

## The Foreign Account Tax Compliance Act (FATCA)

### What is it?

This piece of US legislation is the latest in a number of measures being introduced around the world which takes a more draconian view on matters of tax compliance and regulation.

The act is extremely wide ranging and is designed to ensure that the US Internal Revenue Service (IRS) is able to catch all overseas income and gains that should be liable to US taxation.

### The Basic Proposal

FATCA was passed in March 2010 as part of the HIRE Act.

It creates a new information reporting and withholding regime (30% for payments made to certain foreign financial institution and other foreign entities).

The FATCA rules were generally due to become effective with respect to certain payments made on or after 1 January 2013, however due to industry feedback this has been revised.

The rules are intended to increase transparency for the IRS with respect to US persons that may be investing and earning income through non-US institutions.

The primary goal of FATCA is information gathering rather than withholding tax collection.

### Foreign Financial Institution Agreement

Entering into an FFI agreement requires the FFI to:

- Obtain information on account holders that is necessary to determine if accounts are US accounts.
- Comply with any required due diligence/verification procedures.
- Report information on US Accounts.
- Deduct and withhold a 30% tax on passthru payments paid to account holders who do not supply the required information ('recalcitrant account holders'), or paid to another FFI that is not a 'participating FFI'.
- Comply with IRS information requests.
- Attempt to obtain from US accounts a waiver of applicable bank secrecy or other information disclosure limitations and close the US accounts if the waiver is not obtained within a reasonable period of time.

### FATCA Reporting for Funds

Funds are likely to be financial institutions.

Expectation is that the fund manager or administrator will report on behalf of the fund.

May be able to select on reporting financial institution for fund structures.

## Overview of Key Dates

1 January 2013 – US FI's need new account procedures in place.

31 December 2013 – Participating FFIs should have a signed agreement in place with the IRS.

1 January 2014 – FATCA withholding commences on withholdable payments.

1 July 2014 – Need to certify due diligence is complete on high value accounts.

31 March 2015 – First FATCA reporting is due.

1 January 2017 – FATCA withholding scheduled to commence on foreign passthru payments.

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