

# **Foreign Account Tax Compliance Act (FATCA)**

## **Impact Assessment on the Financial Services (Banking and Insurance) sectors and businesses in Trinidad and Tobago**

Presentation by the Bankers Association of Trinidad and Tobago (BATT)

Breakfast Meeting

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Westmoorings



# Impact of FATCA to Financial Services Sector

- Wide-ranging and costly technological changes to ensure that the requisite customer information is captured
- Process and procedure changes – e.g. to the onboarding process to facilitate the securing of a customer's consent to disclose information and withhold payments
- Compliance costs to participating financial services business are estimated in excess of US\$100MM
- High compliance cost prohibitive to those smaller financial services entities seeking to be compliant – anticipate a high level of non compliance

# Impact of FATCA to Financial Services Sector

- Consequences of Non-Compliance:
  - ▶ 30% withholding on US sourced payments
  - ▶ Doing business with compliant financial institutions will become difficult
  - ▶ *Banking relationships can be terminated*

# Implications to Trinidad and Tobago

- Increased risk of International Sanction – due to high level of non compliance Country wide
- Resultant reputational risk to the Country
- International trading relationships will be affected – correspondent banking services disrupted or terminated e.g. international trade settlements / payments
- The Country will be placed at a competitive disadvantage -
  - Disincentive to foreign investment

# Implications to Trinidad and Tobago

- The cost of doing business will increase:
  - Pricing of financial services will increase as the cost of doing business of these providers increases
  - Resultant impact to pricing of goods and services
  - Inflation
  - Growth prospects of national economy impacted negatively
- Less funds will be available for local investment by financial service providers seeking to become compliant
- Risk of disruption to the provision of financial services – e.g. termination of banking relationships of entities (including financial intermediaries and credit unions) and individuals who are non compliant
- Customer impact – the creation of an underground financial system as the regulated entities become less attractive to customers due to FATCA requirements
  - Money Laundering concerns

# Solution?

- Intergovernmental Agreement between the Governments of Trinidad and Tobago and the US

# Intergovernmental Agreements (IGAs)

Countries can elect to enter into a FATCA Partner agreement with the US which is intended to allow FATCA Partner Financial Institutions to comply with both FATCA and local law.

## IGA

### Model 1

2 versions: reciprocal & non-reciprocal

Reporting to local authorities and no FFI Agreement to be signed.

### Model 2

Reporting directly to the IRS, rather than the Partner Country. May be required to sign FFI Agreement

## No IGA

### Direct Agreement

Reporting directly to the IRS. Must sign FFI Agreement

#### ✓ THE MOST SIGNIFICANT DIFFERENCES:

- ✓ Model 1 limits withholding to “US-source payments”; Model 2 IGA does not suspend the requirement (on FFIs) to impose “gross proceeds” or “foreign passthru payment” withholding on payments made to Non Participating FFIs starting Jan 1, 2017. **Also**, Model 1 specifies that limited FFIs will be obligated to withhold; all FFIs in Model 2 will need to withhold (for example, on payments to Non Participating FFIs) in accordance with the final FFI Agreement.
- ✓ The concept of “Cherry picking” for documentation purposes is only available with Model 1, **which is the preferred approach for most countries**

# Countries in Negotiations with the US

The U.S. Department of the Treasury announced Nov 8, 2012 that it is engaged with more than 50 countries to improve international tax compliance and implement FATCA

IGA concluded	Finalizing IGAs	Actively engaged in dialogue	Exploring options
United Kingdom	France	Argentina	Bermuda
Denmark	Germany	Australia	Brazil
Mexico	Italy	Belgium	British Virgin Islands
Switzerland		Cayman Islands	Chile
Ireland	Japan	Cyprus	Czech Republic
Spain	Canada	Estonia	Gibraltar
	Finland	Hungary	India
	Guernsey	Israel	Lebanon
	Isle of Man	Korea	Luxembourg
	Jersey	Liechtenstein	Romania
	Netherlands	Malaysia	Russia
	Norway	Malta	Seychelles
		New Zealand	Saint Maarten
		Slovak Republic	Slovenia
		Singapore	South Africa
		Sweden	



# Benefits to Trinidad and Tobago

- *Insulates country from the impact of non compliance*
  - *Intended to address local legal barriers to compliance*
  - *Less disruption to financial services*
    - *Financial services businesses are not required to close accounts or refuse business from non cooperating persons or non compliant entities*
  - *Risk of financial loss arising from penalty withholding reduced or removed all together*
    - *Protected from 30% withholding on investment income or trade proceeds on U.S. assets (inclusive of both company assets and assets held for clients)*

# Benefits to Trinidad and Tobago

- *Insulates country from the impact of non compliance*
- *The Country will be on comparative footing with countries having IGAs*
  - *Will not be placed at a competitive disadvantage as against those that have IGAs*
  - *Countries with IGAs will be more attractive to investors*
    - *No IGA –*
      - *Too many restrictions/ high costs to doing business in T&T*
      - *A disincentive to foreign investment*
- *The opportunity to have a reciprocal treatment for taxpayer information in the U.S.*

# Benefits to Business Sector

- *Compliance costs and effort of businesses in financial services sector expected to be reduced*
  - *Financial services businesses relieved of some obligations*
  - Due diligence requirements are closer aligned to local AML
  - Builds upon existing processes and procedures
  - Streamlines entity types and limits those that are reportable
- *Number of affected businesses reduced*
  - Opportunity to have local low risk businesses and products effectively exempt e.g.
    - pension funds,
    - retirement funds,
    - financial services businesses having local client base / low account balances –
      - smaller financial services providers such as credit unions

# What is needed?

Whichever model is adopted, there will be the need for:

(a) resources within the financial sector to address the compliance costs that will arise;

(b) legislative changes to address legal obstacles to meeting FATCA requirements:

- Option to enact a discrete FATCA Law - overarching FATCA law:
  - to strengthen the existing legislation for various sectors as concerns issues of withholding, privacy and constitutional rights in order to protect institutions from prosecution by clients when seeking to comply with FATCA
  - Extend powers of the Board of Inland Revenue to comply with obligations under FATCA (if needed)

(c) increased resources for the Board of Inland Revenue that presumably will assume the role of Central Authority (under the FATCA regime)

# What is needed?

- Public Education
- Identification of FATCA exempt entities through the IGA e.g. credit unions, pension plans?
- Signing of an IGA between U.S. and T&T Governments *urgently*
  - *Model 1 has greater advantages*
- The implementation of the necessary infrastructure at the Board of Inland Revenue to facilitate collation of information and submission to the IRS

# BATT's Commitment

The Bankers Association is prepared to support the Government in any way that it can in this important project.

We need to act quickly because negotiating an IGA can be a lengthy process.



**THANK YOU**

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