



**Guideline on the Implementation of the
Tax Information Exchange Agreements
(United States of America) Act, 2017**

September 2017

Table of Contents

1.	BACKGROUND.....	3
2.	INTRODUCTION	3
3.	APPLICATION AND SCOPE	4
4.	PURPOSE OF THE GUIDELINE.....	4
5.	DEFINITIONS OF KEY TERMS	5
6.	CLASSIFICATION AND REGISTRATION REQUIREMENTS.....	7
7.	KEY ELEMENTS OF A COMPLIANCE FRAMEWORK	7
8.	DUE DILIGENCE REQUIREMENTS	8
9.	REPORTING REQUIREMENTS	8
10.	USE OF THIRD PARTY SERVICE PROVIDERS.....	9
11.	RESPONSIBLE OFFICER AND / OR POINT OF CONTACT	9
12.	INTERNAL AND EXTERNAL AUDIT	10
13.	RECORD KEEPING REQUIREMENTS	11
14.	TRAINING OF STAFF.....	11
15.	CONFIDENTIALITY OF CUSTOMER INFORMATION	12
16.	NON-COMPLIANCE AND ENFORCEMENT	12

1. BACKGROUND

1.1. General

The Foreign Account Tax Compliance Act (FATCA) is a United States (US) tax law designed to combat offshore tax evasion by US persons. It was signed into US law on March 18 2010, became effective July 1, 2014 and requires foreign financial institutions¹ (FFIs) to provide information on US Reportable Accounts held with the FFI to the US Internal Revenue Service (IRS). FATCA seeks to promote cross border compliance with US tax requirements by implementing an international standard for the automatic exchange of information related to US taxpayers. Non-compliance with FATCA imposes, *inter alia*, a 30% withholding tax on FFIs and US persons and has the potential to compromise correspondent banking relationships with US banks.

1.2. Trinidad and Tobago Intergovernmental Agreement

The Government of Trinidad and Tobago signed a Model 1A Inter-Governmental Agreement (Declared Agreement)² with the United States of America (US) on Friday August 19th 2016 and brought the Declared Agreement into the laws of Trinidad and Tobago by repealing and replacing the 1989 Tax Information Exchange Agreements Act, Chap. 76:51 with the Tax Information Exchange Agreements (United States of America) Act, 2017 (TIEAA).

The TIEAA provides for the automatic reporting and exchange of information on an annual basis in relation to US Reportable Accounts held in Reporting Financial Institutions in Trinidad and Tobago by US persons.

Under the provisions of the TIEAA, Reporting Financial Institutions must provide the Trinidad and Tobago competent authority, namely the Board of Inland Revenue (BIR), with the required information. The BIR will in turn forward the information to the Competent Authority in the US, namely the IRS.

2. INTRODUCTION

The TIEAA, which was enacted on March 20, 2017, makes provisions for the implementation of the Declared Agreement for the exchange of information for the purposes of taxation.

In accordance with Section 36(dd) of the Central Bank Act, Chap. 79:02 (as amended)³, the Central Bank of Trinidad and Tobago (Central Bank/Bank) is responsible for the supervision of financial institutions and insurance companies on the implementation of a Declared Agreement. The Central Bank is empowered pursuant to Section 10(1)(e) of the Financial Institutions Act, Chap 79:09 (FIA) (as amended) and Section

¹ In the context of FATCA, a foreign financial institution is any non-US financial institution.

² Refer to Schedule 2 of the TIEA Act, 2017.

³ Section 25 (b) (iii) of the TIEAA amends section 36 of the Central Bank Act, Chap. 79:02. The TIEAA also amends the Financial Institutions Act, Chap 79:09 and the Insurance Act Chap. 84:01 to allow the Central Bank to issue guidelines to give effect to a declared agreement and to issue compliance directions to enforce compliance with the guidelines.

215 of the Insurance Act, Chap 84:01 (IA) (as amended), to issue guidelines to give effect to a Declared Agreement. Similar amendments were made to the Securities Act, Chap. 83:02 to allow the Trinidad and Tobago Securities and Exchange Commission (TTSEC) to issue guidelines and compliance directions to their regulated entities to give effect to a Declared Agreement.

