

## **Jwala Rambarran: Foreign Account Tax Compliance Act (FATCA) – imperial outreach or hidden opportunity**

Opening remarks by Mr Jwala Rambarran, Governor of the Central Bank of Trinidad and Tobago, at the meeting of the Council of Securities Regulators of the Americas (COSRA), Port of Spain, 29 October 2012.

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Ladies and Gentlemen,

I thank the Trinidad and Tobago Securities and Exchange Commission (TTSEC) for inviting me to speak at the Opening Ceremony of the 2012 meetings of the Council of Securities Regulators of America (COSRA) and the Caribbean Group of Securities Regulators (CGSR).

As I look across at this august gathering of securities regulators from North, Central and South America, the Caribbean and even from Europe, I am reminded of the prescient words of former U.S. President John F. Kennedy at his address to the Canadian Parliament in May 1961, "*Geography has made us neighbours. History has made us friends. Economics has made us partners, and necessity has made us allies.*"

The global economic crisis, which is now in its fifth year, has certainly made us partners. Countries cannot successfully regulate their financial markets in isolation. Going it alone is no longer a viable option. Closer international partnership between regulators has never been so important – and yet so challenging.

In my remarks this morning, I would like to first share my perspective on an issue that is not only of immediate concern to all regulators in the Americas, but also an issue that has the potential to deepen our model of engagement from that of partners to allies. I speak, of course, about the Foreign Account Tax Compliance Act, otherwise known as FATCA.

Secondly, I would briefly describe the context in which the Caribbean would have to attain FATCA compliance, if countries are so desirous.

I will end with the state of FATCA preparedness of Trinidad and Tobago, and some key messages for moving forward.

### **What is FATCA?**

Ladies and Gentlemen, since FATCA was enacted in March 2010 by the U.S. government as part of the Hiring Incentives to Restore Employment (HIRE) Act, it has generated much heated debate and has been described in rather uncomplimentary terms. FATCA has been hailed as:

*"A ticking time-bomb";*

*"An attempt to convert foreigners into unpaid IRS agents";*

*"A kind of U.S. backward imperialism".*

FATCA requires foreign financial institutions to report directly to the U.S. Internal Revenue Service (IRS) all clients who are U.S. citizens, green card holders living in the U.S. or abroad, or who are foreign entities in which U.S. taxpayers hold a substantial ownership interest.

To properly comply with these new reporting requirements, a foreign financial institution will have to enter into a special agreement with the IRS by June 30, 2013. Under this agreement, a participating foreign financial institution will be obligated to:

1. Obtain information to determine which account holders are U.S. persons;

2. Comply with verification and due diligence procedures on such account holders as required by the IRS; and
3. Report annually to the IRS on the name and address of each U.S. client, as well as the largest account balance in the year and total debit and credits of any account owned by a U.S. person or foreign entities with substantial U.S. ownership.

The penalties are steep for non-compliance. A participating foreign financial institution will be required to deduct and withhold a 30 percent tax on ALL payments of U.S. source income (such as interest and dividends) as well as U.S. source capital gains made to recalcitrant account holders (those who do not willingly and promptly provide the requested information), and to foreign financial institutions that did not enter into an agreement with the IRS.

In addition, FATCA requires U.S. citizens and green card holders who have financial assets outside of the United States exceeding US\$50,000 to report these assets to the IRS. FATCA focuses on the high net-worth individuals, the so-called "FATCATs".

If a foreign financial institution refuses to comply with these requirements, a withholding tax of 30 percent will be applied on all U.S. source income of that institution, regardless of whether or not such payment was made for the benefit of the U.S. account holder, for another client, or for the institution itself.

Foreign financial institutions, as currently drafted, may broadly include every member of the investment community and encompass banks, credit unions, custodians, asset managers, investment funds and pension fund schemes, brokers and insurance companies (where their products have an investment element).

Ladies and Gentlemen, it would be quite easy for some non-U.S. institutions to believe that they will not be affected by FATCA, as they do not have any U.S. investors. But FATCA paints with a very broad brush. The legislation is structured so that all accounts will be deemed non-compliant or „recalcitrant“ unless the institution can demonstrate it undertook a rigorous due diligence process to prove it has no U.S. account holders. Otherwise the 30 percent withholding tax will be applied. Moreover, correspondent banks everywhere may refuse to deal with a financial institution unless that institution can show it is FATCA compliant.

### **Potential impact of FATCA**

Ladies and Gentlemen, FATCA has the potential to affect every person or entity that has any interest in U.S. assets – in either capital value or income arising from these assets.

