



Bill Essentials

The Tax Information Exchange Agreements Bill, 2016

An Act to repeal the Tax Information Exchange Agreements Act and replace it with a new Tax Information Exchange Agreements Act which would make provision for the implementation of agreements between Trinidad and Tobago and other States providing for the exchange of information for the purposes of taxation, to validate the sharing of personal information held by the Board of Inland Revenue or financial institutions and for related purposes.

To be introduced in: House of Representatives

To be introduced on: 9 September, 2016

To be introduced by: The Hon. Colm Imbert, MP Minister of Finance

11th Parliament

Background and Purpose of the Bill

1. The Tax Information Exchange Agreements Bill, 2016 seeks to repeal and replace the **Tax Information Exchange Agreements Act, Chap. 76:51**. It provides for the implementation of agreements between Trinidad and Tobago and other States, for the exchange of information for the purposes of taxation and to validate the sharing of personal information held by the Board of Inland Revenue or financial institutions.
2. On 5th December 2014, the Ministry of Finance and the Economy advised that the Government of Trinidad and Tobago and the United States Treasury had reached an agreement *in substance* on the terms of an Inter-Governmental Agreement (IGA). The Ministry of Finance and Economy further advised that:
 - under this agreement, foreign financial institutions would be required to report relevant information to the government and the government would then relay the information to the Inland Revenue Service; and
 - the agreement's aim was to assist the global effort against tax evasion and provide crucial clarity for financial institutions as they prepare to comply with FATCA¹.
3. On Friday 19th August, 2016, a **Model 1 Inter-Governmental Agreement (IGA)** was signed by the Honourable Mr. Colm Imbert, Minister of Finance on behalf of the Government of the Republic of Trinidad and Tobago and His Excellency Ambassador of the United States of America, Mr. John Estrada².
4. The objective of this Model 1 IGA is to improve international tax compliance through mutual assistance in tax matters based on an effective infrastructure for the

¹ Press Release, Ministry of Finance-5th December 2014. T&T is now regarded as FATCA compliant. Accessed on 7 Sep. 16

<http://finance.gov.tt/wp-content/uploads/2014/12/FATCA-Compliant.pdf>

² Press Release, Ministry of Finance-19th August 2016. Accessed 6 Sep 16.

<http://www.finance.gov.tt/wp-content/uploads/2016/08/Press-Release-Signing-of-a-Model-IA-Intergovernmental-Agreement.pdf>

automatic exchange of information. The IGA will also facilitate the implementation of the Foreign Account Tax Compliance Act (FATCA) enacted in the United States of America in 2010³.

What is the Foreign Account Tax Compliance Act (FATCA)?

- The Foreign Account Tax Compliance Act (FATCA) was enacted in 2010 by the United States (U.S.) Congress to target tax evasion by U.S. taxpayers using foreign accounts. FATCA requires foreign financial institutions to report to the U.S. Inland Revenue Service (IRS) information about financial accounts held by U.S. taxpayers, or by foreign entities in which U.S. taxpayers hold a substantial ownership interest. Following the enactment of FATCA, the U.S. Treasury published the Model IGA to improve tax compliance and to implement FATCA in various jurisdictions.

Persons Affected by FATCA

According to the U.S. IRS, the following groups are affected:

Category	Impact
U.S. Individual Taxpayers	U.S. individual taxpayers must report information about certain foreign financial accounts and offshore assets with their income tax return, if the total asset value exceeds the appropriate reporting threshold.
Financial Institutions (Globally)	<p>Foreign: A Foreign Financial Institution (FFI) may register with the IRS, obtain a Global Intermediary Identification Number (GIIN) and report certain information on U.S. accounts to the IRS.</p> <p>United States: Regarding foreign entities that do not document their FATCA status and report information about certain non-financial foreign entities, U.S. financial institutions are required to withhold 30% on certain payments.</p>
Governments	<p>Governments worldwide may be asked to enter into Intergovernmental Agreements (IGAs) to implement FATCA. This way, the reporting and other compliance burdens on the financial institutions in the jurisdiction may be simplified. Such financial institutions will not be subject to withholding under FATCA.</p> <p>All IGAs contemplate that a partner government will require all FFIs located in its jurisdiction (that are not otherwise exempt) to identify U.S. accounts and report information about U.S. accounts.</p>

³ Press Release, Ministry of Finance-19th August 2016. Accessed 6 Sep16.

