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**THE PLAN FOR FATCA COMPLIANCE IN THE ECCU**



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# THE PLAN FOR FATCA COMPLIANCE IN THE ECCU

## 1.0 INTRODUCTION

This report provides an update on the progress of on-going efforts by the ECCU Working Group on FATCA (Working Group) towards establishing a compliance framework for the region. The report concludes with a synopsis of the planned way forward for ensuring compliance by the implementation date.

## 2.0 THE ECCU RESPONSE TO FATCA

The implementation of FATCA has the potential to affect a number of financial institutions in the ECCU. Duties outlined in the FATCA legislation, regulation, explanatory notes, and IGAs require the attention and action of most stakeholders. Compliance with FATCA will therefore demand collaboration across all affected sectors.

The ECCB initiated the establishment of the Working Group on FATCA, to treat with FATCA issues in ECCU territories. The Working Group, chaired by Mr Ralph Wharton, is comprised of representatives from various sectors and entities which would be affected by FATCA, including Attorneys General, national and regional regulators, Inland Revenue Departments and representatives of the banking, cooperatives and insurance sectors. The Working Group is tasked with creating the legislative and regulatory framework which would allow financial institutions to achieve compliance with FATCA and to advise ECCU Governments on FATCA issues (*Appendix I*). Five sub-committees have been established to enable the Working Group to realise its mandate (*Appendix II*).

## 3.0 US RESPONSE TO ADDRESS COMPLIANCE CHALLENGES

The US has developed two model Inter-Governmental Agreements (IGAs) which would be the enabling instrument for the implementation of FATCA.

a) **Model I** involves the reporting by FFIs to their own Government's Competent Authority followed by the automatic exchange of this information between the Competent Authority and the United States on a predetermined date, annually. Notwithstanding, the IRS may contact an FFI directly where it appears that errors exist in the information transmitted. There are two versions of this model – the originally

crafted non-reciprocal version and the more recent reciprocal version, which has been adopted by the United Kingdom, France, Germany, Italy and Spain. The reciprocity is based on a Tax Information Exchange Agreement.

- b) **Model II** creates a framework for the direct reporting between the FFIs and the US authorities, supplemented by inter-governmental exchange of aggregated information related to recalcitrant US account holders, upon the request of the IRS. This agreement therefore requires that each FFI enters into an arrangement directly with the US authority.

#### **4.0 THE ECCU FATCA COMPLIANCE FRAMEWORK**

The proposed ECCU FATCA compliance framework involves the enactment of overarching legislation to facilitate FATCA compliance under an IGA Model 1A regime and operationalisation of a Competent Authority for submission of information to the US IRS.

##### **4.1 Model Inter-Governmental Agreement**

The Monetary Council of the ECCB ratified the decision of the ECCB Board of Directors and Ministerial Sub-committee on Banking, based on the advice of the Working Group, to recommend that member governments adopt the IGA Model 1A to facilitate compliance with FATCA, along with the appointment of a joint ECCU negotiating team. The respective Cabinets of ECCU member territories are expected to ratify the Council's decision.

There are several advantages to be derived from the choice of Model 1A IGA including, relieving financial institutions of the requirement to directly report to the US. In instances of significant non-compliance, the Competent Authority would be required to take enforcement action. Resolution of these issues would be required within 18 months of the date of notification as compared to 12 months under Model 2.

The decision to pursue IGA Model 1A took into consideration the fact that some member territories do not have a Tax Information Exchange Agreement (TIEA) with the USA government. A TIEA is a prerequisite for entering into IGA Model 1A. The existing TIEA in some territories do not have the breadth and scope to govern the information exchange

contemplated under FATCA. We note however, that pursuing IGA Model 1A will present the opportunity to negotiate a TIEA with the USA. On 29 November 2013, the Government of the Cayman Islands entered into an IGA with the USA at which time, a TIEA was successfully negotiated. It is envisaged that this precedent will guide the negotiation process for the ECCU territories.

#### **4.2 ECCU Compliance Legislation: Overarching Bill**

In response to the legal impediments to FATCA compliance, the Working Group has embarked on the drafting of the “*Foreign Account Tax Compliance (United States) Implementation and Enforcement Bill, 2014*”. This overarching bill seeks to provide an avenue for the legal information exchange for the purposes of FATCA. As such, the provisions of the bill supersede any legislation which would otherwise prevent the submission of customer information to the US IRS.

