US Foreign Account Tax Compliance ACT (FATCA)

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Introduction

- **What is FATCA?**

  FATCA is a US tax law concerning the taxation of income on foreign accounts which was enacted in 2010 as part of the Hiring Incentives to Restore Employment Act (HIRE)

- **Purpose of FATCA:**

  FATCA aims at combatting tax evasion by US persons holding investments in foreign accounts by imposing extensive reporting requirements on US taxpayers and Foreign Financial Institutions (FFIs)

- **Concerns**
  - **Extraterritorial approach**
  - **Huge costs for FFIs to implement FATCA requirements**

Main elements of FATCA

- FFIs will be required to report directly to the IRS certain information about financial accounts held by US taxpayers or by foreign entities in which U.S. taxpayers hold a substantial ownership interest
- Non-Financial Foreign Entities (NFFEs) are required to disclose information on their beneficial owners
- Sanction: Withholding tax of 30% on payments of US source income (investment income and all withholdable payments)
- FATCA supplements the existing Qualified Intermediary System

Main elements of FATCA

- To avoid the withholding tax, FFIs will have to enter into a special agreement with the IRS. Under this agreement a "participating" FFI will be obligated to:
  - undertake certain identification and due diligence procedures with respect to its accountholders;
  - report annually to the IRS on its accountholders who are U.S. persons or foreign entities with substantial U.S. ownership; and
  - withhold and pay over to the IRS 30% of any payments of U.S. source income, as well as gross proceeds from the sale of securities that generate U.S. source income, made to
    - non-participating FFIs,
    - individual accountholders failing to provide sufficient information to determine whether or not they are a U.S. person, or
    - foreign entity accountholders failing to provide sufficient information about the identity of its substantial U.S. owners.

Implementation of FATCA

- February 2012: US Treasury Department and Internal Revenue Service (IRS) issued proposed regulations for the implementation of FACTA
- January 2013: FATCA becomes effective but phased implementation
- June 2013: Deadline for FFIs to enter into an agreement with IRS
- 1 January 2014: Implementation of due diligence procedures for new accounts. Longer deadlines for pre-existing accounts
- 1 January 2015: Withholding of passthru payments

Intergovernmental agreements

- February 2012: Joint statement of the tax authorities of the US, FR, IT, DE, UK and ES
  - commitment to pursue an intergovernmental approach to FATCA implementation
  - commitment to improve international tax compliance
- July 2012: Publication of a first Model Intergovernmental Agreement to Improve Tax Compliance and Implement FATCA ("IGA").
- August 2012: US Treasury starts negotiations with more than 50 countries
- September 2012: IGA with UK; IGAs with other EU Member States to be concluded by the end of 2012
- November 2012: Second Model Intergovernmental Agreement for implementing FATCA

Intergovernmental agreements

- **Main elements of the IGA:**
  - Financial intermediaries located in a partner country will be granted the status of "FATCA compliant"
  - They will not be subject to the 30 % FATCA withholding without the need to sign an agreement with the IRS
  - Financial intermediaries will have to collect and report FATCA relevant information to the competent national tax authorities
  - The national tax authorities will forward the information to the IRS
- **Significant simplification for banks located in a partner country**

THANK YOU!