

## ***The US IRS Foreign Accounts Tax Compliance Act (FATCA) - What is FATCA and why is it significant to SVG?***

The Foreign Accounts Tax Compliance Act (FATCA), an initiative driven by the Internal Revenue Service of the United States of America (US), comes into effect on **July 1<sup>st</sup>, 2014**. The US levies income taxes on its citizens, regardless of residency, and therefore requires US persons living abroad to pay US taxes on foreign income. Under the US tax law, US persons are generally required to report and pay taxes on income from all sources. As such, on 18<sup>th</sup> March 2010, the US Government enacted FATCA to enforce tax compliance by US persons holding investments in accounts outside of the US.

This new US law is expected to change the financial landscape globally, and will significantly affect how financial institutions in St. Vincent and the Grenadines, and elsewhere, operate on a daily basis, as well as how they interact with existing and new customers. Financial institutions would now have to reconsider their market strategy and reputation in relation to US driven business.

### ***Foreign Financial Institutions***

FATCA will apply to both financial and non-financial entities which directly or indirectly receive US source income, including gross proceeds from the sale or disposition of US property which can produce interest or dividends. FATCA requires foreign financial institution (FFIs) to report to the US Internal Revenue Service (IRS), information on accounts held by US persons or by foreign entities in which US persons hold substantial ownership interests.

A FFI is any non-US entity which accepts deposits in the ordinary course of business or as a substantial portion of its business, holds financial assets for the account of others, or an entity which is engaged primarily in the business of investing, reinvesting, or trading in securities, partnership interests, commodities, or any interest in such securities, partnership interests, or commodities. Generally entities such as banks, broker/dealers, insurance companies, which have cash value products or annuities, hedge funds, securitization vehicles, and private equity funds, will be considered FFIs.

Failure of a FFI to submit information could result in a 30% withholding tax levied by the IRS on withholdable payments and may result in the potential loss of correspondent banking relationships.

### ***US persons***

A US person is defined as a citizen, legal resident (a green card holder) and any person who meets the requirements as a tax resident. Financial institutions are required to obtain information on account holders, which would be used to determine if accounts are held by US persons, by means of due diligence or verification procedures.

## ***A Regional Approach to FATCA***

St. Vincent and Grenadines has been working with an ECCU Working Group on FATCA to ensure that financial institutions are prepared for the implementation of FATCA. A CARICOM Task Force on FATCA was established on 30<sup>th</sup> June 2012, to determine the way forward for CARICOM territories with respect to FATCA. The ECCB was given the responsibility of collaborating with the respective Attorney Generals of the ECCU territories to review national laws which would be impacted by FATCA. As a result, on 27<sup>th</sup> March 2013, an ECCU Working Group on FATCA was established. The Ministry of Finance has been actively involved in all relevant discussions on FATCA at this regional level and is leading the implementation of FATCA in St. Vincent and the Grenadines.

The primary objective of the ECCU Working Group on FATCA is to develop an appropriate framework to adequately allow for FFIs in the ECCU to legally comply with FATCA. Each ECCU territory has established a National Committee on FATCA, which is responsible for advising the Government on developments regarding FATCA. The SVG National Committee is comprised of representatives of the Attorney General's Chambers, Ministry of Finance, Ministry of Foreign Affairs, the Financial Services Authority and the Inland Revenue Department.

To comply with FATCA, all countries are required to sign an intergovernmental agreement (IGA) with the US. Such Agreements outline the terms and conditions for the sharing of information between the parties. The US has published several forms of Model IGAs which are either reciprocal or non-reciprocal with respect to the sharing of tax information. The Member Governments of the Eastern Caribbean Currency Union (ECCU) have commenced discussions with the US towards executing Inter-Governmental Agreement (IGA) Model 1B for the implementation of the provisions of the FATCA.

### ***FATCA Implementation in SVG***

Through the stated coordinated regional approach, SVG has indicated its intent of pursuing IGA Model 1B. This model requires financial institutions to submit customer information to the Inland Revenue Department (the competent Authority) of St. Vincent and the Grenadines for onward submission to the IRS.

The ECCU Member Governments have also undertaken to pass the "*Foreign Account Tax Compliance (United States) Implementation and Enforcement Act, 2014*", to provide for the legal submission of customer information for the purposes of FATCA. This legislation is being reviewed for adoption in SVG and will be made publicly available in due course.

Compliance with the US FATCA is not an option. Countries are obliged to put the necessary measures in place to accommodate this form of information sharing on US persons whether they are residing or holding assets outside of the US. The US has the upper hand in ensuring compliance with FATCA, since the US continues to be the main source of correspondent

banking, which many financial institutions around the world rely upon to conduct daily/routine transactions. Should a financial institution outside of the US fail to report on US accounts annually, the US IRS will cause these correspondent banks to withhold 30% of monies being transmitted to financial institutions outside of the US. Such withholding penalties will significantly impact upon banking business in SVG. Consequently, a concerted effort is being made to ensure that financial institutions are prepared for the implementation of FATCA. The Education Trust will continue with a national workshop on FATCA. The financial industry will be notified of the date in due course.

Further information on the US FATCA can be found by visiting the US IRS website <http://www.irs.gov/Businesses/Corporations/Frequently-Asked-Questions-FAQs-FATCA--Compliance-Legal#Exempt>.

Submitted by:

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May 28<sup>th</sup> 2014.

