

CARIBBEAN CONFEDERATION OF CREDIT UNIONS FATCA UPDATE - JANUARY 2014

On March 18, 2010, the U.S. Government enacted the Foreign Account Tax Compliance Act [FATCA] a derivative of the Hiring Incentives to Restore Employment Act, to combat tax evasion by U.S. persons holding investments in offshore accounts. FATCA requires Foreign Financial Institutions [FFI's] to report directly to the U.S. Internal Revenue Service [IRS] information on assets held by U.S. taxpayers, or by foreign entities in which U.S. taxpayers hold substantial ownership interest¹.

The IRS issued its final regulations for the implementation of the FATCA on January 17, 2013. FATCA purports to apply to non-U.S. Credit Unions as well as to U.S. Credit Unions which make overseas transfers of untaxed proceeds from U.S sourced interest and investment income.

To facilitate the implementation of FATCA, an Inter-Governmental Agreement [IGA] should be negotiated and signed with the U.S IRS. The U.S Treasury has released three [3] styles of "model" IGA's. *Model 1A* which involves reciprocal account and tax information sharing by the U.S. and the other jurisdiction's Government; *Model 1B* which provides for the jurisdiction's Government to share account information with the U.S without reciprocity; and *Model II* which provides for the financial institutions including Credit Unions to report directly to the IRS although the compliance rules and forms of reporting may be determined by the jurisdiction's authorities to some degree.

As part of the Final Regulations, the IRS has issued an *Annex II* to the Model 1 IGA, which may be modified by a mutual agreement entered into between the Competent Authority of the Partner Jurisdiction and the U.S; [1] to allow for the inclusion of additional Entities and accounts that present a low risk of being used by U.S. Persons to evade U.S. tax and that have similar characteristics to the Entities and accounts described in Annex II as of the date of signature of the agreement; or [2] to remove Entities and accounts that due to changes in circumstances, no longer present a low risk of being used by U.S. Persons to evade U.S. tax. Any such additions or removal shall be effective on the date of signature of the mutual agreement, unless otherwise provided therein. Procedures for reaching such a mutual agreement may be included in the mutual agreement described in paragraph 6 of Article 3 of the Agreement.

Annex II to the Model 1 IGA, provides for Credit Unions to be classified as Non-Reporting [FATCA Partner] Financial Institutions that are treated as deemed-compliant FFIs² for the purposes of section 1471 of the U.S. Internal Revenue Code and be classified as a "Local Bank" or "Financial Institution with a Local Client Base" ["Local FFI"] if the following requirements are satisfied.

Local Bank.

¹ Generally greater than 10.0 percent.

² Foreign Financial Institutions.

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1. The Financial Institution operates solely and is licensed and regulated under the laws of the [FATCA Partner] as a credit union or similar co-operative credit organization that is operated without profit;
2. The Credit Union or similar co-operative credit organization's business consist primarily of receiving deposits from and making loans to members provided that no member has greater than five percent interest in such credit union or similar co-operative credit organization.
3. The Credit Union or similar co-operative credit organization has no fixed place of business outside of the [FATCA Partner]. For this purpose, a fixed placed of business does not include a location that is not advertised to the public and from which the Credit Union or similar co-operative credit organization performs solely administrative support functions.
4. The Credit Union or similar co-operative credit organization must not solicit customers or members outside of the [FATCA Partner]. For this purpose, the Credit Union or similar co-operative credit organization shall not be considered to have solicited customers or members outside [FATCA Partner] merely because the Credit union or similar co-operative credit organization merely (a) operates a website, provided that the website does not specifically indicate that the Credit Union or similar co-operative credit organization provides Financial Accounts or services to nonresidents, or (b) advertises in print media or on a radio or television station that is distributed or aired primarily within the [FATCA Partner] but is also incidentally distributed or aired in other countries, provided that the advertisement does not specifically indicate that the Credit Union or similar credit co-operative organization provides Financial Accounts or services to nonresidents, and does not otherwise target or solicit U.S customers or Account Holders and the website does not permit the opening of a Financial Account.
5. The Credit Union or similar co-operative credit organization does not have more than U.S\$175 million or local equivalent in assets on its balance sheet, and the Credit Union or similar co-operative credit organization and any Related Entities, taken together, do not have more than US\$500 million or local equivalent in total assets on their consolidated or combined balance sheets; and
6. Any Related Entity must be incorporated or organized in the [FATCA Partner] and any Related Entity that is a Credit Union or similar co-operative credit organization, with the exception of any Related Entity that is a retirement fund or a Financial Institution with only low-value accounts, must satisfy all of the stated requirements.

