



**Guideline on the Implementation of the
Tax Information Exchange Agreements
(United States of America) Act, 2017**

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1. BACKGROUND

1.1. General

The Foreign Account Tax Compliance Act (FATCA) is a United States (US) tax law designed to combat offshore tax evasion by US persons. It was signed into US law on March 18 2010, became effective July 1, 2014 and requires Foreign Financial Institutions¹ or FFIs to provide information on US accounts held with the FFI to the US Internal Revenue Service (IRS). FATCA seeks to promote cross border compliance with US tax requirements by implementing an international standard for the automatic exchange of information related to US taxpayers. Non-compliance with FATCA imposes *inter alia* a 30% withholding tax on FFIs and US persons and has the potential to compromise correspondent banking relationships with US banks.

1.2. Trinidad and Tobago Intergovernmental Agreement

The Government of Trinidad and Tobago signed a Model 1A Inter-Governmental Agreement (IGA/ declared agreement)² with the United States of America (US) on Friday August 19th 2016 and brought the IGA into the laws of Trinidad and Tobago by repealing and replacing the 1989 Tax Information Exchange Agreement Act Chap. 76:51 between the US and Trinidad and Tobago, with the Tax Information Exchange Agreements (United States of America) Act, 2017 (TIEAA).

The TIEAA provides for the automatic reporting and exchange of information on an annual basis in relation to accounts held in reporting financial institutions in Trinidad and Tobago by US persons.

Under the terms of the TIEAA, reporting financial institutions must provide the Trinidad and Tobago competent authority, namely the Board of Inland Revenue (BIR), with the required information. The BIR will in turn forward the information to the Competent Authority in the US, namely the IRS.

2. INTRODUCTION

The Tax Information Exchange Agreement Act (TIEAA) which was enacted on March 20, 2017, makes provisions for the implementation of the declared agreement between Trinidad and Tobago and the United States of America (US) for the exchange of information for the purposes of taxation.

In accordance with Section 36(dd) of the Central Bank Act, Chap. 79:02 as amended³, the Central Bank of Trinidad and Tobago (Central Bank/Bank) is responsible for the supervision of financial institutions and insurance companies on the implementation of a declared agreement as defined in this Guideline. The

¹ In the context of FATCA, a foreign financial institution is any non-US financial institution.

² Refer to Schedule 2 of the TIEA Act, 2017.

³ Section 25 (b) (iii) of the TIEAA amends section 36 of the Central Bank Act, Chap. 79:02. The TIEAA also amends the Financial Institutions Act, 2008 (FIA) and the Insurance Act Chap. 84:01 (IA) to allow the Central Bank to issue guidelines to give effect to a declared agreement and to issue compliance directions to enforce compliance with the guidelines.

Central Bank is empowered pursuant to Section 10(1)(e) of the Financial Institutions Act, Chap 79:09 and Section 215 of the Insurance Act, Chap 84:01 as amended, to issue guidelines to give effect to a declared agreement. Similar amendments were made to the Securities Act, Chap. 83:02 to allow the Trinidad and Tobago Securities and Exchange Commission (TTSEC) to issue guidelines and compliance directions to their regulated entities to give effect to a declared agreement.

Given that some financial institutions are also registered with the TTSEC, collaboration will be required among the Central Bank, the TTSEC and the BIR to give effect to the TIEAA and the declared agreement.

Consequently, as detailed in section 4 below, this Guideline seeks to provide financial institutions regulated by the Central Bank with guidance as to what is required to ensure compliance with the reporting requirements of the TIEAA.

3. **APPLICATION AND SCOPE**

This Guideline applies to (i) institutions licensed or permitted under the Financial Institutions Act, 2008 (FIA) and (ii) insurance companies registered under IA, regardless of whether they maintain any Financial Accounts for Specified US Persons. Hereinafter, in this Guideline, these institutions will be collectively referred to as “financial institutions”.

Financial institutions should be aware that their overseas branches and subsidiaries will be subject to the laws of the respective jurisdiction as it pertains to the exchange of tax information and will therefore not be subject to this Guideline. However, it is expected that financial institutions will ensure that their overseas branches and subsidiaries comply with the relevant laws and regulations in their respective jurisdictions.

