

Brussels, 14 May 2013

## **EBF COMMENTS ON THE FATCA XML SCHEMA V1.0 AND THE USER GUIDE**

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Reference is made to the EBF comments submitted in November and December 2012 via BIAC to the OECD and the US Treasury on the proposed FATCA XML Schema.

The EBF welcomes the efforts made by the OECD and the Treasury with a view to accommodating the comments provided by the financial industry.

Having compared the User Guide and the revised Schema, the EBF experts would like to draw the attention of the OECD and the Treasury on the comments which are set forth below.

### **1. USER GUIDE STRUCTURE**

#### **Splitting into 2 sections**

The User Guide will be used for both IGA and Final Regulations FFIs thus creating a potential confusion of information that should be reported in an IGA context or in a Final Regulations context. With this respect it would be useful to have two separate sections (one for IGA model 1 FFIs and one for Final Regulations and IGA model 2 FFIs) in order to clearly define the scope of information to be reported to the Tax Authorities.

#### **Guidance on different FATCA regimes and relevance of the provided documents**

Assuming this schema becomes the global standard for FATCA reporting being used by entities operating under the Final Regulations, Model I IGA, and Model II IGA, we would appreciate if additional guidance could be provided, specifying how this will be presented in the schema and which elements are mandatory or optional based on different FATCA regimes, to the extent the requirements differ. The “second revised draft FATCA Schema” presented for OECD conference on 11-12 February 2013 already included a 33 item list with an updated overview of the data elements to be reported (and exchanged) under FATCA (IGA Model 1), but there does not seem to be any reference to this list anymore. For this case, but also in general, we would like to have clarification, in particular as to which documents will be relevant in the future (e.g. (a) ”CTPA/CFA/TRACE(2013)1 - Overview of Data Elements Required to be Reported“, (b) “Excel Schema Overview”, (c) xsd, (d) FATCA xml schema, (e) user guide).

A final set of the following documents is considered to be relevant:

- xsd files (c) as primary source
- Complete view of the FATCA xml schema (d)

- User guide (e) including all information stemming from (c) and heralding the different requirements of each FATCA regime (Model 1, 2 and U.S. regulations).

### **Inconsistency between the xsd files and the user guide**

By comparing the document with the four xsd files, we recognized that the user guide and the data schema screenshots within the document reflect only fragments. This somehow led to misunderstandings and open questions. We strongly recommend a user guide showing the full picture in a structured way, meaning all fields, attributes, types, codes and descriptions to ensure a good readability.

Section III of the user guide introduces the complex type “OrganisationParty\_Type”. This type includes the three elements “TIN”, “Name”, and “Address”. The introduction is not consistently continued, since the sub-sections follow with “IIIa. TIN\_Type”, “IIIb. ResCountry Code” and “IIIc. Organisation”.

Another example for a structural inconsistency is shown in section IV. This respective section introduces the element “ReportingFI”, as this would be a parent type. In this case, the element “ReportingFI” is the child element of the complex parent type “Fatca\_Type”. We suggest structuring the user guide consistently throughout the document, so that, for instance, parent types in general represent main sections within the user guide, and lower elements represent sub-sections.

Additionally, the schema should be mapped with the user guide regarding hierarchy and order. If elements are repeatedly mentioned within the user guide, they should be defined only once in the very beginning of the document to maintain integrity and readability.

### **Pending questions**

As we are well aware, there are a number of issues in relation to US Forms that still need to be addressed by Treasury and IRS. As these are directly connected to the FFIs’ reporting obligations under FATCA, they need to be resolved quickly. We have listed the pending questions below:

- The Final U.S. Treasury Regulations state that reporting will be done on IRS Form 8966. Is this schema meant to also cover IRS Form 8966 reporting?
- Is this reporting meant to cover IRS Form 1042 reporting as required in the Final Regulations or solely U.S. account information and recalcitrant account reporting? Can the IRS confirm that there will be no double reporting through this reporting and the IRS Form 1042 reporting required in the Final Regulations?
- The transitional reporting obligations for payments made to NPFIs are not addressed anywhere. The information must be reported for calendar years 2015 and 2016 for payments made to NPFIs as follows, and differs under all three FATCA regimes:
  - Model I must report aggregate amount of payments
  - Model II must report aggregate foreign reportable amounts
  - Final Regulations must report aggregate foreign reportable amounts as U.S. FDAP

We reiterate our call for a tolerance for minor errors, which should not lead to financial penalties.

