



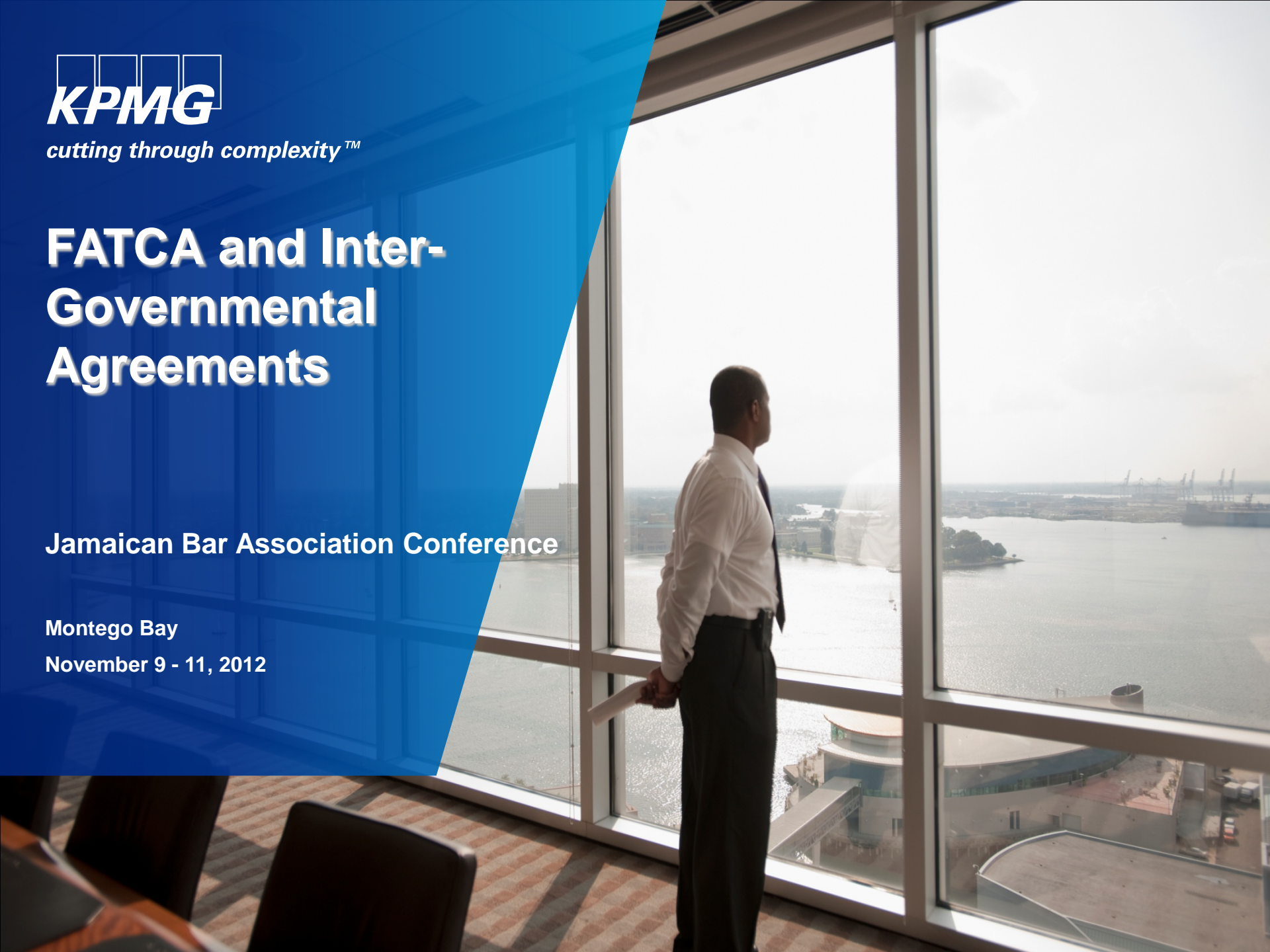
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# FATCA and Inter-Governmental Agreements

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# FATCA and Inter-Governmental Agreements