4. **PURPOSE OF THE GUIDELINE**

The purpose of this Guideline is to provide guidance to financial institutions for the implementation of, and on-going compliance with, the reporting requirements under the TIEAA through the following:

- a) Establishment of an adequate compliance framework;
- b) Implementation of effective policies, procedures and controls; and
- c) Appointment of a Responsible Officer.

The main responsibilities of the Central Bank in respect of this Guideline include:-

- a) reviewing financial institutions’ compliance with this Guideline through onsite examinations and off-site surveillance. This will comprise, inter alia, reviewing the compliance framework, including policies and procedures, of all financial institutions to determine their adequacy;

- b) taking regulatory action against financial institutions and persons regulated by it which fail to adequately comply with this Guideline issued by the Central Bank; and
- c) sharing information with the BIR and TTSEC as required for the purpose of giving effect to the TIEAA.

5. DEFINITIONS OF KEY TERMS

“Account holder” means —

- a) the person listed or identified as the holder of a financial account by the financial institution that maintains the account and does not include a person holding a financial account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor or intermediary; or
- b) in the case of a cash value insurance contract or an annuity contract, any person entitled to access the cash value or change the beneficiary of the contract and where no person can access the cash value or change the beneficiary of the contract, any person named as the owner in the contract and each person with a vested entitlement to payment under the terms of the contract;

“Board of Directors” means the Board of Directors of a Financial Institution;

“Board of Inland Revenue” means the Board of Inland Revenue or BIR established by section 3 of the Income Tax Act;

“Controlling Persons” means an individual who exercises control over an entity as defined in the TIEAA;

“Declared Agreement” means the IGA as defined in section 9 of the Tax Information Exchange Agreements (United States of America) Act, 2017 (TIEAA);

“Entity” means a legal person or legal arrangement such as a trust;

“Financial Account” means an account maintained by a Trinidad and Tobago Financial Institution as defined in the TIEAA;

“Financial Institution” means an (i) institution licensed or permitted under the Financial Institutions Act, 2008 (FIA) or (ii) insurance company registered under the IA.

“High Value Accounts” means accounts with a balance or value that exceeds \$1,000,000;

“IGA” means the Inter-Governmental Agreement signed between the Government of Trinidad and Tobago and the Government of the United States of America to improve international tax

compliance and provide for the implementation of the Foreign Accounts Tax Compliance Act of the United States of America and set out specifically in Schedule 2 of the TIEAA;

“Lower Value Accounts” means accounts with a balance or value that exceeds \$50,000 (\$250,000 for a Cash Value Insurance Contract or Annuity Contract), but does not exceed \$1,000,000;

“Non-Participating Financial Institution” means any non-participating financial institution or a financial institution deemed to be a non-participating financial institution under Schedule 2 of the TIEAA;

“Non-Reporting Trinidad and Tobago Financial Institution” means any Trinidad and Tobago Financial Institution that is described in Schedule 2 of TIEAA as a Non-Reporting Trinidad and Tobago Financial Institution or that otherwise qualifies as a deemed-compliant financial institution or an exempt beneficial owner under relevant US Treasury Regulations in effect on the date of signature of the IGA, hereinafter referred to as a non-reporting financial institution;

“Non-US Entity” means an Entity that is not a US Person;

“Reporting Trinidad and Tobago Financial Institution” means any Trinidad and Tobago Financial Institution that is not a Non-Reporting Trinidad and Tobago Financial Institution, hereinafter referred to as a “Reporting Financial Institution”;

“Responsible Officer” means a manager or official employed at managerial level of a financial institution and designated by the financial institution to perform the functions and duties set out under Section 11.3 in accordance with Section 11.1(i) of this Guideline;

“Sensitive personal information” has the same meaning as assigned under the TIEAA;

“Specified US Person” means a US Person as defined in the TIEAA;

“US Person” means a citizen of the United States of America or resident individual, a partnership or corporation organized in the United States of America or under the laws of the United States of America or any State thereof, a trust if—

- a) a court within the United States of America would have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of the trust; and
- b) one or more US Person has the authority to control all substantial decisions of the trust, or an estate of a decedent that is a citizen or resident of the United States of America;

