

## • FOREIGN ACCOUNT TAX COMPLIANCE ACT - ("FATCA")

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FATCA will be one of the most significant, and onerous, developments in compliance over the next couple of years. FATCA is the means by which the United States intends to make Foreign Financial Institutions ("FFIs") work for them to provide information on their US account holders or owners. The US, specifically the IRS and US Treasury Department, intend to use the information to uncover US citizens who may be holding untaxed income offshore.

The US have forgone the carrot and opted for the stick as their means of compelling FFIs to comply with FATCA's information supplying requirement. FFIs who do not enrol with the IRS and comply with FATCA will have a 30% withholding tax applied to all of their US sourced "withholdable payments". In the context of FATCA, "withholdable payments" include interest, dividends, rents and the gross proceeds from the disposition of any property that produces US Interest or dividends. Needless to say, the implications of FATCA are of great concern to FFIs across the globe.

Its effect is likely to cascade down from large multi-national institutions to small single jurisdiction trust companies. The likely impact is that non approved institutions will not be able to do business with larger banks and other multi nationals, such are the penalties determined on a look through basis. It is unlikely to therefore be an option to merely "opt-out" on the basis that you do not have US clients.

The latest development on FATCA came on 14 July 2011 when the IRS issued Notice 2011-53 confirming that "a FFI must enter an agreement with the IRS by 30th June 2013 to ensure that it will be identified as a participating FFI in sufficient time to allow withholding agents to refrain from withholding beginning on January 1st 2014". This development amounts to a one year extension on the time available before the implementation of FATCA from what had been originally planned.

FFIs will no doubt welcome the extra time to correlate the necessary information and to ensure that their compliance systems are in place to comply with FATCA from 1 January 2014. However, much is still not fully understood about FATCA. Namely, which institutions fall under the umbrella of an "FFI" and just how broad is the definition of a "US account" in relation to FATCA.

Collas Crill will be holding an in-depth seminar on the issues surrounding FATCA in Guernsey on 18 October and in Jersey on the 19 October 2011. Please contact jane.darvell@collascrill.com to book your place at either seminar.

**SEPTEMBER 2011**

**FOR MORE INFORMATION,  
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