

# THE PLAN FOR FATCA COMPLIANCE IN THE ECCU



Prepared for the  
Meeting with the Non-Bank Financial Sector  
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Eastern Caribbean Central Bank  
St Kitts



# Outline

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# Overview

This report provides:

- **An Update on progress** by the ECCU Working Group (WG) towards establishing a compliance framework for the region.
- **A synopsis of the way forward** for ensuring compliance by the implementation date.

# ECCU Working Group (WG) on FATCA



**Chairman: Mr Ralph Wharton / Deputy: Mrs Sylvia Gumbs**

- ECCB initiated the establishment of the ECCU Working Group (WG) on FATCA to deal with FATCA issues in ECCU.

The WG was established to:

1. Recommending to the Cabinets of the respective Governments, the appropriate IGA Model to be pursued with the US;
2. Advising the representatives that will negotiate the chosen IGA with the US IRS on behalf of the ECCU;

# ECCU Working Group (WG) on FATCA



The WG was established to:

3. Developing the legislative and regulatory framework which would allow for compliance with FATCA;
4. Ensuring that member territories execute IGAs in a timely manner;
5. Ensuring that ECCU financial institutions implement internal systems and controls to comply with FATCA; and
6. Ensuring that Competent Authorities within member territories are prepared for compliance.



# The ECCU Working Group on FATCA

## Composition of the Working Group

- Representatives from various sectors and entities affected by FATCA:
  - ✓ Attorneys–General Chambers;
  - ✓ National and Regional Regulators;
  - ✓ Inland Revenue Departments (IRDs);
  - ✓ Financial Sector: Banking, Co–operatives and Insurance sectors; and
  - ✓ ECCB – Secretariat.

# Sub-committees of the Working Group



Established to enable the WG to realise its mandate:

- i. **Legal:** Drafting overarching legislation that would allow for compliance with FATCA.
- ii. **Competent Authority (CA):** Development of framework for the establishment of CA.
- iii. **Negotiations:** Advising ECCU negotiating team.
- iv. **Public Education:** Informing public about FATCA.
- v. **Readiness Assessment:** Conducting readiness assessments at different intervals.

# US Response to Compliance Challenges



The US has developed two model IGAs:

**1. Model I: Reporting by Foreign Financial Institutions (FFIs) to local CA followed by automatic exchange of information between CA and United States Internal Revenue Service (IRS) on predetermined date, annually.**

There are two versions of this model:

- a) **Reciprocal version – reciprocity based on a TIEA; and**
- b) **Non-Reciprocal version (original).**

**2. Model II: Direct reporting between the FFIs and the US authorities. Each FFI enters into an arrangement directly with the US authority.**

# The ECCU Compliance Framework



## Model Inter-Governmental Agreement 1A

- At its 76<sup>th</sup> Meeting, the Monetary Council ratified the decision:
  - ✓ That member governments adopt IGA Model 1A; and
  - ✓ The appointment of a joint ECCU negotiating team to treat with US.

## ECCU Compliance Legislation: Overarching Bill

- The WG is drafting the “*Foreign Account Tax Compliance (United States) Implementation and Enforcement Bill, 2014*”.
- Provisions of the Bill would supersede offending provisions of existing legislation to FATCA.



