



# FATCA ALERT

## Cayman Islands signs FATCA Agreement with USA

On Friday 29 November, the United States and the Cayman Islands signed a "Model 1" [intergovernmental agreement](#) on FATCA ("IGA"). The United States considers this IGA already to be in effect, despite the need for implementing measures in the Cayman Islands. This IGA is the second such agreement with a country that is neither an OECD member nor signatory to an income tax treaty with the United States; Costa Rica signed an IGA on 26 November. It is the first non-reciprocal IGA, meaning that U.S. financial institutions are not obliged to report information about their Cayman Islands account-holders to the IRS, for automatic exchange with the Cayman Islands. This is the twelfth IGA overall that the United States has signed, which noted that it had reached "agreements in substance" on FATCA with 16 other countries.

The signing of this IGA should be welcomed by those private investment fund sponsors who form Cayman entities to make investments in U.S. markets, and those who invest in such funds. Notably, Cayman investment vehicles that are within scope ("Reporting Cayman Islands Financial Institutions") will avoid entering into legal agreements with IRS and will report account information solely to the Cayman Tax Information Authority, rather than the IRS. The other standard benefits of an IGA are also available, including: (i) replacing the obligation to withhold on recalcitrant account holders and non-compliant FFIs with a mere reporting obligation; (ii) limiting the obligation to withhold on U.S.-source payments to qualified intermediaries that have assumed primary withholding responsibility under U.S. regular

withholding rules (extremely rare in the funds industry); (iii) removing the risk of U.S. withholding on gross proceeds that is due to commence 1 January 2017; and (iv) relaxing the requirement that all group members be FATCA-compliant, provided that those Related Entities or branches resident in jurisdictions that preclude FATCA compliance are not used to circumvent FATCA.

Another material benefit of the IGA is that most Reporting Cayman Islands Financial Institutions will have another six months (until 1 January 2015) in which to obtain Global Intermediary Identification Numbers ("GIINs") and notify IRS of their Points of Contact. Treas. Reg. § 1.1471-3(d)(4)(iv)(A). If, however, a Cayman fund vehicle maintains a branch in a jurisdiction which has not signed an IGA and wishes to be registered timely with IRS, the standard effective date for the GIIN of 1 July 2014 stands.

The categories of deemed-compliant FFI fund vehicles (e.g., Sponsored Investment Entities and Qualified Collective Investment Vehicles) set forth in the IRS Regulations are mostly repeated in Annex II without material relaxation of terms. The delayed effective date until 1 January 2017 for certain debt securitisation vehicles set forth in Treas. Reg. § 1.1471-5(f)(2)(iv) is not listed in Annex II, but is available to Cayman vehicles. Annex II breaks new ground, however, in excepting certain Cayman Investment Advisors and Investment Managers from scope. See Annex II, § IV.D.

The IGA is the first step in the process for bringing the Cayman fund industry into compliance with FATCA and so convey information about its U.S. account-holders to the IRS. In due course, the Cayman Tax Information Authority will provide interpretative guidance and explain the procedure for registering the many anticipated Reporting Cayman Islands Financial Institutions. Investors in Cayman fund vehicles can take comfort that this IGA has reduced somewhat the material costs and burdens of FATCA compliance, and so can have heightened expectations that the sponsors will satisfy whatever commitments they have made about FATCA compliance.

Also on Friday, the United States and the Cayman Islands signed a new [Tax Information Exchange Agreement](#) to replace the existing agreement. This is a reciprocal agreement, and modifies the existing agreement by permitting the exchange of tax information not only upon request, but also automatically (as demanded by the IGA), and spontaneously. The tax information exchanged must be "foreseeably relevant" to the assessment and collection of tax, which is a slightly higher standard than that of the existing agreement. Unusually, it appears at first glance that information exchanged under this new agreement may also be shared with the United Kingdom in certain criminal cases.

In other Cayman Islands developments, it signed an automatic information sharing agreement with the UK on 5 November, which is modelled in pertinent part on the U.S. IGA and again is non-reciprocal, and has become party to the OECD's Multilateral Convention on Mutual Administrative Assistance in Tax Matters

For further details please contact:



**Thomas Dick**  
Tax Partner  
T +44 (2)20 7796 6514  
[thomas.dick@dlapiper.com](mailto:thomas.dick@dlapiper.com)

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UK switchboard: +44 (0) 8700 111 111

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