration of the Agreement, only;
 - Relieves the Minister from confidentiality restrictions, except those expressly provided in the Agreement;
 - Ensures that there is no imposition on the government related to being in variance with the laws of the Bahamas, or to disclose trade, business, etc secrets, information contrary to national security; matters under US Federal Tax Law that is barred by the applicable statute of limitations.



Part II: Reporting Bahamas Financial Institutions

- Section 4: Reporting Bahamas Financial Institution – A BFI that is a custodial, depository, investment entity or specified insurance company, unless you are exempted under section 13 and 14 of the Act;
- Section 5: Duty to register with the IRS as per the IGA and any other requirements determined by the Minister



Part II, Cont'd

- Section 6: *A RBFi must apply the due diligence rules of Annex I and identify US reportable accounts*
- Section 7: RBFi must (to be compliant)
 - Obtain and file an information return with the required information (Article 2 (2))
 - Obtain and file for the years 2015 and 2016 – Non Participating Fis to which it has made payments and the aggregate amount of such payments.
 - Comply with Article 4 of the Agreement
 - File the returns in the time and manner specified in Article 3 of the Agreement;
 - Submit to the Competent Authority in the manner determined by the CA
 - In accordance with 6(2) obtain by 1 Jan 2017 the US Tin of each Specified US person



**Annex 1 IGA Review: Due Diligence Requirements

- **Pre-existing Accounts** (as at 30 June 2014)
 - Under \$50,000 no need to review, identify or report
 - Over \$50K, but under \$1m
 - Electronic record search to determine US indicia
 - If US indicia found, but claims Not a US Account, then steps must be taken to prove this (see various US forms)
 - Over \$1m, then High Value Accounts
 - Electronic Record Search
 - Paper Record Search (except when a full database exists)
 - Relationship Management Inquiry for Actual Knowledge

➤ Due diligence is a one time review

➤ Must monitor account balance classification changes

➤ Exceptions for due diligence already done for QI status



**Annex 1 IGA: Review

➤ New Individual Accounts:

- Exempted – Under \$50K, cash value insurance contract under \$50K.
- Self certification to determine US status (new KYC)
- If US, must get Tax Identification Number (TIN)
- Must be built into AML/KYC standards
- If there is doubt about the original self certification, it must be done again



*** Annex 1 IGA: Review

➤ Entity Accounts

- Pre-existing - Under \$250,000 no review, reporting.
 - Reporting required for:
 - Over \$250,000 at 30 June, 2014;
 - or an account which was low value, but goes to over \$1m on the last day of 2015.
 - Determine whether the account is held by US persons, by passive Non Financial Foreign Entities (NFFE) controlled by US persons or by Non-participating Financial Institutions.

➤ New accounts:

Under \$50K not required to be reviewed, reported



**Review of Model 1 IGA, cont'd

- Article 2: Obligations to obtain and exchange
 - Information which must be obtained with respect to US Reportable Accounts (re: controlled by US Specified Persons) on an annual basis
 - Name, address and TIN of US Specified Persons that is an account holder and is identified as having one or more controlling persons that our Specified US persons
 - Account number
 - Name and GIIN of FI
 - Account balance or value, gross interest
 - [Taxable] value associated with a custodial account



** Review of Model 1 IGA, cont'd

- Article 3: Time and Manner of Exchange of Information
 - By Sept 2015 with respect to 2014 accounts: core ID and balance/ value information.
 - Existing accounts as at 30 June, 2014 – if TIN not in your records, use the date of birth if you have it. TINS by 2017 (Art. 6)
 - By September 2016, with respect to 2015 accounts: more detailed information with respect to interest payments, etc
 - By September 2017 and onwards, with respect to 2016 accounts: ALL information in the FATCA IGA.
 - Provides for a Competent Authority Agreement to work out the “nuts and bolts” of how the exchange will occur and how compliance and enforcement measures will work.
 - Refers to the confidentiality provisions in Article 9.



** Review of Model 1 IGA, cont'd

- Article 4: FI FATCA Requirements for Compliance
 - You will be a “Reporting FI” under a Model 1 if:
 - Identify and report to The Bahamas Government in accordance with the IGA and applicable Bahamas legislation and guidelines
 - For 2015 and 2016 report to The Bahamas Government the name of Non-Participating FIs to which you have made payments and the value of those payments
 - Comply with IRS Registration requirements
 - Fulfill any QI withholding responsibilities for Non-Participating FIs, if applicable
 - If not a QI, the FI reports to the payor the information required to make a withholding in the case of a withholdable payment to a NPFI



Part II cont'd, Legislation

- Section 8: Duty to submit Nil return where there is no reportable accounts
 - Name of institution, Address of the registered office, GIIN, Any other information that may be prescribed by regulations.
- Section 9: Duty to keep and maintain records
 - Keep and maintain records including self certifications and documentary evidence at its place of business
 - hold for at least 5 years
 - self certifications – the last day on which a related financial account is opened.
 - other records – the end of the last calendar year in the record was relevant.
 - state the procedures by which the information supplied is determined in English or readily accessible in English
 - Duty note to destroy, conceal, alter records if audited or examined by the Competent Authority.

- Section 10: May rely on 3rd Parties to carry out its obligations under this Act, but the RBFI is responsible and must have access to the records and is liable for failure to carry out the duties under the Act



Part III: Duties of the Competent Authority

- Section 11: The CA shall obtain from the RBFIs the returns specified in Section 7 and annually exchange this within 9 months after the year end with the US IRS
- Section 12: the CA can require an Entity or an agent, officer, connected person or a person reasonably believed to have information to provide information as needed



Part IV: Exempt Owners, BFI and Accounts

- Section 13: Exempt Beneficial Owners
 - Exempt from Registration, reporting, due diligence requirements as per the Agreement
 - Central Bank, international organizations, the Government of the Bahamas and its political subdivisions and agencies or instrumentalities; broad and narrow participation retirement funds; pension funds of an exempt beneficial owners; investment entity wholly owned by an exempt beneficial owner.
- Section 14: Deemed Compliant FIs
 - Entity determines that it meets the requirements of a Deemed Compliant FI under Annex II. (checklist approach)
 - FI with local client base, local bank, only low value accounts, qualified credit card issuer; trustee documented trust, sponsored investment entity, sponsored controlled foreign corporation; sponsored closely held investment vehicle, investment advisor, investment manager; collective investment vehicle
- Section 15: Accounts excluded from Financial Account:
 - Retirements and pension account, non retirement savings account, certain term life insurance contracts, account held solely by an estate (includes copy of will or death certificate), escrow accounts; Partner Jurisdiction Accounts.



Part V: Miscellaneous

- Section 16: Confidentiality –
 - CA shall not disclose except for its obligations under this act, may be disclosed in court proceedings related to the performance of the CA under this Act,
 - employees, agents, RBFIs who have disclosed this information to the CA have not breached any confidentiality rules and no action can be brought against them.
- Section 17: Regulations
 - Regulations can be prescribed for fees, forms, creating offences and prescribing penalties for such offences
 - The Minister may by Order amend the schedule (IGA, Annex I & II)



The Road Ahead: Now to September

