Public Consultation on the Regulations and e-Tax Guide 2014 relating to the Implementation of the Singapore-US Foreign Account Tax Compliance Act Intergovernmental Agreement

Template for Submission of Comments – for the draft Income Tax (International Tax Compliance Agreements) (United States of America) Regulations 2014 ("Regulations")

Date Submitted:	
Name:	Association of Independent Asset Managers Contact person: Anthonia Hui, President
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Summary of feedback:	On behalf of all AIAM members, we would like to thank you MAS and MOF/IRAS for providing us such comprehensive guidelines to the new FATCA rules. Amongst other points, here is the summary of the key points of AIAM feedback and inquiry for your perusal and reply:- 1. Precise clarification is requested with regards to the exemption for investment advisors and investment managers. The investment advisor or investment manager should be exempted from reporting of any accounts that are held in the name of the client with a Financial Institution other than a Nonparticipating Financial Institution. 2. Legal persons and legal arrangements that simply hold assets of one group of related companies or the assets of an individual or a family should be exempted from being qualified as an FFI/SGFI. 3. Once a legal persons/legal arrangements that simply hold assets of one group of related companies or the assets of an individual or a family completed a self-documented declaration with one financial institution in Singapore, it should be regarded as completed the necessary declaration without having to ensure all FIs do the same

Our feedback is based on the EAM business model which structure as follows:-

1. **Clients of EAM all have their own contractual banking relationship with a or multiple of FIs**
2. **Clients of EAM will give EAM a LPOA to assist them to manage the investment activities of their bank portfolios held with such or these FIs.**
3. **The investment mandate given by these EAM Clients to EAM would either be discretionary or advisory (i.e. client driven)**
4. **EAMs will and often also manage an offshore fund (open or closed end, CIS or hedge funds) as an investment**

manager to such offshore fund entity (e.g. Cayman or Luxembourg) but may not have knowledge and responsibility to recruit or administrating investors as this normally be the work of Fund Administrator or Fund directors typically professional firms that are charged to do such work.

5. **EAM clients mostly will use an offshore private investment holding company to hold their Bank portfolios that are advised or managed by EAM. These offshore private investment holding companies are domiciled mostly in IGA 1 countries like BVI, Cayman Island etc.**
6. **EAM clients are predominantly non USA persons under the FATCA definition**
7. **EAMs do not have any infrastructure nor custodian responsibility of clients' assets as they are hold and provided by FIs of client's choice.**
8. **EAMs are either registered FMC or licenced FMC under MAS CMS**
9. **EAMs will and have responsibility of the DDC/KYC of their direct end clients' relationship and have official contract signed between EAM and clients.**
10. **EAMs will NOT book any transactions of clients through their own account or book**

If there are duplicate messages given in various points, it was because we feel necessary and for your ease of following with the feedback. Please do accept our apology for being thorough and not meant to be repetitive to waste your time and effort.

Best regards
Anthonia HUI, President Association of Independent Asset Managers, Singapore
For and on behalf of AIAM
October 17th, 2014

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Details:

No.	Amendment to Regulations[1]	Comments[2]	Proposed change to draft Regulations
	Reg. 3(3) non-reporting Singaporean financial institution	Sec. IV.D Annex II IGA read with Art. 1, para. 1(o) IGA specifies that an Investment Entity established in Singapore that is a Financial Institution solely because it (1) renders investment advice to, and acts on behalf of, or (2) manages portfolios for, and acts on behalf of, a customer for the purposes of investing, managing, or administering funds deposited in the name of the customer with a Financial Institution other than a Nonparticipating Financial Institution is considered a DCFFI and is thus not subject to registration, identification and reporting requirements. 1) AIAM fully supports this exemption. All accounts managed in this form will be assessed and reported by other reporting FIs. There is no additional value in duplicating reporting by such Investment Entities. 2) Based on the reference to Investment Entity, it must be presumed that the exemption applies to Financial Advisers as well as fund management companies ('FMCs'; licensed and registered FMCs).	2) Clarify that the exemption of sec. IV.D Annex II IGA applies to holders of a capital markets services license (for fund management) and registered fund management companies as well as to financial advisers.

