

## INFORMATION SHEET 7

<b>Title:</b>	The US FATCA Agreement		
<b>Authored:</b>	December 2014	<b>Updated:</b>	-----
<b>Company:</b>	Chelco Management Services Ltd		
<b>Reference:</b>	US Treasury		

### In General

Cyprus and the United States of America signed on 2 December 2104, a Model 1 Intergovernmental Agreement (IGA) for the purpose of the application of the Foreign Account Tax Compliance Act (FATCA), effective as of 1 January 2015.

FATCA is a US tax legislation which was enacted as part of the Hiring Incentives to Restore Employment (HIRE) Act in March 2010 to prevent and detect US tax evasion and improve taxpayer compliance.

FATCA forms a new chapter of the US Internal Revenue Code and focuses on strengthening information reporting and withholding compliance with respect to US persons (as defined below) that invest through, or in, non-US entities.

### US Person

- US Citizen / Resident
- Place of Birth in the US
- Current Residential Address / communication address in the US / P.O. Box in the US
- US Telephone number
- Payment instructions to an account(s) in the US
- Power of Attorney or Proxy to person with residential address in the US

### Model 1 IGA

The partner jurisdiction agrees to report to the IRS specified information about the US accounts maintained by all relevant FFIs located in the jurisdiction.

- FFIs identify US accounts pursuant to due diligence rules contained in Annex I of the IGA
- FFIs report specified information about their US accounts to the partner jurisdiction
- The partner jurisdiction, in turn, reports such information to the IRS on an automatic basis.

- The exchange of information under Model 1 IGA may be on a reciprocal or nonreciprocal basis.
- Data Safeguarding: Jurisdictions signing a reciprocal Model 1 IGA with the United States will be asked to complete an International Data Safeguard & Infrastructure Workbook. The information in this workbook will facilitate the evaluation of safeguards and provisions regarding confidentiality, use and infrastructure effectiveness prior to exchanging information.

## Who is affected by FACTA

### 1. Foreign Financial Institutions (FFIs)

A FFI is any financial institution which is a foreign entity and is not created or organized under the laws of a possession of the United States. For that purpose an FFI is any entity that:

- (a) Accepts deposits in the ordinary course of a banking or similar business;
- (b) Holds financial assets for the account of others;
- (c) Is engaged primarily in the business of investing, reinvesting or trading in securities, partnership interests or commodities and includes Cyprus Banks (including any branch of a financial institution not resident in Cyprus, if such branch is located in Cyprus) Depository Institutions, custodians, brokers, investment funds, pension funds and insurance companies which are not exempt or deemed compliant (according to Annex II of the IGA)

### 2. Non-Financial Foreign Entities (NFFEs)

Any foreign entity (not created or organized under the laws of the United States) which does not meet the definition of an FFI. Examples of Cyprus based NFFEs may include privately held operating businesses, professional services firms and certain other non-publicly traded entities which are not involved in banking or investment management.

## FACTA Compliance

FATCA requires FFIs to employ enhanced due diligence procedures according to rules contained in Annex I of the IGA in order to identify, document and report on all US persons to the Internal Revenue Service (“IRS”).

The Cyprus reporting FFI must register with the IRS and obtain a global intermediary identification number (GIIN) and subsequently register with the Cyprus Tax Department in order to confirm their reporting status with the Cyprus Tax Authorities.

The Cyprus reporting FFI shall report all US Reportable accounts directly to the Cyprus Tax Department who in turn will exchange information with the IRS.

In addition FFIs must withhold and pay to the IRS 30% of any payment relating to US sourced income where the payment is made to either:

- A non-participating FFI; or
- Recalcitrant account holders, i.e. those who have not provided sufficient information to determine whether or not they are US persons or substantially owned by US persons

Such “withholding payments” include any sources of US income that is a fixed or determinable annual or periodical payment i.e. wages, dividends, interests, rents, royalties, or the gross proceeds from the sale of US property that is capable of producing US source interest or dividends.

The 30% withholding tax also applies to any withholding payments paid to any NFFE unless the NFFE identifies each substantial US person that owns a direct or indirect interest (more than 10%) or certifies that it has no such substantial US owners.

### Consequences of non-compliance

Most financial institutions in Cyprus, including Banks, investment firms and insurance companies are affected by FATCA and could face significant economic and reputational consequences if they fail to meet the FATCA reporting requirements.

The penalties to be imposed include a 30% withholding tax on any incoming payments relating to US sourced income. In addition, failure to comply with FATCA may involve reputational issues which could disrupt relationships with other financial institutions which are FATCA compliant.

### Benefits

The IGA greatly enhances the profile of Cyprus as a transparent IBC.

The Association of Cyprus Banks welcomed the development, announcing that this two-way exchange of information between banking institutions, via their respective states’ official tax authorities, aims at curtailing offshore tax evasion, at the same time with helping boost confidence in the two states’ banking systems.

### NOTE

The information in this document is intended as a guide only and every reasonable effort was made to ensure the accuracy and timeliness of the information. In no circumstances shall we be legally bound by any information contained in this document, and shall accept no liability in respect of loss caused by reliance on such information.

Our own in-house consultants and our network of associates in Cyprus and worldwide are at your disposal to assist you with the above.