“US Reportable Account” means a Financial Account maintained by a Reporting Trinidad and Tobago Financial Institution and held by one or more Specified US Persons or by a Non-US Entity with one or more Controlling Persons that is a Specified US Person. Notwithstanding the foregoing, an

account shall not be treated as a US Reportable Account if such account is not identified as a US Reportable Account after application of the due diligence procedures in Schedule 4 of TIEAA;

6. CLASSIFICATION AND REGISTRATION REQUIREMENTS

- 6.1 Each financial institution shall conduct an assessment in accordance with Schedule 3 of the TIEAA to determine its classification and confirm whether it:
- i. is a Reporting Financial Institution or Non-Reporting Trinidad and Tobago Financial Institution;
 - ii. is required to register and obtain a Global Intermediary Identification Number with the Internal Revenue Service of the United States of America;
 - iii. has any obligations under the TIEAA;
- 6.2 Each financial institution shall submit the written evidence of the assessment referred to at Section 6.1 and resulting classification to the BIR and the Central Bank, in respect of the first reporting year 2014 and every following calendar year, by June 30th. Where the financial institution is also registered with the Trinidad and Tobago Securities and Exchange Commission (TTSEC), the written evidence of the assessment should be submitted to the TTSEC also.
- 6.3 The written evidence of the assessment referred to at Section 6.2 shall be signed by the Responsible Officer and Chief Executive Officer of the financial institution;
- 6.4 Subject to Section 6.1, each financial institution shall comply –
- i. With the applicable registration requirements of the IRS for the purposes of the IGA;
 - ii. In the manner that the IRS may from time to time require which may include by electronic means

7. KEY ELEMENTS OF A COMPLIANCE FRAMEWORK

- 7.1 Financial institutions will be required to implement a robust compliance framework to ensure compliance with the TIEAA. The compliance framework shall be documented and approved by the Board of Directors.
- 7.2 The compliance framework shall include establishment of appropriate policies, procedures, systems and controls for the following: –
- i. identification of US Reportable Accounts using the due diligence obligations required under Schedule 4 of the TIEAA;

- ii. application of review procedures for pre-existing individual accounts which are considered lower value accounts and enhanced review procedures for high value accounts (refer to Schedule 4 of the TIEAA);
- iii. opening of new individual accounts;
- iv. processing of sensitive personal information, with or without the consent of the account holder, as required under the TIEAA;
- v. obtaining and recording the consent of the account holder for the sharing of information;
- vi. compliance with reporting requirements to the BIR in accordance with the TIEAA;
- vii. transmission of information to the BIR in accordance with the reporting requirements and timelines required under the TIEAA;
- viii. reporting to the Board of Directors on submissions to the BIR as well as any queries and/or instances of non-compliance;
- ix. corrective action regarding minor or administrative errors or areas of significant non-compliance as outlined in Schedule 2 Article 5 of the TIEAA;
- x. internal auditor testing for compliance with the Guideline and TIEAA;
- xi. retention of records and other information in accordance with Section 13.1;
- xii. adequate safeguards for confidentiality of data submissions;
- xiii. ensuring the appropriateness of the information technology systems and the integrity of the data to be submitted to the BIR; and
- xiv. appointment of a Responsible Officer who shall be the Point of Contact for the purpose of ensuring compliance with this Guideline and the TIEAA.

8. DUE DILIGENCE REQUIREMENTS

- 8.1 A financial institution shall establish and maintain arrangements that are designed to identify US Reportable Accounts and accounts held by Non-participating Financial Institutions.
- 8.2 These arrangements shall –
- i. identify the state or territory in which an account holder or a controlling person is resident for income tax or corporation tax purposes or for the purposes of any tax imposed by the law of that state or territory that is of similar character to either of those taxes;
 - ii. identify payments made by the financial institution to a non-participating financial institution; and
 - iii. apply the due diligence procedures set out in Schedule 4 of the TIEAA.