We would also like the US authorities to confirm whether an FFI located in one country may send several distinct reportings to accommodate operational constraints (eg. covering different lines of business), or whether the IRS will only accept one reporting from the FFI.

## 2. POSSIBILITY TO CORRECT EXISTING REPORTS

We welcome that the new schema now contains fields to correct reports already sent to the tax authorities.

Details are however needed to explain applicable rules for data correction and rejection of files eg.: - at what level of granularity will duplicative/redundant reporting be detected (at the level of FFI, message, account or flow?) ;

- at what level of granularity will rejections from the IRS occur (eg. If an account is wrongfully reported twice, is it only the account block which is rejected?) ;
- at what level of granularity shall corrections be made (eg. Shall the FFI resend the whole message again or only the block which contains the mistake)?

## 3. INCONSISTENCIES BETWEEN MANDATORY & OPTIONAL FIELDS

There are some inconsistencies between mandatory & optional fields:

- Page 4: According to the schema, only Name & Address are mandatory, whilst other fields (TIN, Nationality & BirthInfo) are considered as optional. The articulation between TIN and Birthdate is in fact still unclear for IGA Model I FIs: they must provide the Birthdate when there is no TIN. Providing one of these elements is mandatory and this is still not clearly reflected.
- We also note that in the User Guide page 4 the element "Nationality" (in "PersonParty\_Type") is indicated as being "Mandatory", whereas the nationality is not required under FATCA and should therefore be optional.
- Page 5: According to the schema, **TIN** element is optional. In the User Guide, it is considered as:
  - mandatory when the report is issued by an FI
  - optional when the report is issued by the Tax Authorities
- Page 9: According to the schema, only **Name & Address** are mandatory. **TIN** is considered as optional in the Schema.
- Page 10: According to the schema, **TIN** element is optional. In the User Guide, it is considered as mandatory.
- Page 12: According to the schema, **DocTypeIndic** element is validation/mandatory. In the User Guide, the requirement is missing.

- Page 12: According to the schema, **PaymentAmnt** element is validation/mandatory. In the User Guide, the requirement is missing.

**Our recommendation is to align the User Guide with the Schema.**

#### 4. INCONSISTENCIES BETWEEN TYPES NAMES & THE USER GUIDE

There are some other inconsistencies between the types names used in the User Guide and the Schema. It could be fine to have the same type names in both documents.

- Page 4: BirthInfo element is **sfa:TIN\_Type** in the User Guide but **sfa:BirthInfo** in the Schema (probably a mistake in the User Guide)
- Page 5:
  - TIN element is **sfa:String1MinLength\_Type** in the User Guide but **sfa:TIN\_Type** in the Schema (also used page 4)
  - TIN element, issuedBy attribute is **ISO 3166-1 Alpha 2** in the User Guide but has been defined under **iso:CountryCode\_Type** in the Schema.
  - ResCountryCode element is **ISO 3166-1 Alpha 2** in the User Guide but has been defined under **iso:CountryCode\_Type** in the Schema.
- Page 7: CountryCode element is **ISO 3166-1 Alpha 2** in the User Guide but has been defined under **iso:CountryCode\_Type** in the Schema.
- Page 8: Nationality element is **ISO 3166-1 2-digit Alpha** in the User Guide but has been defined under **iso:CountryCode\_Type** in the Schema.
- Page 10: TIN element is **sfa:String1MinLength\_Type** in the User Guide but **sfa:TIN\_Type** in the Schema (also used page 4)

**Our recommendation is to align the User Guide with the Schema.**

#### 5. COUNTRY SUBENTITY

In relation to **II.d. Address\_type - 'CountrySubentity' - p8**, it is not clear to us what is meant by 'CountrySubentity'? Can an example be provided?