Importance of FATCA and Signing the Model 1 IGA

6. On the 5th December 2014, the Ministry of Finance and the Economy , advised that:

“FATCA compliance is critical for the continued interaction of our banks and other financial institutions with their counterparts in the U.S. ...Trinidad and Tobago conducts a tremendous amount of trading and investing with the United States and non-compliance would have seriously affected our ability to continue doing so. In fact we would have been blacklisted.”⁴

7. The Model 1 IGA insulates the country from the impact of non-compliance by avoiding the risk of international sanction which can affect trading relationships and act as a disincentive for foreign investment.

8. The Model 1 IGA also addresses local legal barriers to compliance and reduces disruption to financial services as financial institutions will not have to consider closing accounts or refusing to transact with non-cooperating person or entities⁵.

Considerations

9. The Bill requires a three-fifths majority to be duly passed in both Houses of Parliament as it is inconsistent with the fundamental rights and freedoms guaranteed in **Sections 4 and 5 of the Constitution of the Republic of Trinidad and Tobago (“the Constitution”)**. One of the obligations created by the Bill is the conveyance of sensitive private information without first obtaining consent.

10. However, the Constitution allows Parliament to enact legislation which, for reasons of policy or social necessity, may require some derogation from fundamental rights and freedoms.

⁴ Media Release –Ministry of Finance and the Economy. Accessed on 6 Sep 16. “T&T is now regarded as FATCA Compliant”. <http://finance.gov.tt/wp-content/uploads/2014/12/FATCA-Compliant.pdf>

⁵ Trinidad and Tobago Chamber of Industry and Commerce. Accessed on 6 Sep16. “Demystifying FATCA”

11. In order to give effect to this bi-lateral agreement which Trinidad and Tobago has entered into with the United States, domestic legislation is required to be duly passed to incorporate the terms of the agreement and for it to have effect and be applicable in our jurisdiction.

12. There are key activities which must be considered at both the national and industry levels:

Measure	Details
Infrastructure for Reporting	The Board of Inland Revenue must be equipped for the collation of information for reporting to the IRS in its natural operations (National Level). Infrastructural change may be required to support the storage and meets the reporting requirements for FATCA related documentation (Industry Level).
Revision of legal documents	At the industry level, there is a need to review and amend if necessary, legal documentation to ensure that the burden of withholding falls on the appropriate party.
National Awareness	Members of the financial industry must develop methods to educate the general public of FATCA and what it entails (National Level).
Revision of New Accounts	FATCA requires certain information and documentation to be obtained from customers. Existing procedures have to be reviewed and new procedures have to be considered and implemented to ensure FATCA compliance (Industry Level). ⁶

Key Features of the Bill

13. Clause 3 of the Bill identifies the Minister with responsibility for finance or any such authorised person as the *competent authority* in relation to a tax information agreement.

14. Clause 4 empowers the Minister to authorise any person to act as the competent authority for Trinidad and Tobago in relation to tax information exchange agreement.

⁶ Trinidad and Tobago Chamber of Industry and Commerce Demystifying FATCA
<http://chamber.org.tt/articles/demystifying-fatca/>

15. The Tax Information Exchange Agreements Bill, 2016 will make changes to the following pieces of legislation:

The Financial Institutions Act, Chap 79:09 (FIA)

16. The Bill, via Clause 3, seeks to insert a definition of “**declared agreement**” in the FIA to mean a tax information agreement:

(i) set out in:

- **Schedule 1** - The Agreement between the Government of Trinidad and Tobago and the Government of the United States of America for the Exchange of Information with respect to Taxes; and
- **Schedule 2** –The Intergovernmental Agreement (IGA) between the Government of The Republic of Trinidad and Tobago and the Government of the United States of America to Improve International Tax Compliance and to implement FATCA;

(ii) declared by the President to be a “declared agreement” for the purposes of the proposed Tax Information Exchange Agreements Bill pursuant to section 4

17. Clause 26 of the Bill will also amend section 86(1) of the FIA by inserting a new paragraph and sub-paragraph. Clause 26 provides that if in the Inspector’s opinion, the named categories of persons have breached any requirement or failed to comply with the guidelines related to the declared agreement, then he may direct the same categories of persons to perform such acts as required to give effect to the declared agreements.