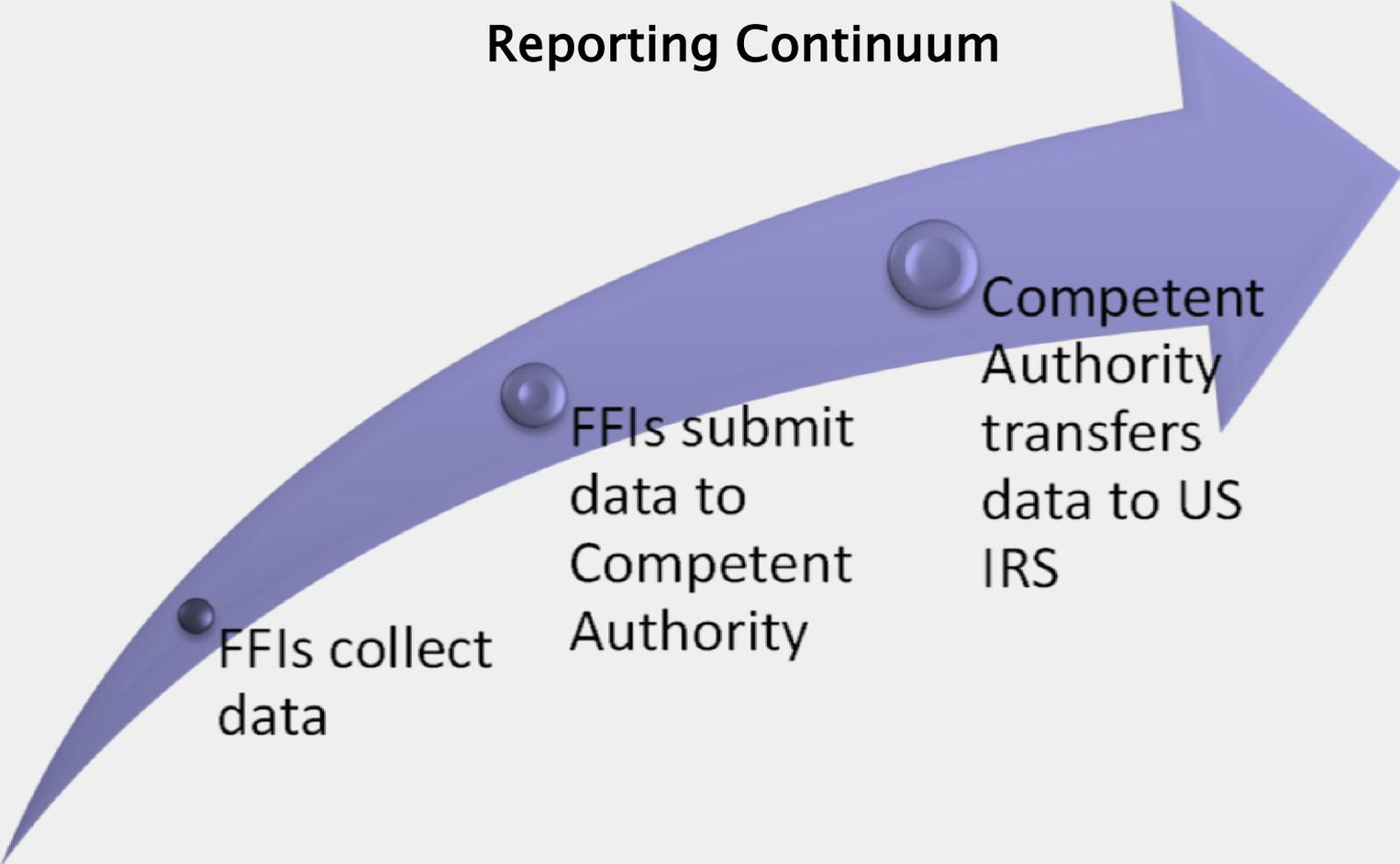
# The Competent Authority

- The WG has agreed to recommend to the Monetary Council that the CA be located within the Inland Revenue Departments across the ECCU.
- The CA would be legally empowered by the new legislation. The administrative requirements for the establishment of the CA are being drafted.
- The CA's main duties would be:
  - To receive information from FIs by a designated date, for submission to the US IRS;
  - Receive inquiries or complaints from the US IRS towards resolution; and
  - Initiate sanctions for non-compliance.

# Compliance Framework: Reporting



## Reporting Continuum



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

# REQUIREMENTS OF THE FATCA AGREEMENT



## FFI Verification process

For compliance with FATCA, FIs, among other things, will have to:

- **Implement written policies and procedures** governing the participating FFI's compliance with its responsibilities under the IGA;
- **Provide the IRS with certification** and certain other information that will allow the IRS to determine whether the participating FFI has met its obligations under the IGA.
- **Undergo Compliance Certification:** Compliance Officer certify that the FFI has complied with the terms of the IGA;

# REQUIREMENTS OF THE FATCA AGREEMENT



## FFI Agreement Verification process (*continued*)

- **Undergo Enhanced Compliance Verification:** Where repetitive or systematic failures of FFI's processes occur. E.g. an **external audit** of one or more issues identified by the IRS;
- **Review Pre-existing Individual Accounts** as of **June 30, 2014**, that exceeds **US\$50,000** (US\$250,000 for a Cash Value Insurance Contract or Annuity Contract), which does not exceed **US\$1.0M** ("Lower Value Accounts") for **US indicia**; and
- **Conduct enhanced review procedures** for pre-existing individual accounts that exceeds **US\$1.0M** as of **30 June 2014**, or **31 December 2015** or any subsequent year ("High Value Accounts").