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Financial Institution with a Local Client Base [Local FFI]

1. The Financial Institution must be licensed and regulated as a financial institution under the laws of the [FATCA Partner];
2. The Financial Institution must have no fixed place of business outside of the [FATCA Partner]. For this purpose, a fixed place of business does not include a location that is not advertised to the public and from which the Financial Institution performs solely administrative support functions;
3. The Financial Institution must not solicit customers or Account Holders outside of the [FATCA Partner]. For this purpose, a Financial Institution shall not be considered to have solicited customers or Account Holders outside [FATCA Partner] merely because the Financial Institution (a) operates a website, provided that the website does not specifically indicate that the Financial Institution provides Financial Accounts or services to nonresidents, or (b) advertises in print media or on a radio or television station that is distributed or aired primarily within the [FATCA Partner] but is also incidentally distributed or aired in other countries, provided that the advertisement does not specifically indicate that the Financial Institution provides Financial Accounts or services to nonresidents, and does not otherwise target or solicit U.S. customers or Account Holders;
4. The Financial Institution must be required under the laws of the [FATCA Partner] to identify resident Account Holders for purposes of either information reporting or withholding of tax with respect to Financial Accounts held by residents or for purposes of satisfying the [FATCA Partner]'s AML due diligence requirements;
5. At least 98% of the Financial Accounts by value maintained by the Financial Institution must be held by residents (including residents that are Entities) of the [FATCA Partner];
6. Beginning on or before July 1, 2014, the Financial Institution must have policies and procedures, consistent with those set forth in Annex I, to prevent the Financial Institution from providing a Financial Account to any Nonparticipating Financial Institution and to monitor whether the Financial Institution opens or maintains a Financial Account for any Specified U.S. Person who is not a resident of the [FATCA Partner] (including a U.S. person that was a resident of the [FATCA Partner] when the Financial Account was opened but subsequently ceases to be a resident of the [FATCA Partner] or any Passive NFFE³ with Controlling Persons who are U.S. residents or U.S. citizens who are not residents of the [FATCA Partner]);
7. Such policies and procedures must provide that if any Financial Account held by a Specified U.S. person who is not a resident of the [FATCA] Partner or by a Passive NFFE with Controlling Persons who

³ Non Financial Foreign Entity.

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are U.S. residents or U.S. citizens who are not residents of the [FATCA Partner] is identified, the Financial Institution must report such Financial Account as would be required if the Financial Institution were a reporting [FATCA Partner] Financial Institution (including by following the applicable registration requirements on the IRS FATCA registration website) or close such Financial Account.

8. With respect to a Preexisting Account held by an individual who is not a resident of the [FATCA Partner] or by an Entity, the Financial Institution must review those Preexisting Accounts in accordance with the procedures set forth in Annex I applicable to Preexisting Accounts to identify any U.S Reportable Account or financial Account held by a Nonparticipating Financial Institution, and must report such Financial Account as would be required if the Financial Institution were a reporting [FATCA Partner] Financial Institution (including by following the applicable registration requirements on the IRS FATCA registration website) or close such Financial Account.

9. Each Related Entity of the Financial Institution that is a Financial Institution must be incorporated or organized in the [FATCA Partner] and, with the exception of any Related Entity that is a retirement Fund as described, satisfy the requirements set forth above; and

10. The Financial Institution must not have policies or practices that discriminate against opening or maintaining Financial Accounts for individuals who are Specified U.S. Persons and residents of the [FATCA Partner]

In seeking to determine its status, a Credit Union or similar co-operative credit organization, should address the following questions.