Given that some Financial Institutions are also registered with the TTSEC, collaboration will be required among the Central Bank, the TTSEC and the BIR to give effect to the TIEAA and the Declared Agreement.

Consequently, this Guideline seeks to provide Financial Institutions with guidance as to what is required to ensure compliance with the reporting requirements of the TIEAA.

3. APPLICATION AND SCOPE

This Guideline applies to all Financial Institutions.

Financial Institutions should be aware that their overseas branches and subsidiaries will be subject to the laws of the respective jurisdiction as it pertains to the exchange of tax information and will, therefore, not be subject to this Guideline. However, it is expected that Financial Institutions will ensure that their overseas branches and subsidiaries comply with the relevant laws and regulations in their respective jurisdictions.

4. PURPOSE OF THE GUIDELINE

The purpose of this Guideline is to provide guidance to Financial Institutions for the implementation of, and on-going compliance with, the reporting requirements under the TIEAA and includes guidance on the:

- a) establishment of an adequate compliance framework;
- b) implementation of effective policies, procedures and controls; and
- c) appointment of a Responsible Officer.

The main responsibilities of the Central Bank in respect of this Guideline include:-

- a) reviewing Financial Institutions' compliance with this Guideline through onsite examinations and off-site surveillance. This will comprise, *inter alia*, reviewing the compliance framework, including policies and procedures, of all Reporting Financial Institutions to determine its adequacy;
- b) taking regulatory action against Financial Institutions and individuals⁴ for failure to comply with this Guideline; and

⁴ These individuals include officers, other employees and agents of insurance companies or a director of officer of a licensee

- c) sharing information with the BIR and TTSEC as required for the purpose of giving effect to the TIEAA.

5. DEFINITIONS OF KEY TERMS

"Account Holder" means —

- a) the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account and does not include a person holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor or intermediary; or
- b) in the case of a cash value insurance contract or an annuity contract, any person entitled to access the cash value or change the beneficiary of the contract and where no person can access the cash value or change the beneficiary of the contract, any person named as the owner in the contract and each person with a vested entitlement to payment under the terms of the contract;

"Board of Directors" means the Board of Directors of a Financial Institution;

"Board of Inland Revenue" means the Board of Inland Revenue or BIR established by section 3 of the Income Tax Act, Chap. 79:09;

"Controlling Persons" means an individual who exercises control over an entity as defined in section 9(1) of the TIEAA;

"Declared Agreement" means the IGA as defined in section 9 of the TIEAA;

"Entity" means a legal person or legal arrangement such as a trust;

"Financial Account"⁵ means an account maintained by a Financial Institution as defined in the TIEAA;

"Financial Institution" means an (i) institution licensed or permitted under the FIA or (ii) Insurance Company registered under the IA.

"Non-Financial Foreign Entity" or **"NFFE"** has the same meaning as defined Annex I, Sections VI.B. 2 of the Declared Agreement which is reproduced in Schedule 2 of the TIEAA;

"Non-Participating Financial Institution" means any non-participating financial institution or a Financial Institution deemed to be a non-participating financial institution under Schedule 2 of the TIEAA;

⁵ For the purposes of the TIEAA and this Guideline, all dollar amounts are in US dollars.

"Non-Reporting Trinidad and Tobago Financial Institution" means any Trinidad and Tobago Financial Institution that is described in Schedule 2 of TIEAA as a Non-Reporting Trinidad and Tobago Financial Institution or that otherwise qualifies as a deemed-compliant Financial Institution or an exempt beneficial owner under relevant US Treasury Regulations in effect on the date of signature of the Declared Agreement, hereinafter referred to as a **"Non-Reporting Financial Institution"**;

"Non-US Entity" means an Entity that is not a US Person;

"Point of Contact" means an individual authorized by a Financial Institution to submit the information required under the TIEAA, to the BIR;