9. REPORTING REQUIREMENTS

9.1 Subject to section 9.2, where a financial institution has determined that it has reporting obligations under the TIEAA following the assessment at section 6, the financial institution shall:

9.1.1 in respect of the first reporting year 2014 and every following calendar year, submit an annual return to the BIR, setting out -

- i. sensitive personal information on an account holder in respect of a reportable account within nine months after the end of the calendar year to which sensitive personal information relates;
- ii. the names of Non-participating Financial Institutions, to whom any payments have been made and the total amounts of those payments, within nine months after the end of the calendar year;

9.1.2 The information required to be reported by a financial institution as is set out in Schedule 2 Article 2 of the TIEAA;

9.1.3 The return shall be submitted electronically in a form and manner as may be determined under Section 18 of the TIEAA and should incorporate an electronic validation process.

9.2 If a financial institution applies the due diligence procedures for a particular calendar year and no account is identified as a US Reportable Account, the institution shall file a nil return to the BIR, within nine months after the end of the calendar year.

9.3 A reporting financial institution shall notify an account holder in respect of a US Reportable Account, that sensitive personal information relating to that person which was required to be reported, has been reported to the BIR and must do so by January 31 in the following calendar year;

9.4 A financial institution shall notify the BIR and the Central Bank if it ceases to be registered with the IRS.

10. USE OF THIRD PARTY SERVICE PROVIDERS

10.1 A financial institution may use a third party service provider to perform due diligence procedures, to the extent provided in relevant US Treasury Regulations.

10.2 Where a financial institution uses a third party service provider, the financial institution shall obtain the consent of the customer to share his/her information with the service provider.

10.3 The financial institution must inform the Central Bank of its decision to use a third party service provider as allowed in Section 10.1, within 3 working days, and provide information on the measures taken to ensure confidentiality of information.

- 10.4 Where a third party service provider is used, the financial institution –
- i. shall at all times, have access to and be able to produce the records and documentary evidence used to identify and report on US Reportable Accounts;
 - ii. is responsible for any failure of the third party service provider to carry out its obligations;
 - iii. shall be responsible for the confidentiality of any information transmitted to the third party provider.

11. RESPONSIBLE OFFICER

- 11.1 Every financial institution shall, for the purpose of ensuring compliance with the reporting requirements of the TIEAA:-
- i. designate a manager or official employed at managerial level as the Responsible Officer ; and
 - ii. notify the BIR and the Central Bank of the name, designation and contact details of the Responsible Officer.
- 11.2 A financial institution shall ensure that the Responsible Officer receive appropriate training to enable him to perform his duties adequately.
- 11.3 The Responsible Officer shall -
- i. ensure that the necessary policies and procedures required for compliance with the reporting requirements of the TIEAA are in place;
 - ii. to the best of his ability, ensure the accuracy and timeliness of all data submissions to the BIR;
 - iii. co-ordinate and monitor the compliance framework to ensure continuous compliance;
 - iv. ensure the financial institution complies with the applicable registration requirements on the IRS FATCA registration website;
 - v. respond to queries from the BIR and the Central Bank in a timely manner;
 - vi. advise the Central Bank and the BIR where issues arise that may impact the institution's ability to comply with the TIEAA or the Guidelines;
 - vii. function as the official liaison with the BIR and the Central Bank as necessary;
 - viii. conduct annually, a self-assessment of the financial institution's compliance with the requirements of the TIEAA and this Guideline and submit the results of this assessment to the Central Bank in such time and manner as the Central Bank may request; and
 - ix. Report to the Board of Directors, at least annually, on the financial institution's compliance framework, deficiencies in its compliance framework and all incidents of non-compliance with the requirements of the TIEAA.
- 11.4 The financial institution must ensure that the Responsible Officer and other employees have timely access to customer data, records and relevant information to enable them to -
- i. comply with the reporting requirements under the TIEAA;
 - ii. report to its Board of Directors, the BIR and the Central Bank as appropriate; and
 - iii. address queries and/or instances of non-compliance.

12. INTERNAL AND EXTERNAL AUDIT

- 12.1 Internal and external auditors of a financial institution must conduct at least, an annual review of the financial institution's compliance framework.
- 12.2 Internal auditors of the financial institution should perform regular reviews to ensure that the financial institution's compliance framework adheres to the requirements of the TIEAA and this Guideline. Such reviews should include a review of the process for capturing information on US Reportable Accounts to be submitted to the BIR. Internal auditors should also follow up routinely to ensure that recommendations made by the financial institutions external auditors, the BIR and the Central Bank are acted upon in a timely manner.
- 12.3 The external auditor shall evaluate the financial institution's compliance with the TIEAA and this Guideline and submit an external audit report with recommendations to the Central Bank and the financial institution's Board of Directors, annually and within four (4) months of the financial institution's year end.