The Securities Act, Chap. 83:02

18. Similar to the FIA, the Bill will insert a definition of “**declared agreement**” in the definition section of the Securities Act.

19. The Bill will also designate a new function to the Trinidad and Tobago Securities Commission (“the Commission”) by inserting a new subparagraph, in section 7 of

the Securities Act. This subparagraph will empower the Commission to formulate, prepare and publish guidelines in respect of declared agreements.

The Insurance Act, Chap. 84:01

20. The Bill seeks to amend the **Insurance Act** by inserting a new subsection (2) in section 6A. Section 6A (2) of the **Insurance Act** will empower the Central Bank of Trinidad and Tobago or persons authorised (in writing) by the Central Bank to share information obtained by the Central Bank to give effect to FATCA.

21. The Bill will amend section 182 of the **Insurance Act** by inserting new subsections 4, 5 and 6:

- New subsection 182 (4) will empower the Central Bank to issue guidelines on any matter it considers necessary to give effect to a declared agreement.
- New subsection 182 (5) of the **Insurance Act** defines “declared agreements” in accordance with the definition assigned to “declared agreements” in section 3 of the Bill.
- New subsection 182 (6) of the **Insurance Act** will empower the Central Bank to direct persons to:
 - (i) cease and/or refrain from committing the act, pursuing the course of conduct, or committing a violation; or
 - (ii) perform such actions as the Central Bank in its opinion thinks are necessary to remedy the situation and to perform any such acts that are required to give effect to FATCA,in instances where persons fail to comply with the guidelines issued in accordance with new subsection 182 (4).

The Tax Information Exchange Agreements Act, Chap 76:51 (TIEA).

22. The Bill seeks to repeal the **Tax Information Exchange Agreements Act, Chap. 76:51** (“the TIEA”) which made provisions for the implementation of agreements between Trinidad and Tobago and other States for the exchange of information in relation to taxes and other related purposes.

23. Section 4 of the TIEA, empowered the President by Order, to declare a tax information agreement to be a “declared agreement” for the purposes of the Act. Pursuant to section 4 of the TIEA, **the Agreement between the Government of the Republic of Trinidad and Tobago and the United States of America for the Exchange of Information with Respect to Taxes** (“the 1989 Agreement”) is a “declared agreement”.
24. Notwithstanding the repeal of the TIEA, the 1989 Agreement will now form part of the Bill, as Schedule 1 to the Bill, thereby continuing to give domestic legislative force to the obligations created under the 1989 Agreement.
25. The Bill will seek to validate the past actions of the Board of Inland Revenue done pursuant to the TIEA. Clause 29 of the Bill deems “all acts or things purportedly done in good faith to have been lawfully and validly done” if the Board of Inland Revenue had the power under the TIEA to do so.

Income Tax Act, Chap 75:01

26. The Bill makes provisions for the disclosure of information by persons having any official duty or employed in the administration the **Income Tax Act, Chap 75:01. Section 4** of the **Income Tax Act** mandates all persons having any official duties or employed in the administration of the Income Tax Act to make an oath of secrecy before a Magistrate. Clause 8 (1) of the Bill authorises such persons to disclose information for the purposes of giving effect to a “declared agreement” notwithstanding having taken an oath of secrecy.
27. The Bill dispenses with the requirement for consent from individuals whose information is being disclosed for the purposes of giving effect to a declared agreement. Sections 6, 41, 42 and 46 of the **Data Protection Act** prohibits persons, organisations or public bodies that are responsible for the collection of personal information belonging to another person from disclosing such information without giving notice of the disclosure or without consent. However, Clause 8 of the Bill authorises the disclosure of information without the consent or prior knowledge of the person whose information is being disclosed.

28. Notwithstanding this, where information disclosed contrary to sections 6, 41, 42 and 46 of the **Data Protection Act** and section 6 of the **Income Tax Act** is used for purposes other than as required under the Bill or a declared agreement, that person commits an offence and is on summary conviction sentenced to a fine of thirty thousand dollars (\$30,000) and two (2) years imprisonment.