"Reporting Trinidad and Tobago Financial Institution" means any Trinidad and Tobago Financial Institution that is not a Non-Reporting Trinidad and Tobago Financial Institution, as defined in Section 9(1) of the TIEAA, hereinafter referred to as a **"Reporting Financial Institution"**;

"Responsible Officer" means a manager or official locally employed at managerial level of a Financial Institution and designated by the Financial Institution to perform the functions and duties set out under Section 11.5 in accordance with Section 11.1(i) of this Guideline;

"Sensitive Personal Information" has the same meaning as assigned under section 9(1) of the TIEAA;

"Specified US Person" means a US Person as defined in section 9(1) the TIEAA;

"US Person" means a citizen of the United States of America or resident individual, a partnership or corporation organized in the United States of America or under the laws of the United States of America or any State thereof, a trust if—

- a) a court within the United States of America would have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of the trust; and
- b) one or more US Person has the authority to control all substantial decisions of the trust, or an estate of a decedent that is a citizen or resident of the United States of America; and

"US Reportable Account" means a Financial Account maintained by a Reporting Financial Institution and held by one or more Specified US Persons or by a Non-US Entity with one or more Controlling Persons that is a Specified US Person. Notwithstanding the foregoing, an account shall not be treated as a US Reportable Account if such account is not identified as a US Reportable Account after application of the due diligence procedures in Schedule 4 of TIEAA.

6. CLASSIFICATION AND REGISTRATION REQUIREMENTS

- 6.1 Each Financial Institution shall conduct an assessment, taking into account the requirements under Schedule 3 of the TIEAA, in the format shown in Appendix 1 of this Guideline, to determine its classification and confirm whether it:
- i. is a financial institution as defined in Section 9(1) of the TIEAA or a Non-Financial Foreign Entity;
 - ii. is a Reporting Financial Institution or Non-Reporting Trinidad and Tobago Financial Institution;
 - iii. is required to register and obtain a Global Intermediary Identification Number with the IRS;
 - iv. in the case of a Financial Institution, has any obligations under the TIEAA; and
 - v. in the case of a Reporting Financial Institution, it has met certain requirements under this Guideline.
- 6.2 Each Financial Institution shall submit written evidence of the assessment referred to at Section 6.1 and resulting classification to the Central Bank, in the first instance by November 30th 2017, and in the event of a change in the classification of the Financial Institution, within 30 days of when the change occurs. Where the Financial Institution is also registered with the TTSEC, the written evidence of the assessment should be submitted also to the TTSEC.
- 6.3 The written evidence of the assessment referred to at Section 6.2 shall be signed by the Chief Executive Officer of the Financial Institution, or any such person acting in a similar position;
- 6.4 Further to Section 6.1, each Financial Institution shall comply –
- i. with the applicable registration requirements of the IRS for the purposes of the Declared Agreement; and
 - ii. In the manner that the IRS may from time to time require which may include submissions by electronic means.

7. KEY ELEMENTS OF A COMPLIANCE FRAMEWORK

- 7.1 Reporting Financial Institutions will be required to implement a robust compliance framework to ensure compliance with the TIEAA. The compliance framework shall be documented and approved by the Board of Directors.
- 7.2 The compliance framework referred to at Section 7.1 shall include establishment of appropriate policies, procedures, systems and controls for the following: –
- i. identification of US Reportable Accounts using the due diligence obligations required under Schedule 4 of the TIEAA;
 - ii. processing of Sensitive Personal Information, with or without the consent of the Account Holder, as required under the TIEAA;
 - iii. compliance with reporting requirements to the BIR in accordance with the TIEAA;

- iv. transmission of information to the BIR in accordance with the reporting requirements and timelines required by the BIR and the TIEAA;
- v. reporting to the Board of Directors on submissions to the BIR as well as any queries and/or instances of non-compliance;
- vi. corrective action regarding minor or administrative errors or areas of significant non-compliance as outlined in Schedule 2, Article 5 of the TIEAA;
- vii. internal auditor testing for compliance with the Guideline and TIEAA;
- viii. retention of records and other information in accordance with Section 13.1 of this Guideline;
- ix. adequate safeguards for confidentiality of data submissions; and
- x. ensuring the appropriateness of the information technology systems and the integrity of the data to be submitted to the BIR.

