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Minister Pinder Makes FATCA Announcements In House of Assembly

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NASSAU, The Bahamas -- In his contribution to the House of Assembly, on August 12, Minister of Financial Services the Hon. Ryan Pinder said that The Bahamas Government agreed that the country shall achieve compliance under the United States Foreign Account Compliance Act ("FATCA") by negotiating and entering into a Model 1 Intergovernmental Agreement (IGA) with the United States Department of the Treasury.

Minister Pinder said: "The Government of The Bahamas has also agreed to the establishment of an inter-Ministerial committee on FATCA under the leadership of the Ministry of Financial Services be established with the following mandate: to prepare an implementation strategy for FATCA, inclusive of the draft FATCA Agreement; to prepare and issue a Request for Proposals (RFP) for the development and implementation of a FATCA reporting system; to oversee aspects of the implementation of The Bahamas' FATCA compliance and to oversee necessary legislative reforms."

Minister Pinder said that FATCA was signed into United States law in 2010 through the Hiring Incentives to Restore Employment Act and came into force on January 1, 2013, with the effect of imposing new reporting requirements on financial institutions throughout the world to the United States Internal Revenue Service (IRS) with respect to certain information on persons and requires non-US entities to provide specific attestations about any US ownership interest.

"Financial institutions that do not comply with the FATCA requirements face a 30 percent withholding tax on all of their US payments and will be deemed a "non-Participating Financial Institution," he said.

"FATCA has far-reaching implications on financial institutions throughout the world and will require significant expense and training for financial institutions throughout the world," Minister Pinder added.

The Ministry of Financial Services, he said, initiated its education and private sector consultation work programme on FATCA in September 2012. In January 2013, the Ministry launched its FATCA strategy document that provided a road map to achieving FATCA compliance.

"The strategy provided an outline of the key issues and definitions related to FATCA," Minister Pinder said. "To ensure that the views of the industry were included in the work of the Ministry with respect to FATCA, the strategy also called for the installation of a small advisory working group.

"The advisory group included representatives from the private sector and the Attorney General's Office, the Ministry of Finance and the financial sector regulators."

Minister Pinder pointed out that on March 1, 2013, he led a delegation to Washington, D.C., to meet with US Treasury Department and Internal Revenue Service (IRS) officials to commence discussions on FATCA.

"I provided the US officials with a brief overview of the positive 10-year experience between the two countries with respect to the TIEA process," he said. "It was noted that The Bahamas was committed to honouring its treaty obligations."

Minister Pinder said in that initial meeting, he expressed an interest in exploring an IGA with the United States and outlined The Bahamas key concerns with respect to FATCA, namely the registration and FFI agreement requirement for trusts managed by professional trustees were extremely onerous and essentially created a trust register for all non-US trusts while US trusts were not subject to the same provisions; the extent of interaction contemplated between the IRS and the Bahamian financial firms under Model 2, including the information which could be requested and the possibility of audits by the IRS of FFIs and the process for appropriately accommodating legal challenges and jurisdictional matters.

Also among the key concerns were the possibility of a combined Model I and Model II approach, given the international nature of The Bahamas' financial sector where the head offices of various firms would be utilising a variety of compliance methods depending on their jurisdiction and the need for a regional FATCA Workshop in The Bahamas in April/May 2013.

"Notwithstanding the US government sequester at the time, as a result of sustained effort on the parts of both my Ministry and the US Treasury, plans were finalised for The Bahamas to host the first regional conference on FATCA facilitated by United States Treasury and Internal Revenue Service officials at the British Colonial Hilton Hotel," Minister Pinder said.

"The meeting attracted over 300 professionals including government and private sector officials from at least 10 Caribbean countries," he added. "In addition to the open sessions of the meeting, the Ministry had arranged for a closed door session with regional government officials and private bilateral consultations with 10 Caribbean governments."

Minister Pinder said The Bahamas met privately with the US officials before the FATCA conference on April 8, 2013. In that meeting, he continued, his Ministry forcefully and articulately advanced The Bahamas' concerns with the requirement that all trusts managed by professional trustees (even those without US interests) be required to register and enter into an FFI agreement with the IRS.

Minister Pinder added that the next day, on April 9, 2013, the US Treasury updated its FATCA exemption Annexes (Annex II) of both Model IGA agreements to include an exemption for "trustee sponsored trusts" such that a trust with a professional trustee, would be exempt from

the registration and FFI agreement requirements, where the due diligence and reporting (where there are US interests) are carried out by the professional trustee which is an FFI under FATCA.

"The significance of this amendment for The Bahamas trust industry cannot be overstated," Minister Pinder noted.

"The Bahamas also met in further bilateral consultations with the US Treasury on 10th April, 2013. In those meetings further exemptions were obtained under Model 1 for Private Trust Companies and certain Master Feeder Fund Structures under the "sponsored deemed compliant" categories".

Minister Pinder said based on his Ministry's "careful" review of the FATCA regulations, the Model Intergovernmental Agreements, consultations with the US Treasury Department and the IRS and consultations with industry, the Government of The Bahamas decided that The Bahamas adopt the Model 1 FATCA agreement without reciprocity based on the Model 1 Agreement provides the greatest level of preferential treatment in terms of exemptions for key Bahamian products; and the Model 1 should result in lower costs and reporting burdens to Bahamian FFIs.

Minister Pinder added that, while Model 1 requires that a reporting infrastructure be developed within the Competent Authority, such an infrastructure might be necessary in the long run given international developments in tax cooperation.

"Additionally, the Government has been advised that establishing such a reporting infrastructure should not be prohibitively expensive," Minister Pinder said.

Both agreements pierce the veil of confidentiality with the aim of facilitating tax compliance with a foreign tax authority, he pointed out.

"However, Model 1 provides the greatest control for The Bahamas Government and its financial institutions over interactions between the IRS and Bahamian financial institutions," Minister Pinder said. "Model 1 further ensures that the directives for FATCA compliance is based on Bahamian implementing law."