

26 March 2014

## **Registration of Licensed Non-bank Financial Institutions in Compliance with FATCA**

The Member Governments of the Eastern Caribbean Currency Union (ECCU) have commenced discussions with the United States of America (US) towards executing an Inter-Governmental Agreement (IGA) for the implementation of the provisions of the US Foreign Account Tax Compliance Act (FATCA).

On 18 March 2010, the US Government enacted FATCA to combat tax evasion by specified US persons (see Annex) holding investments in accounts outside of the United States, specifically as it relates to US-sourced income. FATCA requires Foreign Financial Institutions (FFIs) to report to the US Internal Revenue Service (IRS), information on assets of US\$50,000 or more held by US taxpayers, or by foreign entities in which US taxpayers hold substantial<sup>1</sup> ownership interest. Failure of an FFI to submit information could result in a 30.0 per cent withholding tax levied on withholdable payments<sup>2</sup> and may result in the potential loss of correspondent banking relationships.

The ECCU Member Governments have decided to pursue IGA Model 1. This model requires financial institutions to submit customer information to the Inland Revenue Department of the Government of Saint Kitts and Nevis for onward submission to the IRS. Member Governments have also undertaken to pass the *“Foreign Account Tax Compliance (United States) Implementation and Enforcement Bill, 2014”*, to provide for the legal submission of customer information for the purposes of FATCA.

In the circumstances all non-bank financial institutions, including off-shore banks, are required to register on the IRS Portal prior to the **25 April 2014** deadline. Timely registration by the deadline would avoid the imposition of the 30.0 per cent withholding

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<sup>1</sup> Substantial ownership interest generally means ownership of 10.0 per cent of the company stock.

<sup>2</sup> A withholdable payment is defined to mean: (i) any payment of interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income (FDAP income), if such payment is from sources within the United States; and (ii) any gross proceeds from the sale or other disposition of any property of a type which can produce interest or dividends from sources within the United States.

tax, the penalty for non-compliance under *REG-121647-10* of the “*Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities*” issued by the IRS. Withholding commences on 1 July 2014.

Institutions are required to visit <http://www.irs.gov/Businesses/Corporations/FATCA-Registration> where information pertinent to the registration process can be found. It is important that the “*IGA Country*” option is selected when performing the registration exercise.

Should you require clarification on this matter, please contact Ms Kerstin Petty of the Financial Services Regulatory Commission at (869) 466-5048 or skanfsd@sisterisles.kn.

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## Annex

The term specified United States person (or specified U.S. person) means any U.S. person other than—

- (1) A corporation the stock of which is regularly traded on one or more established securities markets, as described in §1.1472-1(c)(1)(i);
  - (2) Any corporation that is a member of the same expanded affiliated group as a corporation described in §1.1472-1(c)(1)(i);
  - (3) Any organization exempt from taxation under section 501(a) or an individual retirement plan as defined in section 7701(a)(37);
  - (4) The United States or any wholly owned agency or instrumentality thereof;
  - (5) Any State, the District of Columbia, any possession of the United States, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing;
  - (6) Any bank as defined in section 581;
  - (7) Any real estate investment trust as defined in section 856;
  - (8) Any regulated investment company as defined in section 851 or any entity registered with the Securities Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-64);
  - (9) Any common trust fund as defined in section 584(a);
  - (10) Any trust that is exempt from tax under section 664(c) or is described in section 4947(a)(1);
  - (11) A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any State; and
  - (12) A broker as defined in section 6045(c) and §1.6045-1(a)(1).
- (d) Withholding agent--(1) In general. Except as provided in this paragraph (d), the term withholding agent means any person, U.S. or foreign, in whatever capacity acting, that has the control, receipt, custody, disposal, or payment of a withholdable payment.
- (2) Participating FFIs as withholding agents. Except as otherwise provided in the FFI agreement of a participating FFI, the term withholding agent includes a participating FFI that has the control, receipt, custody, disposal, or payment of a passthru payment (as defined in §1.1471-5(h)). The term withholding agent also includes a registered deemed-compliant FFI to the extent that such FFI is required to withhold on a passthru payment as part of the conditions for maintaining its status as a deemed-compliant FFI under §1.1471-5(f)(1)(ii). For the withholding requirements of a participating FFI with respect to limited branches and limited FFIs that are in the same expanded affiliated group as the participating FFI, see §1.1471-4(b).
  - (3) Grantor trusts as withholding agents. The term withholding agent includes a grantor trust with respect to a withholdable payment or a passthru payment (in the case of a grantor trust that is a participating FFI) made to a person treated as an owner of the trust under sections 671 through 679. For purposes of determining when a payment is treated as made to such owner of a trust, see §1.1473-1(a)(5)(v).
  - (4) Deposit and return requirements. See §1.1474-1(a) for the requirement of any person that meets the definition of a withholding agent under this paragraph (d) to deposit any tax withheld, and §1.1474-1(c) and (d) for the requirement to file income tax and information returns.

- (5) Multiple withholding agents. When several persons qualify as a withholding agent with respect to a single payment, only one tax is required to be withheld and deposited. See §1.1474-1(a). A person who, as a nominee described in §1.6031(c)-1T, has furnished to a partnership all of the information required to be furnished under §1.6031(c)-1T(a) shall not be treated as a withholding agent if it has notified the partnership that it is treating the provision of information to the partnership as a discharge of its obligations as a withholding agent.
- (6) Exception for certain individuals. The term withholding agent excludes an individual with respect to a withholdable payment made by such person that is not made in the course of such person's trade or business (including as an agent with respect to making or receiving such payment).
- (e) Foreign entity. The term foreign entity means any entity that is not a U.S. person and includes a territory entity.

*Source: <http://www.irs.gov/pub/newsroom/reg-121647-10.pdf>*