- FATCA, at its core, is a reporting tool
- US wants to know where its taxpayers keep their cash and other investments
- The concept is not new; many countries, including Jamaica, would like to know the same
- The EU has had the EU Savings Directive since 2005
- The OECD has been active in fighting harmful tax competition for many years
- Countries every day are entering to into agreements to exchange tax and other information
- So why does FATCA stand out so much?
- FATCA is US driven; it is directed at businesses (foreign), not governments; there's no give and take, it is a one-way information flow to the IRS; the businesses have to pay for doing the work; and the threat of a 30% withholding tax hangs heavy over a reporting process
- The Inter-Governmental Agreement (“IGA”) is a way to ease the blow of FATCA by, among other things, promising reciprocity in some cases and eliminating the hammer of the 30% withholding tax – it may be the future of FATCA

# The Model Inter-Governmental Agreements

- There are at least two announced Model Agreements and there may be a third one soon
- US Treasury released the Model Inter-Governmental Agreement to Improve Tax Compliance and to Implement FATCA (the “Model I Agreement”) on July 26, 2012
- The Model I Agreement has two versions: the Reciprocal version and the Non-reciprocal version
- UK became the first country to sign a reciprocal Model I Agreement on September 12, 2012
- US Treasury is expected to release a “Model II Agreement” in early October 2012

# Highlights of the Model I Agreement

- Modification of FFI Definition
  - Investment entity now includes an asset manager
  - Investment entity must invest “on behalf of a customer”
- Entry into Force
  - Agreement will enter into force on the later of January 1, 2013 or the date of notification that necessary internal procedures have been completed
  - “Necessary internal procedures” are expected to include the enactment of whatever local laws are necessary, and completion of the Competent Authority Agreement setting forth the terms of information exchange
- Modification to Limited FFI Rules
  - Limited FFI can remain in the EAG indefinitely if requirements are met
- Compliance and Enforcement
  - Minor errors will be dealt with directly between IRS and FFI; significant compliance issues will be handled under domestic law; if not resolved, FFI will become a NPFFI
  - There is no Responsible Officer certification requirement
- Increased Reliance on AML/KYC

# Is Jamaica Ready for an Inter-Governmental Agreement? Part I

- If Jamaica were to enter into a Model I Agreement, it would mean that Jamaican financial institutions would submit the FATCA information to the Jamaican government and the Jamaican government would submit the information to the US government in an automatic exchange
- This is expected to ease the administrative burden on Jamaican financial institutions since they would not have to enter into individual agreements with the IRS
- It also may be a way to work within the banking and tax privacy laws in Jamaica
- The Jamaican financial institutions would no longer be subject to the 30% US withholding tax
- They will not have to close the accounts held by recalcitrant account holders
- Jamaican financial institutions will not have to be concerned that minor non-compliance will trigger a 30% withholding tax and, in most cases, non-compliance will be addressed under Jamaican laws
- The Jamaican government will have access to information about Jamaicans who hold cash and investments in US (in the case of a reciprocal agreement)

# Is Jamaica Ready for an Inter-Governmental Agreement? Part II

- New procedures (and possibly system changes) will be required to implement the automatic exchange of information requirement
- Automatic exchange of information means that when the FATCA information is submitted to the Jamaican government, the government must consolidate the information and the information must be encrypted and sent in bundles to the US. The information when received by US will be decrypted and fed into an automatic matching process. (The reverse will be true when US sends information to Jamaica in a reciprocal agreement)
- The final agreement on the automatic exchange process will have to be negotiated with the US so that both the sender and the receiver of information are aligned
  - the IGA contemplates that the two governments would enter into an agreement which will establish the procedures for the automatic exchange of information
- The Model II Agreement (to be released in October 2012) is not expected to require automatic exchange of information; it will require exchange of information on request

# Is Jamaica Ready for an Inter-Governmental Agreement? Part III

- Jamaican (tax) laws will have to require Jamaican financial institutions to report FATCA information to the government
- New (tax) laws will have to cover potential non-compliance by Jamaican financial institutions, including the application of penalties
- Any privacy laws that may prevent such reporting will have to be modified – and supplemented with new confidentiality laws



# Open Questions

- If the IGA cannot be completed before the deadline required for financial institutions to enter into an agreement with the IRS, what should the financial institutions do in the interim?
- Can Jamaica implement automatic exchange of information including any system changes that may be required in time to sign and implement the IGA?
- Should Jamaica require financial institutions to report financial information of other foreign account holders? That is, should Jamaica extend the scope of financial reporting beyond FATCA either because other countries may require them in the future or because Jamaica needs the information for its own tax enforcement efforts?
- What will the Model II Agreement look like and should Jamaica consider the Model II Agreement instead?



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