American Citizens Abroad (ACA), a Geneva-based organization representing the interests of six million Americans living abroad, launched a campaign to repeal FATCA. The ACA claims that *"FATCA is an unacceptable manifestation of U.S. financial imperialism that imposes U.S. law on the rest of the world; this can lead to systematic destabilizing of international financial markets."*

So, should we really be concerned about this so-called "ticking time bomb"?

Let me underscore that the aim of FATCA is to target those who evade paying U.S. taxes by hiding assets in undisclosed foreign bank accounts. We recognize and affirm the sovereign right of the U.S. government, as it is of any government, to collect taxes from its citizens. We also recognize that tax avoidance and tax evasion threaten the already weak revenue position of many governments.

According to a November 2011 report from the Tax Justice Network, an independent group that promotes financial transparency, governments worldwide lose more than US\$3 trillion in annual revenue because of tax evasion. This loss is equivalent to more than 5 percent of global GDP.

The report estimates that the United States is in the unpleasant position of Number One when it comes to tax evasion. The U.S. government loses some US\$377 billion a year from tax evasion by U.S.-based firms and individuals. To put this sum in perspective, it represents some 7.5 percent of total U.S. government revenue. In addition, the Euro Zone countries of Italy, Germany, France and Spain as well as the United Kingdom are estimated to each lose at least US\$100 billion in revenue every year to tax evasion.

Not surprisingly, these five countries have seen an opportunity in FATCA to counter offshore tax evasion and improve international tax compliance. They have agreed to each enter into Intergovernmental Agreements with the United States for collecting and reporting FATCA-style information to their local tax authorities. On September 14 2012, the United States and the United Kingdom announced they had signed the first bilateral agreement to implement FATCA.

### **FATCA and the Caribbean**

So, Ladies and Gentlemen, where does this leave the Caribbean?

As you may be aware, tax transparency and the fight against cross-border tax evasion have been high on the agenda of successive G-20 Summits. At the G-20 Summit held in Los Cabos, Mexico in June 2012, leaders reiterated their commitment to strengthen transparency and comprehensive exchange of tax information including through the Global Forum on Transparency and Exchange of Information for Tax Purposes and through the Multilateral Convention on Mutual Administrative Assistance. This will be mainly achieved through peer reviews of countries' compliance with internationally agreed tax standards.

It is my respectful view that adopting a robust, common set of standards may be essential to fostering global financial stability. But it is neither practical nor desirable to effect a dogmatic application of these identical standards to every country or region. Standards must be calibrated and adapted to local circumstances. This is particularly true in the Caribbean given the limitation and vulnerabilities inherent in the relatively small size of individual economies.

For some time now, Caribbean countries have had to grapple with the exercise of the asymmetrical global application of power and influence when it comes to the increased regulatory scrutiny by the advanced countries of the region's offshore financial centres, especially in respect of tax evasion and money laundering. To be fair, some of these Caribbean jurisdictions did have loosely defined regulatory and supervisory environments, but have subsequently come a long way in strengthening their capacity.

As an example, I recall 1998, when the Organization for Economic Cooperation and Development (OECD) produced a list of countries which it said would be "blacklisted" for "harmful tax competition". Caribbean countries, which were on that list, mounted a spirited response with the assistance of the Commonwealth Secretariat, forcing the OECD to relax its position in 2000.

Since then, the global financial crisis and a string of headline-grabbing fraud scandals like those involving disgraced Wall Street financier Bernard Madoff and Texas billionaire Allen Stanford have focused new attention on offshore financial centers in the Caribbean. However, no Caribbean country is currently on the OECD "gray" or "black" list of non-cooperative jurisdictions.

Now, the Caribbean region has to cope with FATCA. Quite rightfully, the Caribbean Community (CARICOM), an organization of 15 Caribbean nations and which coordinates economic policy in the region, is taking the lead on FATCA. CARICOM has created a Task Force led by Jamaica and has hired the accounting firm of PriceWaterhouseCoopers to advise on the best approach for the region on the issue. The region's strategic approach to FATCA will be on the agenda of the upcoming CARICOM Central Bank Governors Meeting to be held in Suriname in mid-November 2012.

Apart from using the joint regional machinery of the CARICOM Secretariat to advance their collective interests in FATCA, I would also encourage Caribbean countries to build alliances with other jurisdictions in the Americas that are equally affected by FATCA.

In particular, I note that the TTSEC, which is the third representative of the Inter-American Regional Committee (IARC), is in a unique position to make representations on behalf of the Caribbean to the International Organisation of Securities Commission (IOSCO). I encourage the TTSEC to use this avenue to highlight FATCA implementation issues that are of particular concern to the Caribbean region or to members within the region.

As I indicated before, no one country can do this alone. Now is the time for Caribbean countries to put their case before influential and potential allies in the G-20 such as Brazil and Canada, which together represent the Caribbean region on the Executive Boards of the IMF and the World Bank.

