

Summary of Key Feedback Received on the Draft Income Tax Regulations and E-Tax Guide Relating to the Implementation of the Singapore-US Foreign Account Tax Compliance Act (FATCA) Intergovernmental Agreement (IGA)

1. Limit the identification and reporting of payments to a Non-Participating Financial Institution (NPFI) only to payments made with respect to accounts held by the NPFI

Feedback: The proposed Regulation 11(2) provides that the reporting is required “whether the payment is made to a non-participating financial institution as an account holder or otherwise”. The words “or otherwise” should be removed as this is inconsistent with Annex I of the IGA which only requires a Reporting Singaporean Financial Institution to determine whether payments are made to an account of a NPFI. In addition, the proposed Regulation 11(3) would be clearer with respect to its interaction with Regulation 11(2) if it is amended to clarify that the payments refer to the amounts credited to a “financial account” of the NPFI.

Response: Accepted. Regulations 11(2) and 11(3) were amended to provide that a Reporting Singapore Financial Institution is only required to report amounts paid with respect to a financial account of a NPFI.

2. Have regulation to allow Reporting Singaporean Financial Institutions to fulfil their FATCA obligations while remaining in compliance with other Singapore laws

Feedback: As the FATCA reporting regime involves data collection and disclosure, having provisions for appropriate disclosure without contravention of other Singapore laws (e.g. Personal Data Protection Act 2014, Banking Act etc) may be required.

Response: Accepted with clarification. Section 105L of the Income Tax Act already provides that the duty to provide FATCA information to IRAS prevails over any duty of secrecy or confidentiality provided in other Singapore laws and also provides for immunities for a breach of any duty of secrecy or confidentiality when Reporting Singaporean Financial Institutions comply with FATCA identification and reporting obligations in good faith.

3. Whether reporting is necessary for a preexisting account that is closed before it is reviewed

Feedback: If a preexisting account is closed before a review for US indicia is completed, the Reporting Singaporean Financial Institution (SGFI) should not be required to complete the review of the preexisting account as the contractual relationship with the account holder ceases with the closure of the account.

Response: Not accepted. Where the financial institution has identified one or more US indicia associated with a preexisting account, the financial institution may have to obtain additional documentation from the account holder to confirm whether the account is a US reportable account.

If the financial institution is unable to establish that the account is not a US reportable account by 30 June 2015 (for high value individual accounts) or 30 June 2016 (for lower value individual accounts), the IGA obliges it to report the account unless the account is excluded from being a Financial Account under Annex II of the IGA.

Where a preexisting account, with one or more identified US indicia, is closed on or after 1 July 2014 and the financial institution has no continuing contractual relationship with the account holder and is unable to contact the account holder to obtain the required documentation, the account should be treated as reportable in that reporting year.

4. FATCA Due Diligence Procedures for Accounts Held by Minors

Feedback: Respondents asked for clarification on the FATCA due diligence procedures required for accounts held by minors.

Response: For accounts held by minors, an SGFI should obtain information on both the minor and the controlling person of the minor's account (e.g. parent), including a self-certification from the controlling person on whether the account is held by a Specified US person. Obtaining such information is consistent with the applicable laws and regulatory requirements for anti-money laundering/countering the financing of terrorism (AML/CFT) of financial institutions, where beneficial owners¹ of accounts must be identified.

¹ "Beneficial owner" in relation to a customer of a financial institutions, means the natural person who ultimately owns or controls a customer, or the natural person on whose behalf a transaction is conducted or

5. Definition of Controlling Persons

Feedback: Respondents asked for clarity on the threshold for the definition of “Controlling Persons”.

Response: As stated in the IGA, an SGFI shall interpret the term “Controlling Persons” in a manner consistent with the Financial Action Task Force Recommendations. SGFIs should refer to the relevant MAS Notice on the Prevention of Money Laundering and Countering the Financing of Terrorism and the corresponding Guidelines, which include a definition of “beneficial owner”. This will be reflected in the e-Tax Guide.

6. Acceptable Self-Certification Forms

Feedback: Respondents suggested allowing SGFIs to use acceptable alternatives to the US Internal Revenue Service (US IRS) Forms W-8 and W-9.

Response: While it is not mandatory for SGFIs to use the US IRS Forms W-8 and W-9, we suggest that SGFIs use these forms as they have been endorsed by the US IRS.

7. Information Reporting of Trusts

Feedback: Respondents asked for clarity on the information to be reported in relation to trusts that are Investment Entities, particularly on the debt or equity interests in the trust held by a settlor who is a Specified US Person.

Response: In general, the information to be reported in relation to trusts that are Investment Entities include (i) equity or debt interest in the trust and (ii) trust distributions.

- (i) Equity or debt interest in the trust should be reported as the Account Balance as at 31 Dec or other appropriate reporting period, under Article 2(2)(d) of the IGA.
- (ii) Trust distributions should be reported as payments credited to the account during the calendar year or other appropriate reporting period, under Article 2(2)(g) of the IGA.

business relations are established and includes any person who exercises ultimate effective control over a legal person or legal arrangement.