13. RECORD KEEPING REQUIREMENTS

- 13.1 To facilitate compliance with reporting requirements of the TIEAA, financial institutions should retain for a period of six years, all books, documents and other records, including those stored by electronic means, which relate to the information required to be reported to the BIR for the purposes of the TIEAA.
- 13.2 Records should be retained in a format, including electronic, scanned or microfilm, that would facilitate reconstruction of information to comply swiftly with information requests from the Board of Inland Revenue.
- 13.3 Each financial institution is required to maintain a register of all queries and/or instances of non-compliance and corrective actions taken to address them.

14. TRAINING OF STAFF

- 14.1 Financial institutions are required to ensure that its directors, Responsible Officer and staff are appropriately trained to equip them to perform their obligations in respect of the reporting requirements of the TIEAA.
- 14.2 Training should be targeted at all employees, with emphasis on the Responsible Officer as well as the compliance and audit staff, because of his critical role in sensitizing the broader staff complement to the obligations under the TIEAA and ensuring compliance with established policies and procedures regarding same.

- 14.3 At a minimum, a financial institution is required to:
- i. Develop an appropriately tailored training and awareness programme;
 - ii. Document its approach to training;
 - iii. Ensure that staff involved with screening customers or obtaining customer data are aware of the reporting requirements of the TIEAA;
 - iv. Ensure that all staff members are aware of the identity and responsibilities of the Responsible Officer;
 - v. Establish and maintain a regular schedule of new and refresher programmes for the different types of training required for:
 - a) new employees;
 - b) operations staff;
 - c) supervisors;
 - d) board and senior management; and
 - e) audit and compliance staff
 - vi. Obtain an acknowledgement from each staff member on the training received;
 - vii. Assess the effectiveness of training; and
 - viii. Provide all staff with reference manuals/materials that outline their responsibilities and the institution's policies. These should complement rather than replace formal training programmes.
- 14.4 A financial institution should clearly explain to its directors, senior management and employees their obligations under the TIEAA, and more specifically, the requirements concerning customer due diligence and confidentiality, as well as the consequences of non-compliance.

15. **CONFIDENTIALITY OF CUSTOMER INFORMATION**

The financial institution shall, in respect of any information received with regards to the TIEAA, ensure that the information is –

- i. treated as confidential;
- ii. afforded the necessary safeguards as may be required for the protection of personal data; and
- iii. only disclosed to an authority that is legally entitled to the information, who shall use the information solely to fulfil its obligations under the TIEAA

16. **NON-COMPLIANCE AND ENFORCEMENT**

16.1 The Central Bank may take such regulatory measures, as may be allowed under the FIA and IA, to ensure compliance with this Guideline, including, but not limited to, on-site examinations to assess the adequacy/ effectiveness of the financial institution's compliance framework.

16.2 Additionally, if the BIR indicates that:

- i. in the case of a financial institution licensed or permitted under the FIA, the financial institution or its controlling or significant shareholder, Director or Officer; or
- ii. in the case of a financial institution licensed under the IA, the financial institution, its officer, employee or agent,

failed to take such actions as may be necessary to give effect to or comply with the TIEAA, the Central Bank may issue compliance directions as may be necessary to rectify the non-compliance.

16.3 When considering the appropriate intervention action or combination of actions needed to address potential concerns or non-compliance with this Guideline, the Central Bank will consider:

- i. the nature and extent of the non-compliance;
- ii. whether there are a number of deficiencies which, when considered collectively, indicate a pattern of non-compliance;
- iii. the extent to which the Board of Directors, Responsible Officer or any other officer acted in such a way to contribute to or further non-compliance; and
- iv. any corrective measures undertaken by the financial institution

16.4 A financial institution is required to immediately notify the Board of Inland Revenue and Central Bank of any matter arising that would impede its ability to comply with the reporting requirements under the TIEAA and its plan to address this deficiency.

16.5 Compliance directions issued by the Central Bank for non-compliance with this Guideline shall require the financial institution to either take or not take a specified action in order to comply with the Guideline and the TIEAA.

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