PROPOSED REGULATIONS TO HELP FINANCIAL INSTITUTIONS COMPLY WITH US FATCA

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Introduction

On 22 September 2014 the Ministry of Finance ("**MOF**"), Monetary Authority of Singapore ("**MAS**") and the Inland Revenue Authority of Singapore ("**IRAS**") proposed the draft Income Tax (International Tax Compliance Agreements)(United States of America) Regulations 2014 (the "**Regulations**") to help financial institutions ("**FIs**") in Singapore comply with the US Foreign Account Tax Compliance Act ("**FATCA**"). Under the FATCA, FIs outside the US are required to regularly submit information on financial accounts held by US persons to the US Internal Revenue Service ("US IRS") or face a 30% withholding tax on certain gross payments received from US, such as US-source dividends and interest, and gross proceeds from the sale of US stock or debt. In order to ease FATCA compliance, Singapore has substantially concluded a Model 1 Intergovernmental Agreement with the US (the "**Agreement**"), set to be released in the 4th quarter of 2014. Under the Agreement, reporting Singaporean FIs are required to report account information of US persons to IRAS. IRAS will in turn share this information with the US IRS.

A draft e-Tax guide ("**Guide**") explaining the obligations under the Regulations was also prepared to guide FIs.

The public consultation on the draft Regulations and Guide ran from 22 October to 17 October 2014 and is now closed. Please click on this link for MOF's press release and the draft Regulations and Guide.

We have set out below a brief review of the draft Regulations and Guide.

The Regulations

Who does they apply to?

The Regulations apply to FIs which are reporting Singaporean FIs. An FI refers to a custodial institution, depository institution, investment entity or a specified insurance company. The meaning of each institution is explained in regulations 5, 6, 7 and 8 respectively and includes certain Capital Markets Services licence holders or institutions exempt from holding such licences.

A reporting Singaporean FI refers to (i) any FI that is a tax resident in, or incorporated, formed or established under the laws of Singapore, excluding any branch of the FI located outside Singapore; or (ii) a branch located in Singapore of a FI that is not tax resident in, nor incorporated, formed or established under the laws of Singapore, excluding non-reporting Singaporean FIs.

Obligations

- Obligations in relation to financial accounts:
  - *Identification obligation:*Reporting Singapore FIs must establish and maintain arrangements designed to identify US reportable accounts , in relation to all financial accounts it maintains. This will include complying with the due diligence requirements set out in Annex 1 to the Agreement and ensuring records of such arrangements are kept for 5 years starting from the end of the first year such arrangements start applying to the accounts.
  - *Reporting obligation:*Reporting Singapore FIs must, starting from 2014 and for every following calendar year on or before 31 May of the following year prepare and provide to IRAS a return setting out the required information, as set out in the Agreement, in relation to every US reportable account. Such required information includes the name, address and US Taxpayer Identification Number of each specified US person that is an account holder or, in the case of a non-US entity, is identified as having one or more controlling persons that is a specified US person; account number; account balance or value and total gross amount paid or credited to the account holder during the calendar year. The FI is required to comply with the reporting obligation even if it does not maintain any reportable accounts by preparing a return stating this fact.However, an investment entity need not comply with these obligations in relation to a US reportable account maintained for units in a collective investment scheme listed for quotation on an approved exchange, provided the approved exchange itself complies with these obligations.

- Obligations in relation to payments to non-participating FI
  - *Identification and disclosure obligations:* A reporting Singapore FI must have arrangements identifying payments made in the years 2015 and 2016 to non-participating FIs, regardless of whether the payment is made to a non-participating FI as an account holder or otherwise. This rule is designed to deter non-participating FFIs from using participating FFIs as FATCA "blockers".
  - *Reporting Obligation:* Reporting Singapore FIs must, for the years 2015 and 2016, prepare an IRAS return setting out the names of the non-participating FI to whom the payments are made in each year and the total amount of those payments made to each of the non-participating FI in question. The FI is required to comply with the reporting obligation even if it does not make any payments and all returns must be submitted by 31 May of the following year which the return relates to.

Exemptions

Part 4 of the Regulations sets out certain provisions, to be read with the Agreement, determining how

certain parties and financial accounts are exempt from the reporting obligations. This includes any account maintained by an FI for an exempt beneficial owner.

The Guide

The purpose of the Guide is to provide guidance to entities, businesses and individuals affected by the Agreement and, amongst other things, explains the due diligence procedures which are required to be performed by the reporting Singapore FIs, what information is to be reported and the timeline for reporting.

The Guide also clarifies how the Agreement would apply to certain parties, including fund entities. For non-publicly traded CIS, since a fund manager is responsible for AML/CFT due diligence, the fund manager (or trustee, where the fund manager is not based in Singapore) will also be responsible for complying with the obligations under the Agreement. The fund manager or trustee may appoint a third party service provider to fulfil account identification and reporting requirements. Where a fund manager acts for funds located in a number of jurisdictions and is acting as a sponsor, the fund manager will need to act on behalf of each sponsored fund independently and, as far as IRAS is concerned, the sponsor is not required to report to IRAS in respect of funds not domiciled in Singapore.

What happens next?

MOF will publish a summary of the comments received together with their responses by December 2014. FIs should take account of certain deadlines mentioned in the Guide including 22 December 2014 being the last date to register themselves with the US IRS and obtain a Global Intermediary Identification Number.