#### **4.3 The Competent Authority**

The Working Group has recommended that the Inland Revenue Departments of ECCU territories be designated as the Competent Authority. The Competent Authority would be legally empowered by the “*Foreign Account Tax Compliance (United States) Implementation and Enforcement Bill 2014*”, when enacted. The Working Group is about to enter into a phase of consultations with the respective Inland Revenue Departments towards drafting the administrative requirements for the establishment and full implementation of the FATCA Unit which will serve as the Competent Authority. The Authority’s main duties would be to receive information from financial institutions by a designated date, for submission to the US IRS. It would also receive inquiries or complaints from the US IRS regarding issues involving ECCU financial institutions. These institutions could be sanctioned for non-compliance under the provisions of the new FATCA legislation.

**Figure 1 – Reporting Continuum**



*Communication regarding the resolution of data issues will occur on the inverse.*

## **5.0 REQUIREMENTS OF THE FATCA AGREEMENT**

The successful implementation of the compliance framework requires financial institutions and the Competent Authority to fulfil several tasks that there be a high level of synergy to facilitate the receipt and submission of information to the IRS.

### **5.1 Financial Institutions Compliance Verification Procedure**

Financial institutions will be required to follow a verification process for determining their compliance with the provisions of FATCA. This will require, among other things, that a participating FFI:

- i. Implement *written policies* and procedures governing the participating FFI's compliance with its responsibilities;
- ii. Conduct *periodic internal reviews* of its compliance;
- iii. Periodically *provide the IRS with certification* and certain other information that will allow the IRS to determine whether the participating FFI has met its obligations. However, repetitive or systematic failures of the participating FFI's processes relating to its compliance may result in enhanced compliance verification requirements, such as an external audit of one or more issues identified by the IRS;
- iv. Have a *Compliance Officer* certify that the FFI has complied with its requirements without verification of such compliance through third-party audits. If an FFI

substantially complies with its obligations in the FFI agreement, the FFI will not be held strictly liable for failure to identify a US account;

- v. ***Review Pre-existing Individual Accounts*** with a balance or value as of 30 June 2014, that exceeds US\$50,000 (US\$250,000 for a Cash Value Insurance Contract or Annuity Contract), which does not exceed US\$1,000,000 (“Lower Value Accounts”) for US indicia; and
- vi. ***Conduct enhanced review procedures*** for pre-existing individual accounts with a balance or value that exceeds US\$1,000,000 as of 30 June 2014, or 31 December 2015 or any subsequent year (“High Value Accounts”).

## **6.0 IMPLICATIONS FOR FINANCIAL INSTITUTIONS**

In order to meet their FATCA obligations, ECCU financial institutions must consider the implications of the Act:

- i. ***Understand the Agreement and its Requirements:*** FATCA requires FFIs to register with the IRS in order to obtain compliance. The Act, Regulations and Notices contain over 500 pages of information which financial institutions and financial sector stakeholders must familiarise themselves with, in order to have a good working knowledge of FATCA, in order to make informed decisions.
- ii. ***Information Technology:*** In order to meet some of the obligations, financial institutions need to maintain information technology (IT) systems with electronically searchable information. The system must be capable of housing the US indicia required for conducting diligent reviews for US private banking accounts. It is important that financial institutions get a full appreciation of the system capabilities and the costs involved in system upgrades.
- iii. ***FATCA Units:*** Financial institutions are advised to have in place a team of dedicated staff for implementation of their FATCA compliance programmes. This unit would also be responsible for, or involved in, guiding the training activities and customer education programme.

- iv. ***Designate Compliance Officer:*** FATCA Regulations requires a responsible officer of each financial institution to certify that the institution has complied with the terms of its FFI Agreement without verification of such compliance through third-party audits. If an institution substantially complies with its obligations in the FFI Agreement, the institution will not be held strictly liable for failure to identify a US account.
  
- v. ***Note the 25 April 2014 portal registration deadline:*** ECCU FIs are therefore advised to accelerate their implementation plans for FATCA to ensure their compliance with FATCA with the portal registration deadline and subsequent timelines established by the Working Group.