8. DUE DILIGENCE REQUIREMENTS

- 8.1 A Reporting Financial Institution shall establish and maintain arrangements that are designed to identify US Reportable Accounts and Financial Accounts held by Non-participating Financial Institutions.
- 8.2 These arrangements shall –
 - i. identify payments made by the Financial Institution to a Non-Participating Financial Institution;
 - ii. identify Financial Accounts held by a Non-US entity with one or more Controlling Person that is a Specified US Person; and
 - iii. apply the due diligence procedures set out in Schedule 4 of the TIEAA.

9. REPORTING REQUIREMENTS

- 9.1 Subject to section 9.2, where a Financial Institution has determined that it has reporting obligations under the TIEAA following the assessment at section 6:
 - 9.1.1 the Reporting Financial Institution shall, in respect of the first reporting year 2014 and every following calendar year, report to the BIR on -
 - i. Sensitive Personal Information on an Account Holder in respect of a US Reportable Account within nine months after the end of the calendar year to which the Sensitive Personal Information relates;
 - ii. the names of Non-participating Financial Institutions to which any payments have been made and the total amounts of those payments for the years 2015 and 2016, within nine months after the end of the calendar year;
 - 9.1.2 The information required to be reported by a Reporting Financial Institution is set out in Schedule 2 Article II of the TIEAA;
 - 9.1.3 The report referred to in Section 9.1.1 shall be submitted electronically in a form and manner as may be determined by the BIR.

- 9.2 If a Reporting Financial Institution applies the due diligence procedures for a particular calendar year and no account is identified as a US Reportable Account, the Reporting Financial Institution shall file a nil report to the BIR, within nine months after the end of the calendar year.
- 9.3 A Reporting Financial Institution shall notify an Account Holder in respect of a US Reportable Account, that Sensitive Personal Information relating to that person which was required to be reported, has been reported to the BIR and must do so by January 31 in the following calendar year.
- 9.4 A Financial Institution shall notify the BIR and the Central Bank if there is a change in its registration status with the IRS, including if it ceases to be registered, within 30 days of such change.

10. USE OF THIRD PARTY SERVICE PROVIDERS

- 10.1 A Financial Institution may use a third party service provider to perform due diligence procedures, to the extent provided in relevant US Treasury Regulations.
- 10.2 Where a Financial Institution uses a third party service provider, the Financial Institution shall obtain the consent of the customer to share his/her information with the service provider.
- 10.3 A Financial Institution must inform the Central Bank of its decision to use a third party service provider as allowed in Section 10.1, within 30 days of entering into an agreement with the third party service provider, and provide information on the measures taken to ensure confidentiality of information.
- 10.4 Where a third party service provider is used, the Financial Institution –
- i. shall at all times, have access to and be able to produce the records and documentary evidence used to identify and report on US Reportable Accounts;
 - ii. is responsible for any failure of the third party service provider to carry out its obligations;
 - iii. shall be responsible for the confidentiality of any information transmitted to the third party provider.

11. RESPONSIBLE OFFICER AND / OR POINT OF CONTACT

- 11.1 Every Reporting Financial Institution shall, for the purpose of ensuring compliance with the reporting requirements of the TIEAA:-
- i. designate a manager or official employed at managerial level as the Responsible Officer ;
 - ii. designate a Point of Contact for the purpose of conducting activities at 11.4; and
 - iii. notify the BIR and the Central Bank of the name, designation and contact details of the Responsible Officer and Point of Contact.