# REQUIREMENTS OF THE FATCA AGREEMENT



U.S. Indicia	Documentation Required
U.S. citizenship or lawful permanent resident	Obtain W-9
U.S. birth place	<ol style="list-style-type: none"> <li>1. Obtain W-9 or W-8BEN; <b>and</b></li> <li>2. Non-U.S. passport or similar documentation establishing foreign citizenship; <b>and</b></li> <li>3. Written explanation regarding U.S. citizenship</li> </ol>
U.S. address (residence, correspondence, or P.O. Box)	<ol style="list-style-type: none"> <li>1. Obtain W-9 or W-8BEN; <b>and</b></li> <li>2. Non-U.S. passport or similar documentation establishing foreign citizenship</li> </ol>
Instructions to transfer funds to U.S. accounts or directions regularly received from a U.S. address	<ol style="list-style-type: none"> <li>1. Request W-9 or W-8BEN; <b>and</b></li> <li>2. Documentary evidence establishing non-U.S. status</li> </ol>
Only address on file is “in care of” or “hold mail” or U.S. P.O. Box <i>Notice 2011-34 excludes foreign PO Box as US indicia</i>	Request W-9, W-8BEN; <b>or</b> Documentary evidence establishing non-U.S. status
Power of Attorney or signatory authority granted to person with U.S. address	Request W-9, W-8BEN; <b>or</b> Documentary evidence establishing non-U.S. status



# Implications for Financial Institutions

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

- ***Understand the Agreement and its Requirements:*** The Act, Regulations and Notices contain over **500 pages of information** which FIs and financial sector stakeholders must familiarise themselves with, in order to make informed decisions.
- ***Maintain IT Systems:*** FIs need to maintain IT systems with **electronically searchable information**. The system must be capable of housing the US indicia required for conducting diligent reviews for US banking accounts. Need for a **full appreciation of the system capabilities and the costs involved in system upgrades**.

# Implications for Financial Institutions



- ***FATCA Units:*** A team of **dedicated staff** for implementation of their FATCA compliance programmes. This unit would also be responsible for, or involved in training activities and customer education programme.
- ***Designate Compliance Officer:*** A responsible officer of each financial institution to certify that the institution has complied with the terms of the IGA without verification of such compliance through third-party audits.
- ***Note the 25 April 2014 portal registration deadline:*** Accelerate implementation plans for FATCA to ensure compliance with FATCA with the portal registration deadline and subsequent timelines established by the WG. In the meantime, institutions are encouraged to update their customer on-boarding forms and educate customers on the new regime.



# The Way Forward

Achievement of key outputs identified as imperative to successful implementation of ECCU compliance framework:

- ✓ **Ratification of IGA Model 1A** by respective Cabinets;
- ✓ **Notification to US Treasury** of ECCU's intent to comply with FATCA;
- ✓ **IGA negotiations** with US Department of Treasury;
- ✓ **Enactment of the *“Foreign Account Tax Compliance (United States) Implementation and Enforcement Bill, 2014”*** to allow information sharing for the purposes of FATCA;
- ✓ **The implementation of the public education plan;** and
- ✓ **The establishment of the Competent Authority.**



# CONCLUSION

- Section 1471 of FATCA imposes a **30.0 per cent withholding tax** on “withholdable payments” made to **FFIs that do not enter into “FFI Agreements”** (and who are not “excepted” FFIs or “deemed-compliant” FFIs).
- Successful implementation of framework will ensure that the region is not penalised for not meeting **01 July 2014** deadline.
- The WG has made substantial progress towards finalisation of a framework to allow ECCU FIs to comply with FATCA.
- Successful implementation of framework, requires continued collaboration of stakeholders and **timely completion of FATCA preparation activities by all.**



# Discussion Points

1. What are your views on the plan for FATCA compliance in the ECCU?
2. What challenges do you foresee in seeking to meet FATCA implementation in time for the 01 July 2014 commencement date?
3. What internal plans have you made towards preparing for the implementation of FATCA?



**THANK YOU**