I believe that now is also time for the Caribbean to develop a different engagement model with China. China recently joined the Global Forum to maintain its interests in mainland China, Hong Kong and Macao. As a Vice President of the Global Forum, China may prove to be an invaluable ally to the Caribbean on implementation of standards of transparency and international tax matters, instead of being viewed solely as a non-traditional provider of aid resources to the region.

### **Trinidad and Tobago – preparedness for FATCA**

Ladies and Gentlemen, I now turn to Trinidad and Tobago's readiness for FATCA. I wish to state quite categorically that Trinidad and Tobago is not a tax haven. Trinidad and Tobago is recognized by competent institutions such as the IMF, the World Bank and the Financial Action Task Force (FATF) as a clean and transparent jurisdiction. We have taken significant steps to enhance the effectiveness of our jurisdiction in our fight against tax avoidance and tax evasion.

Indeed, at its Plenary Meeting in Paris just a week ago, FATF agreed to move Trinidad and Tobago from its list of countries with strategic Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) deficiencies.

Over the past decade, the Central Bank of Trinidad and Tobago has taken measures to enhance Know Your Customer (KYC) procedures for institutions falling under its purview. We have issued Guidelines on AML/CFT, which comply with the standards of the FATF and which eventually formed the basis for new legislation in bringing the country closer to full compliance.

In this respect, the Central Bank is one of three supervisory authorities responsible for preventing money laundering and terrorist financing, the other two authorities being the TTSEC and the Financial Intelligence Unit (FIU).

Trinidad and Tobago is party to 17 Double Taxation Treaties in force, and there are others awaiting ratification or under negotiation. We signed our first Double Taxation Treaties with both Norway and Denmark in 1969. Our Double Taxation Treaty with the United States was signed in 1971. We also have a Tax Information Exchange Agreement (TIEA) with the United States.

This should make it relatively easier to enter into Intergovernmental Agreements of the model types proposed by the United States, in which foreign financial institutions report information to authorities in their residence country and have those foreign authorities report the information to the IRS.

We recognize that several benefits may arise from concluding a FATCA-style agreement using the Intergovernmental model. It eliminates U.S. withholding on payments to our financial institutions; it identifies specific categories of our financial institutions which are deemed compliant or which present a low risk of tax evasion; it relieves our financial

institutions from terminating the account of a recalcitrant account holder; and it imposes passthru withholding on payments to other foreign financial institutions in the FATCA treaty partner or in another jurisdiction with which the U.S. has a FATCA agreement.

Based on submissions, it appears that all of our banks are ready to respond to, and comply with, FACTA requirements. However, there are varying levels of preparedness within the banking sector. Our three Canadian and the U.S.-owned banks are at the highest level of preparedness, having been part of their parents' global program of FATCA compliance. The two large local banks have initiated projects which would enable them to be well in train to comply with the FATCA requirements. The smaller banks are in the process of amending their KYC procedures to identify U.S. residents and citizens.

So, in my respectful view, there is little need for us to be unduly alarmed about FATCA. I do concede, however, that successful navigation of FATCA would entail a number of challenges for our financial institutions, including the immediate need to mount an aggressive public awareness campaign. And, of course, much more work needs to be done by several other sectors and entities in preparing for FATCA including credit unions, and the Unit Trust Corporation.

As you can appreciate, ladies and gentlemen, many of the issues surrounding FATCA go well beyond the remit of the Central Bank. For example, one key issue relates to the capacity of our Board of Inland Revenue, which would probably be the tax authority designated to conduct these operations, to cope with the requirements imposed by the proposed FATCA Partnership.

It is from this perspective that the Central Bank proposes the establishment of a Joint Working Group of key stakeholders to prepare for FATCA implementation. Among the proposed terms of reference of the Working Group would be to evaluate the impact of FATCA on the financial sector in Trinidad and Tobago, to determine a cost-effective strategy for compliance, and to advise on a promotions strategy.

The Working Group would comprise the Board of Inland Revenue, the Ministry of Finance, the Ministry of Foreign Affairs, members of the Banking Association of Trinidad and Tobago, members of the Association of Trinidad and Tobago Insurance Companies (ATTIC), members of the Institute of Chartered Accountants of Trinidad and Tobago (ICATT), the FIU, the TTSEC and the Central Bank.

## **Conclusion**

In closing, ladies and gentlemen, we must recognize that the FATCA clock is ticking, but partnership models for engagement are emerging. Whether Trinidad and Tobago settles FATCA on the basis of bilateral interventions, or through joint partnership with other Caribbean countries, we will be forcefully seeking to ensure that financial institutions in Trinidad and Tobago face no undue disadvantage from FATCA compliance.

I thank you.