- 11.2 The Responsible Officer and Point of Contact may be one and the same person.
- 11.3 A Reporting Financial Institution shall ensure that the Responsible Officer and Point of Contact receive appropriate training to enable him to perform his duties adequately.
- 11.4 The Point of Contact must:
- i. report to the BIR, as required under Section 9; and
 - ii. facilitate communication between the Reporting Financial Institution and the BIR.
- 11.5 The Responsible Officer shall function as the official liaison with the Central Bank and ensure -
- i. the policies and procedures of the Reporting Financial Institution, required for compliance with the reporting requirements of the TIEAA, are in place;
 - ii. the accuracy and timeliness of all data submissions to the BIR;
 - iii. continuous compliance with the Reporting Financial Institution's compliance framework;
 - iv. the Reporting Financial Institution complies with the applicable registration requirements on the IRS FATCA registration website;
 - v. queries from the BIR and the Central Bank are responded to in such time as may be required;
 - vi. self-assessments referred to at Section 6.1 are conducted ; and
 - vii. there is reporting to the Board of Directors, at least annually, on the Reporting Financial Institution's compliance framework, deficiencies in its compliance framework and all incidents of non-compliance with the requirements of the TIEAA.
- 11.6 The Reporting Financial Institution must ensure that the Responsible Officer, Point of Contact and other relevant employees have timely access to customer data, records and relevant information to enable them to -
- i. comply with the reporting requirements under the TIEAA;
 - ii. report to its Board of Directors, the BIR and the Central Bank as appropriate; and
 - iii. address queries and/or instances of non-compliance.

12. INTERNAL AND EXTERNAL AUDIT

- 12.1 Internal auditors of the Reporting Financial Institution should perform reviews, at least annually, to ensure that the Financial Institution's compliance framework adheres to the requirements of the TIEAA and this Guideline. Such reviews should include a review of the process for capturing information on US Reportable Accounts to be submitted to the BIR.
- 12.2 Internal auditors should also follow up routinely to ensure that recommendations made by the Reporting Financial Institution's external auditors, the BIR and the Central Bank are acted upon in a timely manner.
- 12.3 The external auditor shall evaluate the Reporting Financial Institution's compliance with the TIEAA and this Guideline at least once every three years and submit an external audit report with recommendations

to the Central Bank and the Reporting Financial Institution's Board of Directors within four (4) months of the Reporting Financial Institution's year end.

13. RECORD KEEPING REQUIREMENTS

- 13.1 To facilitate compliance with reporting requirements of the TIEAA, Reporting Financial Institutions should retain for a period of six years, all books, documents and other records, including those stored by electronic means, which relate to the information required to be reported to the BIR for the purposes of the TIEAA.
- 13.2 Records should be retained in a format, including electronic, scanned or microfilm, that would facilitate reconstruction of information to comply swiftly with information requests from the BIR.
- 13.3 Each Reporting Financial Institution is required to maintain a record of all queries and/or instances of non-compliance and corrective actions taken to address them.

14. TRAINING OF STAFF

- 14.1 Reporting Financial Institutions are required to ensure that its directors, Responsible Officer, Point of Contact and relevant staff are made aware of their obligations in respect of the reporting requirements of the TIEAA, including the requirements concerning customer due diligence.
- 14.2 Training should be targeted at all relevant employees, with emphasis on the Responsible Officer as well as the compliance and audit staff.
- 14.3 At a minimum, a Reporting Financial Institution is required to:
 - i. develop an appropriately tailored training and awareness programme;
 - ii. document its approach to training;
 - iii. ensure that staff involved with screening customers or obtaining customer data are aware of the reporting requirements of the TIEAA;
 - iv. establish and maintain a regular schedule of new and refresher programmes for the different types of training required for relevant staff; and
 - v. provide all relevant staff with reference manuals/materials that outline their responsibilities and the Financial Institution's policies. These should complement rather than replace formal training programmes.

15. CONFIDENTIALITY OF CUSTOMER INFORMATION

The Reporting Financial Institution shall, in respect of any information received with regards to the TIEAA, ensure that the information is –

- i. treated as confidential;
- ii. afforded the necessary safeguards as may be required for the protection of personal data; and
- iii. only disclosed to an authority that is legally entitled to the information, who shall use the information solely to fulfil its obligations under the TIEAA.