	Reg. 3(3) non-reporting Singaporean financial institution	3) The exemption refers to servicing a customer with the funds deposited in the name of the customer. All providing of financial advisory and asset management services must qualify for this exemption, irrespective of the customer being a natural person, legal person, legal arrangement or other as long as the Investment Entity is not holding the funds of the customer. If the exemption does not apply to any type of customer, e.g. for funds/collective investment schemes or personal investment companies, financial institutions in Singapore will incur increased efforts and cost that put them at a disadvantage to competitors in other jurisdictions that allow for the full application of the exemption. 4) Sec. IV.D Annex II IGA indicates that an Investment Entity qualifies for the exemption, if it solely (1) renders investment advice to, and acts on behalf of, or (2) manages portfolios for, and acts on behalf of, the customer. Many, if not most, financial advisers and FMCs derive income from other fund management or wealth management activities. Limiting their activities exclusively to rendering investment advice to, and acting on behalf of, or managing portfolios for, and acting on behalf of, customers whose funds deposited in the name of the customer with a Financial Institution other than a Nonparticipating Financial Institution will limit their income and put the existence of many at risk. Singapore will become less attractive as a financial centre. 5) If the status of non-reporting SGFI would not be applicable, a financial adviser or FMC should be entitled to certify itself as Deemed Compliant FFI under the Regulations. Although it is preferable to clarify the issues above in the regulation that provides legal certainty, clarification may also be provided in the e-Tax Guide. Please see our comments on sec. 7.17 e-Tax Guide.	3) Clarify that an investment manager acting as fund manager of a Singapore fund or non-Singapore fund is considered a Non-Reporting SGFI as long it does not hold assets on behalf of customer (by acting as custodian or custodian agent). 4) Clarify that the investment adviser or investment manager may pursue other activities (e.g. PE Fund, Family Office, Advisor to wealth structure and Fund Manager to offshore funds), not exclusively the activities qualifying for the exemption. Also to remove the word "solely" from the definition as this is confusing. If necessary, a threshold can be applied. 5) Singapore based investment manager to an off-shore fund or CIS (e.g. Cayman) will only act as an investment advisor and have no other responsibility (e.g. NO managing the administrative or management affairs of the Fund, recruiting investors thus have no control or knowledge as to who are the investors), should not be automatically assumed that the SG Investment Manager will have knowledge of the investors information thus being forced to under this new regulation to have the reporting accountability of such.

	Reg. 7(1)(a)(iv)	In many instances, the assets of the investors are held in a client's own special entity, separate from the fund management company ('FMC'; see reg. 26-27 SF(LCB)R). In these instances, the proposed regulation subjects the FMC (reg. 7(1)(a)(iv)) in addition to the fund entity (reg. 7(1)(f)) to the registration, identification and reporting obligations. A duplication of the obligations and the reporting results. Singapore is striving to offer a robust and attractive framework to fund managers. The duplication of the registration, identification and reporting obligations is an operational and financial burden to the fund management industry. In other jurisdictions, only fund vehicle is subject to the identification and reporting obligations under FATCA, not the fund manager.[1] Such jurisdictions will be more attractive to fund managers. In order to maintain Singapore's competitiveness, we propose that FMCs that solely manage funds whose identification and reporting obligations are fulfilled by another entity – even if this entity is not a sponsor – to be considered non-reporting SGFIs.	Clarify that the FMC is not subject to the registration, identification and reporting requirement where it manages a fund or accounts where the fund entity (or other entity holding the accounts) is a Reporting FFI.
	Reg. 7(1)(b)	See comments on reg. 7(1)(a)(iv).	
	Reg. 7(1)(c)	See comments on reg. 7(1)(a)(iv).	

[1] For example Luxembourg.

	Reg. 7(1)(f)	Reg. 7(1)(f) FATCA Reg. qualifies any person that conducts as a business (or is managed by a person that conducts as a business) in one or more of the activities set out in paragraph 1(j)(1) to (3) of Article 1 of the Agreement, for or on behalf of a customer as an Investment Entity and thus as a FFI/SGFI. Companies and wealthy individuals often set up structures for the management of their assets as part of their succession planning, e.g. entities for treasury management and personal investment companies ('PICs'). In some cases, such companies are also exempted from holding a capital markets services ('CMS') license (see para. 5(1) of the Second Schedule of the SF(LCB)R). Where these entities simply hold assets of one group of related companies or, even more, the assets of an individual or a family, such entity should be exempted from being qualified as an FFI/SGFI. Even the requirement for a sponsor to qualify of as a DCFFI (para. 7.16 e-Tax Guide) is exaggerated for entities simply hold assets of one group of related companies or, even more, the assets of an individual or a family. Because of the cost and complexity to comply with FATCA, this will add significant amount of burden to legitimate good clients and may have an unintended consequence of client chose to relocate their banking relationship out of Singapore seeking location that may be more friendly to handle this issue. We recommend that Singapore allow such entities to confirm equity and debt interest in a self-certification. In parallel, SGFIs should be allowed to rely on the self-certification of the above mentioned entities.	Suggestion to exempt non US legal persons and legal arrangements (e.g. Private Investment Company) that simply hold assets of one group of related companies or the assets of an individual or a family, from being treated as an FFI/SGFI thus no need to register GIIN and can sign self-declaration to FIs and FMCs alike to confirm their non-US status to fulfil the FATCA requirements.

	New: Penalties	The regulations should provide clear guidance on the penalties SGFIs may incur for an infringement of their obligations under the regulations. Since this is a new regime, reasonable time and resources (e.g. assistance or funding) should be given to those firms which might be struggling to comply within their limited resources.	Suggestion to provide the range of penalties, taking into account the complexity of the regulations and the resulting challenge to fully comply with the regulations, and a grace period to rectify the errors.