Question 1

Is the Credit Union or similar co-operative credit organization located in a FATCA Partner jurisdiction with an IGA ?	If the answer is “yes” the Credit Union or similar co-operative credit organization will follow the local FATCA Rules established by the IGA. <i>If the answer is “no” proceed to Question 2.</i>
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Question 2

Does the Credit Union or similar co-operative credit organization (1) only has offices in its home country (2) has less than US\$175 million or local equivalent in total assets and (3) does not solicit business from outside its home country or permit the opening of Financial Accounts on its website?	If the answer is “yes” the Credit Union or similar co-operative credit organization is a “non-registering Local Bank” and does not need to register with the IRS but there will be an IRS form that the institution can submit to its bank counterparts along with a copy of its financial statements showing that it is less than US\$175 million or local equivalent, to prove that it is exempt. These institutions could however choose to register voluntarily with the IRS to be placed on its “Whitelist of FATCA compliant local institutions.” <i>If the answer is “no” proceed to Question 3.</i>
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Question 3

<p>Does the Credit Union or similar co-operative credit organization have more than US\$175 million or local equivalent in total assets? Does it only have offices in its home country and has 98% or more of the value of its deposit/share accounts held by residents and/or citizens of its home country (the accounts of home country citizens living outside the jurisdiction as well as U.S. citizens residing in the jurisdiction as well as accounts below US\$50,000 or local equivalent)?</p>	<p>If the answer is “yes” the Credit Union or similar co-operative credit organization is a “deemed compliant local Foreign Financial Institution [Local FFI]” and would be partially exempt from FATCA and would take the actions outlined below.</p> <p><i>If the answer is “no” to all three(3) questions the Credit Union or similar co-operative credit organization would need to comply with the full IRS FATCA Regulation including its “withholding agent” provisions.</i></p>
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Actions to be taken by “deemed compliant Local FFI’s”

- The Credit Union or similar co-operative credit organization registers with the IRS using the FATCA Registration Portal, a secure internet-based registration system which became operational on January 1, 2014, and receives a Global Intermediary Identification Number [GIIN] for FATCA compliance purposes.
- All new and pre-existing accounts⁴ below US\$50,000 are considered as exempt.
- Existing accounts above US\$50,000 or less than US\$1 million or local equivalent in value and new accounts above US\$50,000 or local equivalent should be interrogated electronically for signs of US indicia⁵.
- The Credit Union or similar co-operative credit organization establishes policies not to discriminate against opening or maintaining accounts for U.S. individuals that are residents in the local jurisdiction.
- The Credit Union or similar co-operative credit organization establishes policies not to open new accounts for U.S. Persons who are not local residents.

It should be noted however that Credit Unions in an IGA jurisdiction with less than US\$175 million or local equivalent in total assets and more than 98% of the value of accounts held by local residents may be required to undertake due diligence and reporting, if the exemptions in the IGA are different from those in the FATCA Regulations.

⁴ Accounts existing as at December 31, 2013 if the account is (a) in the name of a natural person with a balance under US\$50,000 or local equivalent or (b) in the name of a legal entity with a balance under US\$250,000 or local equivalent.

⁵ U.S. passport, address, telephone number etc.

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FATCA Implementation Timeline

2014	
January 1 – April 25	Initial FFI Electronic Applications Period.
June 30	FFI Agreements effective.
July 1	Account opening procedures implemented to identify U.S. Accounts.
July 1	Existing obligations are grandfathered.
July 1	FATCA withholding on FDAP ⁶ payments to non-participating FFIs and recalcitrant account holders begins with respect to new accounts
December 31	Complete due diligence for pre-existing accounts of <i>prima facie</i> FFIs
2015	
Jan 1	FATCA withholding begins on pre-existing obligations of non-documented <i>prima facie</i> FFIs
March 15	Forms 1042 due for first FATCA withholding on FDAP income then annually.
March 31	Participating FFIs first report with respect to U.S. accounts for 2014 calendar year, then annually each March 31.
June 30	Complete due diligence for pre-existing high-value individual accounts.
July 1	Withholding begins on FDAP payments on pre-existing individual high-value accounts.
2016	
March 15	Aggregate reporting for passthru payments for passthru payments of FDAP to non-participating FFIs for 2015
June 30	Complete due diligence for other pre-existing entity accounts and non-high-value individual accounts.
July 1	Withholding begins on FDAP payments on pre-existing obligations of non-documented Entities other than <i>prima facie</i> FFIs and individual non-high-value accounts.
September 1	Due date for initial certification of all due diligence.
2017	
January 1	FATCA withholding on gross proceeds from the sale of U.S. assets begins, withholding on passthru payments may begin on or after this date.
March 15	Aggregate reporting for passthru payments for passthru payments of FDAP to non-participating FFIs for 2016.
2018	
March 15	Gross proceeds reporting begins.

⁶ Fixed or Determinable Annual Periodic Income