16. NON-COMPLIANCE AND ENFORCEMENT

16.1 The Central Bank may take such regulatory measures, as may be allowed under the FIA and IA, to ensure compliance with this Guideline, including, but not limited to, on-site examinations to assess the adequacy/ effectiveness of the Reporting Financial Institution's compliance framework.

16.2 Additionally, if the BIR indicates that:

- i. in the case of a Financial Institution licensed or permitted under the FIA, the Financial Institution or its controlling or significant shareholder, director or officer; or
- ii. in the case of an Insurance Company, the Financial Institution, its officer, employee or agent,

failed to take such actions as may be necessary to give effect to or comply with the TIEAA, the Central Bank may issue compliance directions as may be necessary to rectify the non-compliance.

16.3 When considering the appropriate intervention action or combination of actions needed to address potential concerns or non-compliance with this Guideline, the Central Bank will consider, *inter alia*:

- i. the nature and extent of the non-compliance;
- ii. whether there are a number of deficiencies which, when considered collectively, indicate a pattern of non-compliance;
- iii. the extent to which the Board of Directors, Responsible Officer or any other officer acted in such a way to contribute to or further non-compliance; and
- iv. any corrective measures undertaken by the Financial Institution.

16.4 A Financial Institution is required to immediately notify the BIR and Central Bank of any matter arising that would impede its ability to comply with this Guideline or the reporting requirements under the TIEAA and its plan to address this deficiency.

16.5 Compliance directions issued by the Inspector of Financial Institutions of the Central Bank for non-compliance with this Guideline shall require the Financial Institution to either take or not take a specified action in order to comply with the Guideline and the TIEAA.

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APPENDIX 1
TIEAA SELF-ASSESSMENT FORM

This Form is intended to assist you in identifying your entity's classification in accordance with the TIEAA and is to be used as a guide only. This Form is not a substitute for understanding the requirements and obligations of the relevant laws and must be read in conjunction with the TIEAA and the Central Bank Guideline on the Implementation of the Tax Information Exchange Agreements (United States of America) Act, 2017 (Guideline).

Section A (Fill in block letters)

1. Legal Name of the Financial Institution

2. Address of the Financial Institution

3. What is the jurisdiction of incorporation of the Financial Institution?

4. Status of Financial Institution (tick all applicable boxes)

- Licensed or Permitted under the Financial Institutions Act, Chap. 79:09
- Registered under the Insurance Act, Chap. 84:01
- Registered with the Securities Act, Chap.83:02

Section B (Tick relevant boxes)

5. With reference to the Declared Agreement, the Financial Institution is categorized as a:

- a. Financial Institution (as defined in Section 9(1) of the TIEAA) - **GO TO SECTION C**
 - Custodial Institution
 - Depository Institution
 - Investment Entity
 - Specified Insurance Company

- b. Non- Financial Foreign Entity

Section D (Tick relevant boxes)

9. For the purposes of compliance with the reporting requirements of the TIEAA, please confirm the following:

	YES	NO
i. The Reporting Financial Institution has developed and implemented a compliance framework as required under Section 7 of the Guideline	<input type="checkbox"/>	<input type="checkbox"/>
ii. The compliance framework of the Reporting Financial Institution has been documented and approved by the Board of Directors	<input type="checkbox"/>	<input type="checkbox"/>
iii. The Reporting Financial Institution has established due diligence procedures to identify US Reportable Accounts	<input type="checkbox"/>	<input type="checkbox"/>
iv. The Reporting Financial Institution has implemented a record retention policy for the information required to be reported to the BIR in accordance with Section 13 of the Guideline	<input type="checkbox"/>	<input type="checkbox"/>
v. The Reporting Financial Institution has implemented a process to notify account holders in respect of US Reportable Accounts in accordance with section 17(4) of the TIEAA	<input type="checkbox"/>	<input type="checkbox"/>

Section E

Self-Declaration:

I declare that I have examined the information on this form, to the best of my knowledge, and belief it is true, correct, and complete. I agree that I will submit a revised form within 30 days if there is any change of circumstances which will necessitate an update to the information provided in this form.

Name and designation of Chief Executive Officer	Signature:	Date:

11