## **7.0 THE WAY FORWARD**

The ECCU Working Group on FATCA will continue its work towards assisting the Governments in implementing the multi-sectorial compliance framework. The achievement of the following key outputs has been identified as imperative to the successful implementation of the ECCU compliance framework:

- i. Ratification of IGA Model 1A by respective Cabinets – The Working Group, through the ECCB has submitted recommendations to the respective Cabinets the recommended pursuit of Model 1A which was approved by the Monetary Council.
- ii. Notification sent to the US Department of Treasury on the ECCU’s intent to comply with FATCA – Official notifications are being drafted and will be forwarded to the US Department of Treasury. This will initiate the IGA negotiation phase.
- iii. IGA negotiations with US Department of Treasury - The respective cabinets were asked to indicate the individual who will lead negotiations for their territory. The ECCB is currently liaising with the Governments to compile the list of negotiators. It is anticipated that the negotiation phase will commence immediately upon the constitution of the ECCU Negotiation Team.
- iv. Enactment of the overarching legislation<sup>1</sup> to allow information sharing for the purposes of FATCA – The draft bill is being finalised and will be submitted to the respective Attorneys General for parliamentary consideration. The passage of

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<sup>1</sup> “*Foreign Account Tax Compliance (United States) Implementation and Enforcement Bill, 2014*”

the bill is contingent on the successful completion of the negotiation phase as the IGA forms the schedule appended to the act.

- v. The implementation of the public education plan – The Public Education Sub-Committee of the Working Group has commenced its education plan. The plan is currently being implemented with information sessions with the financial sectors and will follow with public education drives.
- vi. The establishment of the Competent Authority – Work has begun to prepare the administrative details for the establishment and implementation of the Competent Authority.

## **8.0 CONCLUSION**

The Working Group continues to advise ECCU Governments on a compliance framework which would allow financial institutions in the ECCU to comply with the requirements of FATCA. This framework will ensure that the region will not be penalised for not meeting the standards of compliance by the 01 July 2014 implementation date. In order to realise successful implementation of the framework, stakeholders including regulators, member Governments and financial institutions, must continue to collaborate and complete their FATCA preparation activities in a timely manner to ensure compliance with FATCA requirements in a timely manner.

## **APPENDICES**

### **APPENDIX I**

#### **MANDATES OF THE FATCA WORKING GROUP**

The Working Group is comprised of representatives from the various sectors and entities which would be affected by FATCA within the ECCU, including Attorneys General, national and regional regulators, Inland Revenue Departments and representatives of the banking, cooperatives and insurance sectors. The Working Group is tasked with creating the ECCU FATCA Compliance Framework, which includes:

- i) Recommending to the Cabinets of the respective Governments, the appropriate IGA Model to be pursued with the US;
- ii) Advising the representatives that will negotiate the chosen IGA with the US IRS on behalf of the ECCU;
- iii) Developing the legislative and regulatory framework which would allow for compliance with FATCA;
- iv) Ensuring that member territories execute IGAs in a timely manner;
- v) Ensuring that ECCU financial institutions implement internal systems and controls to comply with FATCA; and
- vi) Ensuring that Competent Authorities within member territories are prepared for compliance.

## APPENDIX II

### **MANDATES OF THE FATCA WORKING GROUP SUB-COMMITTEES**

- a. **Legal** – This sub-committee would be charged with the drafting, or overseeing the drafting of the overarching legislation that would allow for compliance with FATCA. This would ideally comprise the legal representatives on the Working Group.
- b. **Competent Authority** – This sub-committee would be charged with the development of the framework for the establishment of the Competent Authority. This involves the documentation of the powers and responsibilities of the Competent Authority which includes quality control processes and information vetting. It also involves the establishment of the organisational structure and reporting responsibilities. The Competent Authority will be the agency charged with being the conduit for Information sharing to the US IRS.
- c. **Public Education** – This subcommittee would be charged with ensuring that the public is informed about FATCA through the planning, designing and implementation of public education initiatives in the various territories.
- d. **Negotiation** – This sub-committee would be charged with liaising with the team that would be negotiating with the US IRS/ Treasury on the behalf of the ECCU countries.
- e. **Readiness Assessment** – This would be a special sub-committee of regulators and the industries represented. The main task will be to complete readiness assessments at different intervals to ensure that systems and procedures at the institutional level are adequate for the 1 January 2014 implementation of FATCA.