

## ● US TREASURY RELEASES REGULATIONS FOR FOREIGN FINANCIAL INSTITUTIONS UNDER FATCA

On 8 February 2012 the US Treasury released regulations relating to the reporting and tax withholding requirements of Foreign Financial Institutions (FFIs) under the Foreign Account Tax Compliance Act (FATCA).

FATCA requires FFIs across the globe to report to the IRS on the US accounts they hold. Non-compliance with its requirements will result in a 30% withholding tax being applied to all US sourced income flowing into that FFI.

The regulations represent the most recent guidance provided on FATCA since its enactment in 2010. It has been hoped that they would provide some answers to the many questions and concerns raised by the previous guidance notes.

A chief concern amongst FFIs has been that compliance with FATCA provisions could trigger a breach of their local law. For instance, in Guernsey a direct report to the IRS of a client's personal account information is an almost certain breach of the Island's data protection law.

A joint statement issued alongside the release of the regulations by the US, France, Germany, Italy, Spain and the UK shows how the US may intend to deal with this issue. These countries have agreed to a reciprocal inter-governmental agreement to exchange bank account information on each others citizens where those citizens hold accounts in partner countries. The UK will pass on information on US accounts in the UK if the US agrees to reciprocate for UK accounts in the U.S.

The five listed countries are the only current FATCA Partner countries, but the US Treasury has suggested that it is a model that could be expanded to other countries. FATCA Partners will be required to enact any necessary legislation to guarantee that FATCA provisions can be enforced without contradicting local law.

FFIs based in FATCA Partner countries will enjoy a range of benefits that other FFIs will not, including: reporting to their respective government rather than directly to the IRS; avoiding the need to enter a direct FFI agreement with the IRS; no subsection to withholding tax on payments made to them; and the chance that their FATCA Partner country may have negotiated for their specific category of FFI to be deemed compliant with FATCA without the need for IRS registration.

Becoming a FATCA Partner would offer obvious benefits for the FFIs located in Guernsey and Jersey, but can an agreement be reached with the US? The omission of major finance jurisdictions such as Canada, Switzerland and the Netherlands as initial FATCA Partners raises the question as to whether Guernsey or Jersey will be prepared to meet the necessary terms to become a FATCA Partner. The other side of the coin is whether the US will want an agreement with them! The US has been vocal in its disapproval of offshore jurisdictions (which it sees as tax havens) and their terms for FATCA Partnership may be more onerous than the Channel Islands can bear.

The US Treasury's press release accompanying the regulations set out three headline objectives, these are:

- reducing the administrative burden of identifying US accounts by allowing FFI's where possible to use ID documentation collected as part of their AML procedures;
- expanding the categories of FFIs that are deemed to be FATCA compliant without the need to enter into a FFI agreement with the IRS (with the idea to focus the aim of FATCA at higher risk financial institutions); and
- phasing in the reporting and withholding requirements over an expanded transition period to allow FFI's more time to develop the necessary systems and procedures they will need to be compliant.

The regulations are dense and will need a full analysis to determine if, and to what extent, these objectives have been achieved. For instance, will an extended transition period assist FFIs in non-FATCA Partner countries that will still be faced with the choice of a possible breach of local law or the imposition of a withholding tax against it?

The majority of Collas Crill's clients across both Channel Islands will be affected by FATCA in some way. In light of this we have established a FATCA team with a broad range of knowledge across the FFI sectors most likely to be affected by FATCA. The goal of this team will be to offer a bespoke service to adapt a client's existing procedures and documentation to make them FATCA compliant.

If you would like to contact the Collas Crill FATCA team please contact [marcus.hinkley@collascrill.com](mailto:marcus.hinkley@collascrill.com) in the first instance.

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