1 Please quote the title as well as the relevant Section/Clause Number(s)/Page Number(s) of the draft Regulations.
2 Illustrations and diagrams can be attached as Annexes.

	Annexure II, Page 10 ***IV.D – Investment Entities that Qualify as Deemed Compliant FFIs and Other Special Rules*** An Investment Entity established in [FATCA Partner] that is a Financial Institution ***solely*** because it (1) renders investment advice to, and acts on behalf of, or (2) Manages portfolio for, and acts on behalf of, a customer for the purposes of investing, managing or administering funds deposited in the name of the customer with a Financial Institution other than a Nonparticipating Financial Institution.	1. Does the "solely" test apply only for Independent Asset Managers who are licensed and regulated under the Financial Advisers Act (FAA) or would it also apply to IAM's who hold the CMS Fund Management license under the Securities and Futures Act (SFA)? 2. Is the classification of the Investment Manager impacted by whether a discretionary mandate is exercised over the segregated accounts or a consolidated account ? 3. Would the Investment Manager qualify as a Non-	Clarify that "Customer" can also be a Fund for which the investment manager acts as Fund Manager. Clarify that Investment manager acting as Fund Manager of a Singapore Fund or non-Singapore Fund is still considered a Non-Reporting SGFI as long it does not hold assets on behalf of Customer (by acting as Custodian or Custodian agent)

		Reporting SGFI if it derives ***substantial business income (more than 20% of the income)*** from by managing segregated accounts which are not Financial Accounts for the Investment Manager? 4. Would the Investment Manager still qualify as a Non-Reporting SGFI if it derives certain minimum income from acting as Fund Manager on behalf of a Singapore CIS or non Singapore CIS ? 5. If the status of non-reporting SGFI would not be applicable, will the CMS license holder be entitled to certify itself as Deemed Compliant FFI under the Regulations?	

9.4 Review Procedures for Preexisting Lower Value Accounts (Pg 68) 9.4.2 Current US telephone number	It is common for clients to have US phone number if they travel frequently overseas for leisure. It is also a challenge to identify country of origin in jurisdictions that share same number format as the US, for example, Canada and the Cayman Island. Suggest to report only if the US number is the sole telephone number registered by the account holder.	
9.6 Enhanced Review Procedures for Preexisting Individual High Value Accounts (Pg 72) 9.6.3 The most recent documentary evidence collected with respect to the account;	How recent is considered recent? What is the validity of the most recent documentary evidence? Suggest to state that these documents(e.g. passport) are valid for the validity of the period of the passport (i.e. typically 10 years) from the date of issue. If it is tax declaration, it should be valid until the next renewal declaration is being signed if there is any update or change.	
9.6 Enhanced Review Procedures for Preexisting Individual High Value Accounts (Pg 72) 9.6.4 … the Reporting SGFI must perform a Relationship Manager Inquiry for Actual Knowledge for any High Value Account…	How extensive is the Relationship Manager Inquiry? Would the current KYC/DDC practice commonly used by Banks and FMCs be suffice? Would the call report made by the RM would be sufficient? Bearing in mind that EAM shares common client with FIs/banks and such FI/Banks will conduct the same level of DDC/KYC on the same client.	

10.6 Format for reporting to IRAS (Pg 95) 10.6.2 Reporting SGFIs are required to develop their system application to collate the required data in accordance to the XML Schema. Returns in any other format will not be accepted.	Suggest that funding be provided to assist smaller sized fund management companies if they are required to develop such system application for reporting purposes. Alternatively such reporting should be done at the bank level where they hold financial accounts of clients. The reporting will flow up from the intermediaries to the banks to reduce duplication of reporting.	

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Annexure 1 – Comparison of IGAs

Category	BVI IGA	Cayman Islands IGA	FATCA Regulations
Investment Managers / Advisors	Annexure II IV.D – Investment Entities that Qualify as Deemed Compliant FFIs and Other Special Rules An Investment Entity established in the British Virgin Islands that is a Financial Institution solely because it (1) renders investment advice to, and acts on behalf of, or (2) manages portfolio for, and acts on behalf of, a customer for the purposes of investing, managing or administering funds deposited in the name of the customer with a Financial Institution other than a Nonparticipating Financial Institution	Annexure II IV.D – Investment Entities that Qualify as Deemed Compliant FFIs and Other Special Rules An Investment Entity established in the Cayman Islands that is a Financial Institution solely because it (1) renders investment advice to, and acts on behalf of, or (2) manages portfolios for, and acts on behalf of, a customer for the purposes of investing, managing, or administering funds deposited in the name of the customer with a Financial Institution other than a Nonparticipating Financial Institution.	1.1471-5(f)(2)(v) An FFI is described in this paragraph (f)(2)(v) if the FFI meets the following requirements: (v)(A) The FFI is a financial institution solely because it is described in 1.4751-5(e)(4)(i)(A) (v)(B) The FFI does not maintain financial accounts