# The Foreign Account Tax Compliance Act (FATCA)

pwc

## How will FATCA affect your business?

FATCA affects a wide range of non-U.S. financial institutions: banks, hedge funds, private equity funds, broker-dealers, clearing organisations, portfolio managers, investment advisors, trust companies and private trusts and insurance companies. These affected foreign financial institutions (FFIs), will be required to comply with specific due diligence and verification procedures. FATCA becomes effective beginning July 1 2014 and will be phased-in over two and a half years, ending in 2017.

If an institution fails to comply, they will be subject to a new 30% U.S. withholding tax on any U.S.-sourced income paid on or after July 1, 2014. The withholding tax may be avoided if the FFI enters into an agreement (FFI agreement) with the U.S. Government by registering on a portal (the U.S. Internal Revenue Service opened the FATCA portal on August 19, 2013 and FFIs should register on the FATCA portal no later than April 25, 2014, and comply with the new documentation requirements, due diligence procedures, and reporting and withholding obligations by the deadlines set by the U.S. Internal Revenue Service.

## Actions FFIs need to take to comply

Classify the legal entities in your affiliated group as either FFIs or NFFEs

- Register through FATCA portal by April 25, 2014 by filling out Form 8926
- Update new customer onboarding procedures by July 1, 2014
- Complete identification and review on Individual high value accounts (accounts over a million dollars in value) by June 30, 2015
- Complete identification and review procedures for prima facie FFI accounts by December 31, 2014
- Complete identification and review procedures for all remaining preexisting accounts(those accounts in existence on June 30, 2014) by June 30, 2016
- Start reporting information on U.S. account holders to the IRS by March 31, 2015
- Start Foreign "passthru" withholding on payments to recalcitrant account holders and non participating FFI's and on gross proceeds of U.S. securities sales, both starting on January 1, 2017

## Penalty for non-compliance

The penalty for FATCA non-compliance is a new 30% U.S. withholding tax on any U.S.–sourced FDAP income paid on or after July 1, 2014 (FDAP income is passive income like interest, dividends, royalties, premiums, etc.) Starting January 1, 2017, the 30% withholding tax will also apply to the gross proceeds from the sale of U.S. securities that generate dividends or interest. In addition to U.S.–sourced income, and gross proceeds from the sale of investments that produce U.S.–sourced interest or dividends. withholding on "Passthru" payments (income payments from an FFI to a foreign individual or entity who has not complied with FATCA requirements) will begin on January 1, 2017.

## FATCA Intergovernmental Agreements

Cayman and Bermuda have both signed Intergovernmental Agreements (IGAs) with the U.S. Treasury and Internal Revenue Service (IRS). These Agreements are intended to trump local country law information security, privacy and confidentiality laws that would conflict with reporting financial account information to the IRS.

Although the substantive FATCA "tasks" and obligations are largely the same under the IGAs and the FATCA regulations there are some differences (eg: Do financial institutions report information first to the local government, rather than directly to the IRS).

*"FATCA is more than just a tax or technology topic. It involves governance, compliance and process changes that will impact your entire business. By planning the work and starting now, you can minimize the disruption to business operation as the deadline approaches."*

– Paul Eldridge, Managing Director, PwC

## How PwC can help

To successfully comply with FATCA, organisations must also understand and implement substantial changes to people, process, technology and internal governance systems in order to address the increase in due diligence procedures. PwC's FATCA team knows the intricacies of US tax laws and the Bermuda and Cayman FATCA Intergovernmental Agreements (IGAs") and can help you prepare for and implement FATCA compliance.

- ***Training and communication***
  - Educate organisation
  - Create FATCA awareness
  - Conduct executive management briefings
  - Mobilise FATCA team

- ***Conduct a FATCA impact assessment***
  - Establish footprint
  - Review and identify process, data and systems gaps
  - Highlight critical business issues
  - Create implementation plan

- ***Create an implementation plan***
  - Design future state and roadmap
  - Define business requirements
  - Develop target operating model

- ***Implement FATCA target operating model***
  - Establish corporate governance policy
  - Adapt client onboarding processes
  - Create withholding processes
  - Create reporting processes
  - Operationalise requirements

- ***Assist with project management/PMO***

## Our approach

PwC takes a structured and controlled approach to delivering our services in manageable stages – with timelines, milestones and deliverables. Our goal is to deliver a distinctive client experience, through:

- Tailored compliance solutions customised to meet your needs
- Innovative and flexible approach to keep costs down
- Highly credentialed Bermuda team who are market leaders in FATCA
- Extensive industry experience gained through numerous global engagements
- Market–leading accelerators to help you get to compliance quickly and effectively

***PwC solutions 'fit for purpose' by using our local Bermuda FATCA expertise and leveraging the best of our global PwC FATCA network.***

## Our team

Our Bermuda and Cayman team welcomes the opportunity to meet with you to discuss the impact that FATCA may have on your company's information reporting and compliance requirements.


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