



**Financial Services Commission  
Information Circular to the Securities, Pensions and Insurance Sectors  
On FATCA**

June 2013

**Background**

The Foreign Account Tax Compliance Act ("FATCA") was enacted in 2010 by US Congress to target non-compliance by US taxpayers holding investments in non-US accounts. It is an important development in U.S. efforts to improve tax compliance by persons holding foreign financial assets and offshore accounts. Under FATCA, U.S. taxpayers who hold specified foreign financial assets that exceed certain thresholds must report those assets to the IRS

In addition, FATCA will require foreign financial institutions to report directly to the IRS information about financial accounts held by U.S. taxpayers, or held by foreign entities in which U.S. taxpayers hold a substantial ownership interest. FATCA imposes a 30% withholding tax on an extensive list of payments, including payments to non-participating foreign financial institutions ("FFIs") and other payees that do not comply with the FATCA requirements. FATCA also imposes a broad range of other obligations on FFIs including reporting and due diligence obligations. The US Treasury has an online FATCA Resource Centre where all the latest FATCA announcements are listed - See more at: [www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx](http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx) - The website explains the FATCA compliance obligations in further detail.

**What has been done in Jamaica?**

A Working Group comprised of representatives of the Financial Services Commission ("FSC"), Bank of Jamaica ("BOJ"), Tax Administration of Jamaica, the Ministry of Foreign Affairs and Foreign Trade and the Attorney General's Chambers held a series of meetings to discuss the implications of the FATCA regime on the Jamaican financial sector, including the Government's tax imperatives, with the objective of providing recommendations as to the appropriate measures to be adopted by the Government in this area. The Group considered the key issues arising from the FATCA regime, including the obligations that financial institutions have to meet in order to be considered a participating financial institution. This required a consideration of the current legal framework and whether it could accommodate compliance with FATCA.

Around November 2012, the FSC and the BOJ, in order to provide feedback on the state of readiness of the financial sector, surveyed the entities that operate in the sector to ascertain their state of readiness for the implementation of FATCA. While the response was lower than anticipated the FSC was able to determine that its licensees held a preference for FATCA Model I. This was communicated to the Minister of Finance as well as the National FATCA Working Group.



Financial Services Commission  
Information Circular to the Securities, Pensions and Insurance Sectors  
On FATCA

Page 2 of 3

June 2013

### Which Model will be negotiated?

The Working Group deliberated the possibilities, the constraints, benefits and disadvantages of both models and presented an informed submission to the Minister of Finance, who with Cabinet's approval, indicated that the Jamaican Government, having considered all options, had determined that a **Model 1 Inter governmental Agreement (IGA)** is most desirable. Therefore, the Working Group was given the approval for Jamaica to enter into negotiation for a **Model 1 IGA with the USA** to facilitate the implementation of FATCA. Further, the BOJ will continue to lead the Working Group and they have already embarked on signaling to the IRS Jamaica's position.

### What are the Features of the Model I Agreement?

- a. Governmental Central Authority: Under one version of the Model Agreements, certain "FATCA Partner" countries will implement legislation requiring financial institutions ("FFIs") located in those jurisdictions to collect and report information regarding their accountholders to the relevant local tax authorities, which will compile and forward this information to the IRS. In exchange, the IRS would collect information regarding accounts held with financial institutions in the US by tax residents of the relevant FATCA Partner, and report this to the tax authorities of that partner country.
- b. Automatic Exchange of Information: Due to US laws restricting the distribution of such information, however, it is anticipated that the reciprocal agreement will only be available to countries that have a treaty and tax information exchange agreement with the US and otherwise have "robust" protections, under local law, limiting the use of the information exchanged.

Under another, non-reciprocal, version of the Model Agreements, FFIs located in the relevant FATCA Partner jurisdiction would collect and report information regarding their accountholders, which would be forwarded to the IRS, but the tax authorities of that jurisdiction would not receive any corresponding information from the US regarding accounts its tax residents maintain with US financial institutions.

- c. GOJ Undertakes to remove obstacles to disclosure: FFIs in jurisdictions with which the US has signed either a reciprocal or non-reciprocal agreement would not be subject to the new US withholding tax under FATCA. In addition, they will not be required to separately enter into agreements with the IRS under which they would become participating FFIs and agree to identify their US accountholders to the IRS, thereby addressing concerns regarding data protection and bank secrecy laws that would potentially prevent FFIs in those jurisdictions from releasing such information to the IRS.



**Financial Services Commission  
Information Circular to the Securities, Pensions and Insurance Sectors  
On FATCA**

Page 3 of 3

June 2013

**What are the timelines?**

The Working Group has set some optimistic timelines for a successful implementation of FATCA. These include:

- |   |               |
|---|---------------|
| • Negotiate Model I Annex II and reciprocity              | July 2013     |
| • Signature of Model I Agreement                          | July 2013     |
| • Determine and establish Framework for Central Authority | October 2013  |
| • Education Programme Roll-out                            | December 2013 |
| • Enactment of FATCA Legislation                          | May 2014      |

**How can you assist the negotiation process?**

The BOJ and the FSC need feedback from their licensees to indicate which of our financial institutions should be registered as reporting FFIs, those that should have "deemed compliant" or other exempt status; with the institution providing specific supporting data (which supports the deemed compliant or other exempted status). This information is needed for the negotiation process which has already begun. This information will also facilitate your registration. As such, the FSC attaches the Annex II document for your review and requests your response by June 21, 2013.