The information to be reported with regard to a settlor of a trust that is an Investment Entity is set out below:-

Settlor's Status and Types of Distribution	Revocable	Irrevocable
Where settlor is not a beneficiary	i) Account Balance - Full Value of Interest in the Trust ii) Payments - Nil	i) Account Balance - Nil ii) Payments - Nil
Where settlor is a beneficiary and distribution is <u>Discretionary</u>	i) Account Balance - Full Value of Interest in the Trust ii) Payments - Amount that is paid or payable from the trust to the settlor	i) Account Balance - Full Value of Interest in the Trust ii) Payments - Amount that is paid or payable from the trust to the settlor
Where settlor is a beneficiary and Distribution is <u>Non-Discretionary</u> (or fixed interests trust)	i) Account Balance - Full Value of Interest in the Trust ii) Payments - Amount that is paid or payable from the trust to the settlor	i) Account Balance - Portion of Interest that Settlor (as a beneficiary) is entitled to ii) Payments - Amount that is paid or payable from the trust to the settlor

8. Exempt Supplementary Retirement Scheme (SRS) accounts and SRS Investment Accounts from FATCA reporting obligations

Feedback: Respondents suggested exempting SRS accounts and all investments made using SRS monies from FATCA reporting obligations.

Response: Not accepted. These accounts do not meet the US criteria for exemption. Accordingly, SRS accounts and SRS investment accounts will be subject to FATCA due diligence and reporting requirements.

9. Relationship Manager's Inquiry

Feedback: Respondents asked how a "relationship manager" is defined for FATCA purposes and how extensive the "inquiry for actual knowledge" of a Specified US person should be.

Response: The relationship manager's inquiry for actual knowledge that an account is held by a Specified US person is only applicable for pre-existing individual high value accounts. If a relationship manager knows that an account holder is a Specified US person, then the account must be reported unless it falls within the exceptions described in Annex I to the IGA, Section II(D)(5)(b).

For FATCA purposes, a relationship manager is any person who is an officer or other employee of an SGFI assigned responsibility for a given account holder on an ongoing basis. The SGFI must also ensure that it has procedures in place to be updated of any change in circumstances, which results in a change in the account holder's status, and that the relationship manager's attention has been drawn to the change.

10. Change in Circumstances

Feedback: Respondents asked for clarity on what constitutes a change in circumstances for the purpose of FATCA.

Response: A change in circumstances includes any change in or addition of information in relation to an account holder.

For example, an account holder with a pre-existing individual lower value account was reviewed by an SGFI and determined to have no US indicia in

Annex I to the IGA Section II(B)(1). Subsequently, the said account holder establishes a standing instruction to transfer funds to an account maintained in the US. This constitutes a change in circumstances with respect to the account holder, which requires the SGFI to take the measures as described in Annex I to the IGA Section II(B)(3).

If there is a change in circumstances that causes an SGFI to know or have reason to believe that the original self-certification (such as one obtained during the opening of an account) is no longer valid, the SGFI should obtain a new self-certification that establishes whether the account holder is a Specified US person. If the account holder fails to respond to the SGFI's requests for a self-certification or for other documentation to verify the account holder's status, the SGFI should treat the account as a US Reportable Account until the SGFI is given the necessary information to confirm otherwise.

11. Validity of Documentation

Feedback: Respondents suggested that self-certifications should be considered as valid indefinitely.

Response: Accepted with some conditions. Documentary evidence, including a self-certification, used to establish an account holder's status will remain valid indefinitely (save where the document specifies a date of expiry), provided that there is no change in circumstances which results in a change in the account holder's status.

12. Currency Conversion

Feedback: Respondents asked for a currency conversion rate for FATCA purposes to be prescribed.

Response: Where accounts are denominated in a currency other than the US dollar, the threshold limits to be applied (as described in Annex I to the IGA Section II(A), III(A), IV(A) and V(A)) must be converted to the currency that the accounts are denominated in.

This conversion should be done using a published spot rate for 31 December of the year being reported or in the case of an insurance contract or annuity contract, the date of the most recent contract valuation. In the case of closed

accounts, the spot rate to be used is the rate on the date the account was closed.

The method of conversion must be applied consistently. An example of acceptable published exchange rates would be those on the MAS website (<https://secure.mas.gov.sg/msb/ExchangeRates.aspx>).

13. Applicability of US Regulations

Feedback: Respondents asked if SGFIs can use definitions in the US Regulations in interpreting Singapore's FATCA Regulations and IGA.

Response: Where a definition in the IGA makes express reference to the US Regulations (such as in Article 1(1)(o) of the IGA), FIs may use the relevant definitions in US Regulations and should seek their own professional advice on the implications when doing so.

However, SGFIs are not permitted to use a definition in the relevant US Treasury Regulations in lieu of a corresponding definition in the IGA, pursuant to Article 4(7) of the IGA. SGFIs must use definitions in the Singapore's FATCA Regulations and the IGA where such definitions are expressly set out in the Regulations or the IGA.

For terms that are not expressly defined under the IGA or the Regulations, Article 1(2) of the IGA provides that the definition of such terms, in the application of the IGA by Singapore, would take reference from Singapore law unless the context otherwise requires.

14. Applicability of Deemed Compliant FFI and Exempt Beneficial Owner categories in the US Regulations

Feedback: Respondents asked if SGFIs could qualify for the Non-Reporting FFI categories found in the US Regulations, but not in the IGA.

Response: In accordance with Article 1(1)(o) of the IGA, SGFIs can qualify for the Deemed Compliant FFI and Exempt Beneficial Owner categories in the US Treasury Regulations in effect on 9 December 2014. SGFIs seeking to rely on the US Treasury Regulations for such categories should consult their legal/ tax advisor on whether they can qualify.

15. Applicability of the FFI category “Relevant Holding Companies and Treasury Centres of Financial Groups”

Feedback: Respondents asked if the abovementioned FFI category, found in the US Regulations, is applicable to SGFIs.

Response: This FFI category does not apply to SGFIs, in accordance with Article 1(g) of the IGA. However, where the entities’ business is to carry on treasury functions solely for its Related Entities that are not FIs, these entities would be considered as NFFEs as stated in Annex I (VI)(B)(4)(e) of the IGA.