29. It should be noted that in relation to the sections 6, 41, 42 and 46 of **Data Protection Act**, only section 6 was proclaimed (**Legal Notice 2 of 2012**⁷).

Key Features of the Schedules

Schedule 1

30. The First Schedule contains nine (9) articles:

- Article 1 Object and Scope of the Agreement;
- Article 2 Taxes Covered;
- Article 3 Definitions;
- Article 4 Exchange of Information;
- Article 5 Mutual Agreement Procedure and Costs;
- Article 6 Other Applications of this Agreement;
- Article 7 Implementation;
- Article 8 Entry into Force; and
- Article 9 Termination.

Areas of Taxes in which Information may be exchanged (Article 2 Schedule 1)

Trinidad and Tobago	United States of America
<ul style="list-style-type: none">• Income tax• Corporation tax• Petroleum Profit tax• Unemployment Levy	<ul style="list-style-type: none">• Federal Income Taxes• Federal taxes on self-employment income• Federal taxes on transfers to avoid income tax• Federal estate and gift taxes• Federal excise taxes.

⁷ <http://www.news.gov.tt/archive//E-Gazette/Gazette%202012/Legal%20Notice/Legal%20Notice%20No.%202%20of%202012.pdf>

Schedule 2

31. Schedule 2 of the Bill contains ten (10) articles:

- Article 1 Definitions
- Article 2 Obligations to Obtain and Exchange Information with respect to reportable accounts
- Article 3 Time and Manner of Exchange of Information
- Article 4 Application of FATCA to Trinidad and Tobago Financial Institutions
- Article 5 Collaboration on Compliance and Enforcement
- Article 6 Mutual Commitment to Continue to Enhance the Effectiveness of Information Exchange and Transparency
- Article 7 Consistency in the Application of FATCA to Partner Jurisdictions
- Article 8 Consultations and Amendments
- Article 9 Annexes
- Article 10 Terms of the Agreement

32. Types of Information to be Exchanged (Article 2 Schedule 2)

Trinidad and Tobago	United States of America
<ul style="list-style-type: none"> • Name, address and U.S. TIN of each specified US person that is a holder of a reportable account and in the case of a Non – U.S. Entity is identified as having one or more Controlling Persons that is a specified U.S. Person the name, address, and U.S. TIN (if any) of such an entity and each such Specified U.S. Person • Account number • Name and identifying number of the Reporting Trinidad and Tobago Financial Institution • Account balance • For a Custodial Account, the total gross amount of interest, dividends and total amount of other income generated • For a Depository Account, the total amount of interest paid or credited • For an account other than a Custodial Account or a Depository Account, the total gross amount paid or credited to the account holder 	<ul style="list-style-type: none"> • Name, address and Trinidad and Tobago TIN of any person that is a resident of Trinidad and Tobago and is an Account Holder of an account • Account number • Name and identifying number of the Reporting U.S. Financial Institution • Gross amount of interest paid on a Depository Account • Gross amount of U.S. source dividends paid or credited to the account • Gross amount of other U.S. source paid income to the account.

33. Article 4 (Schedule 2) highlights the instances in which Trinidad and Tobago Financial Institutions will be deemed compliant with the Agreement. Some of these include identifying the U.S. Reportable Accounts, reporting annually to the Trinidad and Tobago Competent Authority with the required information, reports annually all Nonparticipating Financial Institutions and complying with the applicable registration requirements on the IRS FATCA registration website.
34. Article 4 also provides for specific treatment of Trinidad and Tobago deemed compliant Foreign Financial Institutions and special rules related to entities that are Nonparticipating Financial Institutions.
35. Article 10 addresses the term of the agreement. The Agreement shall enter into force on the date of Trinidad and Tobago's written notification to the U.S. that Trinidad and Tobago has completed its necessary internal procedures for the Agreement. The U.S. or Trinidad and Tobago can terminate this Agreement in writing to the other Party. Termination shall only take effect on the first day of the month following the expiration of a period of twelve (12) months after the date of the notice of termination.