#### 6. NULL ATTRIBUTE

We have difficulties to understand the new "Null" attribute to explain that some fields are not required under FATCA. Why can't we continue to use "Optional"?

Some situations are very ambiguous, for example: in the **Name\_Type**, the **FirstName** element is a Validation field and its **xnlNameType** attribute is Optional. But, the **LastName**

element is also a Validation field and its **xnlNameType** attribute is Null. Why such a difference?

Our view is that Optional was enough to cover all our requirements.

## **7. ACCOUNT REPORTING**

### **Account Balance - page 15**

No indication is given on the balance that must be provided in relation to reportable accounts that have been closed during the reference year (and that must be reported under the Model I IGA). Does IRS accept the EBF proposal to report the balance held in that account at the end of the calendar year preceding the year of closure?

### **US owners - page 15**

The following statement creates confusion for an IGA Model I reporting FI: "Leave (AccountBalance) blank if reporting about US owners of an entity that is receiving a reported payment. Instead, use the payment type codes to report the payment amount and currency." It is our understanding that (as an IGA Model I Reporting FI) when reporting on a controlling US owner (of a passive NFFE), we should report:

- In the field AccountNumber and in field AccountHolder the account number and the account holder details, respectively, of the passive NFFE which has one or several controlling US owners
- In the field SubstantialOwner the details about each of the US controlling persons
- In the field AccountBalance, the balance held in the account of the Passive NFFE with one or several controlling US owners.
- In the field Payment, the different reportable payment types made to the Passive NFFE with one or several controlling US owners.

Does the above statement mean that when reporting on a controlling US owner of a passive NFFE it is not necessary to report the account balance of the passive NFFE with one or several US controlling persons? In such a case, it should be clarified why the User Guide, in page 14, refers to the element "AccountBalance" as being for "Validation".

### **Our Proposal regarding Account Reporting**

Since reporting on Non Participating FIs is covered in both section IV b. (covering reporting on an account basis) and section IV c. (covering reporting on a pooled basis), the reporting requirements on Non Participating FIs by an IGA Model I FI should be clarified. In particular, the User Guide should:

- clearly state the way IGA Model I Reporting FI must report name and aggregate payments made to each identified Non Participating FI (in line with the requirements set out in the IGA);

- remove all ambiguity on possible duplicate reporting on Non Participating FIs by an IGA Model I Reporting FI;
- confirm how the “Account number” element should be completed (with “NAN”?) when the FI performs the transitional reporting obligations for payments made to an NPPFI which is not an account holder

## **8. POOL REPORTING**

It is further our understanding that IGA Model I Reporting FIs do NOT have to report on recalcitrant account holders or dormant accounts but only on Specified US Persons and Non Participating FFIs.

It should therefore be made clear that the different client clusters foreseen in the User Guide in section IVc (pool Report) are not to be used by IGA Model I Reporting FIs:

- o FATCA201 = Recalcitrant account holders with US Indicia
- o FATCA202 = Recalcitrant account holders without US Indicia
- o FATCA203 = Dormant Accounts
- o FATCA205 = Recalcitrant account holders that are US persons or Non-consenting U.S. accounts
- o FATCA206 = Recalcitrant account holders that are passive NFFEs

## **9. AGGREGATION BY PAYMENT TYPE**

With respect to Parts IVb. Account Report and IVc. Pool Report of the draft User Guide, it is unclear whether Reporting can be aggregated by payment types, e.g. all dividends paid to an account holder can be reported as a total in one report, or whether all dividend payments made to the account holder must be individualized. The User Guide should clarify this issue.