

## Client Alert

June 2013

### FATCA Update - Japanese IGA Finalized

On June 11, 2013, the U.S. and Japanese governments finalized their intergovernmental agreement on the implementation of the provisions of the U.S. law commonly known as the Foreign Account Tax Compliance Act ("**FATCA**") by Japanese financial institutions (the "**IGA**"). It became effective on that same date.

#### Executive Summary

- The IGA expressly covers all financial institutions operating in Japan, including both locally incorporated financial institutions and the local Japanese branches of foreign financial institutions (collectively, "**Japanese Financial Institutions**").
- All Japanese Financial Institutions will be classified as either non-reporting or reporting institutions ("**Non-Reporting Japanese Financial Institutions**" and "**Reporting Japanese Financial Institutions**", respectively).
- Non-Reporting Japanese Financial Institutions will not have any reporting obligations and will not be subject to withholding under FATCA.
- All Japanese Financial Institutions that do not qualify as Non-Reporting Japanese Financial Institutions will be categorized as Reporting Japanese Financial Institutions.
- Reporting Japanese Financial Institutions must register with the U.S. Internal Revenue Service (the "**IRS**") by January 1, 2014 and implement the requirements of an FFI Agreement (as defined in the IGA).
- Each Reporting Japanese Financial Institution that registers and implements the requirements of an FFI Agreement will be treated as complying with the requirements of, and as not subject to withholding under, FATCA.

#### Non-Reporting Japanese Financial Institutions

Annex II to the IGA lists the following entities which, for the purposes of FATCA, will be treated as Non-Reporting Japanese Financial Institutions:

- Exempt beneficial owners, including:
  - ✓ the Japanese government and any wholly owned agencies / instrumentalities;
  - ✓ the Bank of Japan and any of its wholly owned subsidiaries;
  - ✓ the Japan offices of the International Monetary Fund, the World Bank, the International Bank for Reconstruction and Development, the International Finance Corporation, the Asian Development Bank and the African Development Bank;
  - ✓ certain public institutions established by law, such as the Regional

Economy Vitalization Corporation of Japan, the Innovation Network Corporation of Japan and the Organization for Restructuring Businesses after the Great Tohoku Earthquake; and

- ✓ certain pension funds.
- Deemed compliant foreign financial institutions ("**FFI**"), including:
  - ✓ certain small domestic Japanese Financial Institutions with local client bases; and
  - ✓ certain collective investment vehicles.

In order to maintain its status as a deemed compliant FFI, a qualifying Japanese Financial Institution must:

- register with the IRS and comply with the terms of its registered deemed compliant status;
- certify every 3 years that all of the requirements for the deemed compliant category have been satisfied since January 1, 2014;
- keep the IRS' confirmation of its registration as a deemed compliant FFI and its Global Intermediary Identification Number; and
- notify the IRS within 6 months of any change in its circumstances that would make it ineligible for deemed compliant status.

## Reporting Japanese Financial Institutions

All Japanese Financial Institutions that do not fall within any of the categories listed in Annex II to the IGA will be categorized as Reporting Japanese Financial Institutions.

Reporting Japanese Financial Institutions must register with the IRS by January 1, 2014 and implement the requirements of an FFI Agreement.

With respect to existing accounts held by U.S. persons, Reporting Japanese Financial Institutions must:

- request from each such account holder (i) its U.S. federal tax ID number and (ii) its consent to the Japanese Financial Institution reporting details of the account to the IRS; and
- report annually to the IRS the aggregate information required with respect to non-consenting U.S. accounts.

Furthermore, Reporting Japanese Financial Institutions may only open new accounts for U.S. persons if the U.S. account holder provides its consent in advance to the Japanese Financial Institution reporting details of the account to the IRS.

With respect to accounts of, or obligations owed to, non-participating financial institutions ("**NFI**") that exist as of December 31, 2013 and in relation to which the Reporting Japanese Financial Institution expects to pay a Foreign Reportable Amount (as defined in the IGA), Reporting Japanese Financial Institutions must:

- request from each NFI its consent to the Japanese Financial Institution reporting details of the account/obligation to the IRS for 2015 and 2016; and
- report annually for each of 2015 and 2016 the number of non-consenting NFIs to which Foreign Reportable Amounts were paid and the aggregate amount of all such payments.

For further information please contact

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Furthermore, Reporting Japanese Financial Institutions may only open new accounts for, and enter into new obligations with, an NFI on or after January 1, 2014 in relation to which the Reporting Japanese Financial Institution expects to pay a Foreign Reportable Amount to that NFI, if the NFI provides its consent in advance to the Japanese Financial Institution reporting details of the account/obligation to the IRS.

The U.S. government may also request further information from the Japanese government regarding (i) non-consenting U.S. accounts and (ii) Foreign Reportable Amounts paid to NFIs.

Each Reporting Japanese Financial Institution that registers and implements the requirements of an FFI Agreement will be treated as complying with the requirements of, and as not subject to withholding under, FATCA.

## **Exempt Accounts**

Annex II to the IGA also identifies certain accounts established in Japan by a Japanese Financial Institution that will not be reportable under FATCA, including:

- certain employee retirement savings accounts, employee housing saving accounts and employee savings accounts
- employee benefit savings insurance, employee benefit savings trusts, employee fund savings insurance and employee fund savings trusts
- certain employee or executive stock ownership plans
- certain stock ownership plans
- certain accounts or products under qualified employee or executive stock option plans
- ISA accounts
- employee retirement benefit trusts
- bankruptcy related trusts required under law for the segregation of funds
- employee stock ownership trusts
- employee stock ownership plan trusts
- specified accounts based on the Act on Transfer of Bonds, Stocks, etc.
- corporate pension insurance, contributory group annuity insurance, group endowment insurance, group whole life insurance