

August 2015

FATCA Implementation

Background

FATCA introduces a new reporting regime aimed at the disclosure of US persons with offshore accounts and investments. This disclosure is accomplished by a new withholding regime (US Chapter 4), that works in tandem with the current withholding regime (US Chapter 3). Chapter 4 imposes a penal withholding tax on withholdable payments made to foreign financial institutions and other foreign entities that fail to comply with the disclosure requirements. Thus FATCA introduces a new withholding tax and reporting regime that requires Non Financial Foreign Entities (“NFFEs”) and Foreign Financial Institutions (“FFIs”) to identify and report to the IRS all substantial US account holders.

Barbados has signed a Model 1A Reciprocal Intergovernmental Agreement (“IGA”) with the United States and has committed to addressing FATCA under the context of Automatic Exchange of Information (“AEOI”). The relevant legislation in Barbados is expected to be shortly passed in the House of Parliament to give effect to the IGA, namely amendments to the Income Tax Act section 83 and the Income Tax Act (Automatic Exchange of Information) Regulations 2015.

Reporting Deadlines

Generally, the deadline for the transmission of the information to the Barbados Revenue Authority (“BRA”) will be July 31 annually, covering the previous year ended December 31. However, in this first year of submission, the deadline for the year ended December 31, 2014 is September 15, 2015. The Barbados Government is expected to submit the information to the US IRS by September 30, 2015.

Information required

For income year 2014, the following information is required:

- Name and ID# or GIIN of the Reporting Financial Institution
- Account holder name
- Address
- US TIN where applicable
- Account balance or value as of the end of the reporting period
- For insurance companies, the annual amount of the surrender value of relevant accounts

The BRA has advised that “Nil” reporting is required for Reporting Financial Institutions.

Offences

Where a Reporting Financial Institution fails to submit the required information by the deadline stipulated, the penalty is \$50,000 for the breach and may also include additional penalty of \$5,000 per day until such breach is rectified. There is also provision for a term of imprisonment of 2 years, depending on the nature of the offence.

Appeal procedure

Where the BRA has determined that a Reporting Financial Institution is in breach the BRA must inform the entity of

- the nature of the breach,
- the dollar amount of the penalty
- the deadline for payment of the penalty, and
- the right of the entity to appeal

The appeal may be made to the Revenue Commissioner or the BRA Appeals Tribunal in writing within fourteen days of the notice of the penalty, stating the grounds of the appeal. The Tribunal either confirms the assessment or cancels it.

If the entity is not satisfied with the decision under the first appeal a Judge of the Supreme Court may hear the appeal within 30 days after the re-assessment by the Tribunal.

Reporting procedure

The BRA expects that all Barbados registered Foreign Financial Institutions (“FFIs”) have already registered directly with the US IRS on the FATCA Portal and received the Global Intermediary Identification Number (“GIIN”).

Since Barbados has signed the Reciprocal model IGA, the process for reporting is between the Competent Authorities of each jurisdiction. Consequently, the Barbados registered FFIs need to submit the information to the BRA and must now register with the BRA by 17 August 2015 using the email address compauth@bra.gov.bb.

Registration procedure

The BRA has advised that the registration process will be explained on the BRA's website within the coming days. A registration form will be placed on the website to be downloaded, completed and submitted via the email address indicated above.

The BRA also expects to make available on the website, guidance and explanation notes regarding the reporting process to be undertaken by the relevant entities.

On receipt of the registration email from the FFI, the BRA will verify the information contained and then return to the entity, a username and password to be used in logging on to the SFTP Server for actual transmission of the required information to the BRA.

The reporting is to be done via XML Schema and the FFI is expected to download the schema directly from the IRS Website at www.irs.gov. This schema is to be used to create the file to be submitted to the BRA and all FFIs are encouraged to download the schema, and complete with the required information as soon as possible in order to be able to complete the submission by the stipulated due date.

Further information on the detailed process for submission will be provided by the BRA.

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