Annex I -Due Diligence Obligations

36. Schedule 4 requires that Reporting Trinidad and Tobago Financial Institutions apply the due diligence procedures contained in Annex I.
37. Applying the Due Diligence Procedures will help to identify U.S. Reportable Accounts and accounts held by Non-Participating Financial Institutions. Trinidad and Tobago may permit reporting TT Financial Institutions to rely on procedures in U.S. Treasury Regulations in order to establish whether an account is U.S. Reportable Account.
38. Review procedures are detailed for pre-existing individual accounts, new individual accounts, pre-existing entity accounts and new entity accounts. In relation to pre-existing accounts, some of the review procedures include:

Accounts not required to be Reviewed, Identified or Reported	Pre-Existing Individual Accounts with a Balance or Value as at the Determination Date (Exceeding 50,000 but does not exceed \$1,000,000)	High Value Accounts –Balance or Value Exceeding \$1,000,000 as of 31 st December 2015 or the Determination Date
<ul style="list-style-type: none"> • accounts are not required to be reviewed or reported or identified unless a Reporting Trinidad and Tobago Financial Institution elects otherwise. • Pre-existing individual accounts with a balance that exceeds \$50,000 as of the date of determination. • Pre-existing individual account that is a cash value insurance contract or an annuity of \$250,000 or less as at the determination date. • Pre-existing individual account that is a cash value insurance contract or an annuity contract. • A depository account with a balance of \$50,000 or less. 	<ul style="list-style-type: none"> • an electronic record search-Reporting Trinidad and Tobago Financial Institutions must review electronically searchable data maintained by the Reporting Trinidad and Tobago Financial Institutions with specific indications –e.g. current U.S. telephone number, identification of the account holder as a U.S. citizen. • Review of the pre-existing individual accounts that are lower in value must be completed within two (2) years from the determination date. 	<ul style="list-style-type: none"> • Electronic record search • Paper record search

Annex II

39. Annex II identifies entities that shall be treated as non-reporting Trinidad and Tobago Financial Institutions and as exempt beneficial owners under the US Internal Revenue Code. These include Governmental Entities, International Organisations and the Central Bank.

40. Annex II further identifies funds that would qualify as Exempt Beneficial Owners. These funds include:

- Treaty-Qualified Retirement Fund
- Broad Participation Retirement Fund
- Narrow Participation Fund
- Pension Fund for an Exempt Beneficial Owner
- Investment Entity wholly owned by Exempt Beneficial Owners.

Another noteworthy point in Annex 2 is the identification of certain accounts that are excluded from the definition of Financial Accounts. These include certain saving accounts:

- retirement and pension accounts
- non-retirement saving account
- an estate and escrow account.

Implication for Non-Compliance

41. The potential implication of non-compliance is deduction and withholding of thirty (30) per cent tax on:

- all payments of U.S. source income (such as interest and dividends).
- US source capital gains made to non-compliant account holders (those who do not willingly and promptly provide the requested information); and
- to foreign financial institutions that did not enter into an agreement with the IRS.

Legislation Mentioned in the Bill

- Data Protection Act, Chap. 22:04
http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/22.04.pdf
- The Income Tax Act, Chap. 75:01
http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/75.01.pdf
- The Tax Information Exchange Agreements Act Chap 76:51
http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/76.51.pdf
- The Financial Institutions Act, Chap 79:09
http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/79.09.pdf
- The Securities Act Chap 82:02
http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/83.02.pdf
- The Insurance Act Chap 84:01
http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/84.01.pdf

Reference Materials

- Ministry of the Attorney General and Legal Affairs
http://www.legalaffairs.gov.tt/Laws_listing.html
- The Ministry of Finance of the Republic of Trinidad and Tobago
T&T now regarded as FATCA Compliant
<http://finance.gov.tt/wp-content/uploads/2014/12/FATCA-Compliant.pdf>
- Signing of a Model IA Intergovernmental Agreement Between the Government of the Republic of Trinidad and Tobago and the Government of the United States of America
<http://www.finance.gov.tt/wp-content/uploads/2016/08/Press-Release-Signing-of-a-Model-IA-Intergovernmental-Agreement.pdf>
- Trinidad and Tobago Chamber of Industry and Commerce
Demystifying FATCA
<http://chamber.org.tt/articles/demystifying-fatca/>
- The United States Internal Revenue Service (IRS)
<https://www.irs.gov/businesses/corporations/fatca-governments>
- The United States Department of the Treasury
<https://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx>



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