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# *Malta and the US sign FATCA Intergovernmental Agreement*

*17 December 2013*

The United States and Malta announced on 16 December 2013 that they have signed an Intergovernmental Agreement ("IGA") to improve international tax compliance and to implement the US Foreign Account Tax Compliance Act ("FATCA").

The FATCA IGA is a Model I reciprocal agreement, meaning that financial institutions in each country will report specific information to their own Governments, who will then automatically exchange that information annually on a reciprocal basis.

## **Malta**

The FATCA IGA is in line with Malta's commitment to improve international tax compliance and mutual assistance in tax matters through the automatic exchange of information. Through the IGA, the United States and Malta will cooperate to reduce tax evasion and build a stronger, more stable, and more accountable, global financial system.

The IGA, in line with OECD's efforts to strengthen cooperation in tax matters, strives to effectively combat offshore tax evasion.

By signing the IGA, Malta has become one of the latest countries to sign a FATCA IGA with the United States. Earlier this week, Jersey, Guernsey, the Isle of Man and the Netherlands signed IGAs with the US to implement FATCA.

Bermuda, the Cayman Islands Costa Rica, Denmark, France, Germany, Ireland, Japan, Mexico, Norway, Spain, Switzerland and the United Kingdom have also become FATCA partner countries with the United States to combat international tax evasion, demonstrating the growing global momentum behind FATCA and strong support from the world's most important economies.

## **FATCA - Scope and Obligations**

FATCA, together with the specific Maltese legislation that will implement the signed IGA, will apply to "Malta Financial Institutions" which refers to financial institutions resident in Malta (excluding any branch of such financial institution that is located outside Malta), and to any branches of non-Maltese-resident financial institutions located in Malta.

Annex II of the IGA lists those entities that are treated as exempt beneficial owners or deemed-compliant financial institutions and those accounts that are excluded from being considered financial accounts for FATCA purposes. The entities listed in Annex II of the IGA should have no reporting obligations under FATCA.

Under the IGA, Malta Financial Institutions having a reporting obligation (Reporting Malta Financial Institutions) are required to disclose details of their US Reportable Accounts to the Maltese Competent Authority. The Maltese Competent Authority will then forward this information to the US Competent Authority within nine months after the end of the calendar year to which the information relates.

The IGA specifically addresses legal impediments to compliance, such as local data protection and privacy legislation and other types of restrictions which would typically be invoked so as not to divulge tax related information between two jurisdictions.

### Identification

Both the US Final Regulations as well as the IGA require each Reporting Malta Financial Institution to identify all account holders, in order to determine which are its US Reportable Accounts and which are those accounts held by Nonparticipating Financial Institutions. Specific procedures and documentation requirements are provided in Annex I of the IGA for this purpose.

### Reporting

The information required to be reported to the Maltese Competent Authority will be substantially similar to that required under the US Regulations and covers information about:

- US Reportable Accounts and Recalcitrant accounts ("non-compliant account holders"); and
- All payments made during calendar years 2015 and 2016 to Nonparticipating Financial Institutions.

Furthermore, information in relation to payments effected by a Reporting Malta Financial Institution to a Nonparticipating Financial Institution of US Source Withholdable Payments would need to be provided to the immediate payor of such US source payments for reporting and withholding to be effected at the level of such payor.

### Withholding

Though the purpose of FATCA is not to collect a withholding tax, withholding is enforced to incentivise financial institutions and other impacted parties to comply with FATCA.

In terms of the IGA, a Malta Financial Institution should suffer withholding tax only if the US treats such financial institution as a Nonparticipating Foreign Financial Institution (NPFFI). This may occur when the Malta Financial Institution has not resolved any identified instances of non-compliance within 18 months of first receiving notification from the US.

Through the IGA, a Reporting Malta Financial Institution that makes a payment of, or acts as an intermediary with respect to, a US Source Withholdable Payment to any NPFFI, is not required to effect withholding at its level (except in case of certain payments made by a Malta Financial Institution that acts as a withholding qualified intermediary, withholding foreign partnership or withholding foreign trust). However the Malta Financial Institution is required to provide to any immediate payor of such US Source Withholdable Payment the information required for withholding and reporting to occur with respect to such payment.

A Reporting Malta Financial Institution is not required to withhold tax with respect to a Recalcitrant account if such financial institution reports to the Maltese Competent Authority the account information required in terms of the IGA.

## Next Steps

Now that the IGA between the US and Malta has been signed, the next step should be for the IGA to be implemented into local legislation and guidelines.

In the meantime, Reporting Malta Financial Institutions should focus on the upcoming FATCA deadlines (mainly in relation to registration with the IRS). However prior to entering any information into the IRS on-line registration system, these financial institutions should focus on legal entity management issues such as the identification of "expanded affiliated groups" and sponsoring relationships.

Although the FATCA registration portal opened in August 2013, financial institutions cannot submit their registration as final before 1 January, 2014. A Reporting Malta Financial Institution needs to register by 25 April, 2014 to be included in the first list of registered foreign financial institutions ("FFIs") to be published by the IRS on 2 June, 2014. Although there is an extended deadline available for financial institutions covered by a Model I IGA (unless such financial institution has a branch in a non-IGA country), there may be practical advantages in being on the first list of registered FFIs.

Another important upcoming deadline for Reporting Malta Financial Institutions is 1 July, 2014 by which date the new on-boarding process should be in place.

## How can PwC help?

PwC welcomes the opportunity to meet with you to discuss our methodology and approach to help prepare you for compliance with FATCA. PwC's involvement in supporting several large financial institutions has helped us refine our methodology, develop lessons learned and success factors, and enhance tools to address FATCA.

We can provide the benefit of our experience in conducting FATCA projects, leveraging effective governance structures to accelerate our work and assessing risk frameworks within various product types, distribution channels, and administrative functions pertinent to your industry.

For more information regarding the Malta - US IGA, please contact:

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Click the link below to view PwC FATCA contacts in each country  
<http://www.pwc.com/us/en/financial-services/fatca-contacts.jhtml>

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### For more information

- The press releases by the Governments of Malta and the US can be accessed below
  - [Statement by the Government of Malta](#)
  - [Statement by the Government of the United States](#)
- Additional FATCA information can be found on the following US Government sites
  - [US Treasury FATCA resource center](#)
  - [IRS FATCA web site](#)
- For additional thought leadership regarding FATCA guidance and implementation please see PwC's [FATCA Publications archive](#).
- Access PwC's FATCA [IGA Monitor web site](#) to view an overview of signed IGAs and related IGA developments.

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