



THE FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA)

A new US initiative with a global reach that impacts areas other than tax

The new FATCA regime will impact areas of your business that you may not expect. It is not just an issue of taxation. This complex legislation requires careful consideration and firms need to start their analysis immediately in order to meet the requirements within the prescribed timescales.

THE NEW RULES

As with many jurisdictions, the US has been focusing on protecting its tax base. Congress has decided that it is too easy for US persons to avoid tax on their overseas assets. The US has therefore introduced a new regime, The Foreign Account Tax Compliance Act (FATCA) which runs in parallel with the existing withholding tax regime. The aim is to increase reporting of US persons investing offshore.

This regime comes into effect on 1 January 2013, but action is needed now. As a result of this change, payments to Foreign (eg non-US) Financial Institutions ('FFIs') of US sourced amounts will potentially be subject to a 30% US withholding tax unless the FFI complies with defined disclosure requirements.

The withholding tax applies to:

- Any payment of US source periodic income eg dividends, interest, etc
- Any gross proceeds from the sale or other disposition of a security which can give rise to such income.

However, income from a trade or business within the US is excluded. It should be noted that treaties are unlikely to afford protection from this compliance burden and if the withholding tax is imposed, double tax relief may not be available for the full amount.

WHO IS AFFECTED?

The rules will apply to any foreign financial entity which:

- Accepts deposits in the ordinary course of business.
- Holds financial assets for others (eg custody/nominee services).
- Is primarily engaged in investing, reinvesting or trading in inter alia securities or commodities or any interest in such assets. This will therefore include banks, brokers, insurance companies and collective investment vehicles within its remit.

The magnitude of this change should not be underestimated. It will be complex, onerous and costly. There could be compliance obligations even if the business has no US connected persons as customers, unless other detailed provisions are met.

NEXT STEPS

The new regime has a broad application and it is important that firms determine at an early stage how they will be impacted so that business strategies and operational arrangements can be developed to take account of the new requirements:

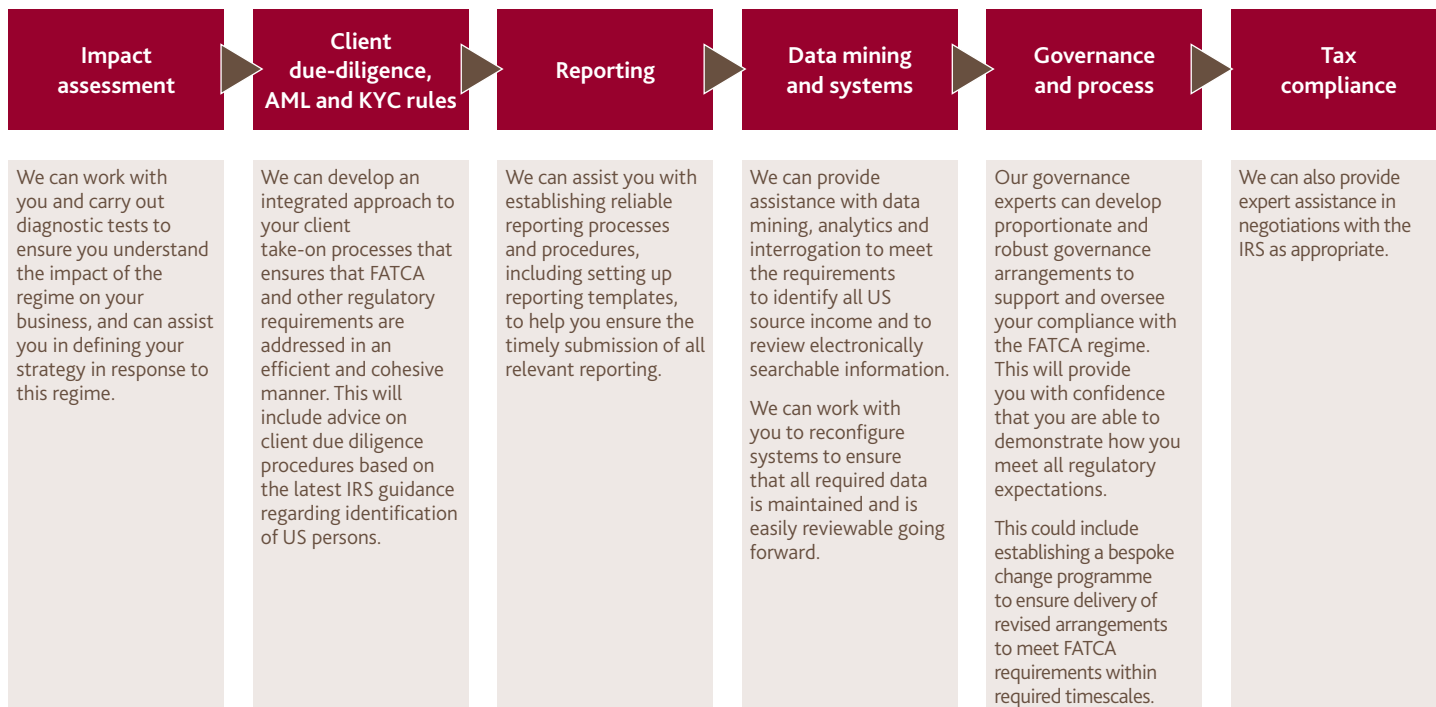
- All financial institutions should consider whether they potentially fall within the regime (which is highly likely)
- All affected institutions should then identify any accounts held by US persons.

Following these initial steps, in addition the provisions require participating FFIs:

- To comply with the relevant client due diligence procedures to ensure all US accounts are identified.
- To report information regarding US accounts annually to the IRS.
- To provide other information regarding payments on request to the IRS.
- To withhold on any 'pass thru' payments to either recalcitrant account holders or non-participating foreign financial intermediaries.
- The rules will also extend to foreign non-financial entities which are entitled to any US income. Whilst less onerous, there are still certification procedures for such entities.

HOW BDO CAN HELP

BDO can provide a comprehensive response that draws together the expertise of our multi-disciplinary team to deliver a joined-up solution to all aspects of the FATCA regime. This will help you ensure that the taxation, regulatory, governance and technology aspects of compliance with the regime are all addressed in a cohesive manner.



WHY BDO

- BDO is the world's fifth largest accountancy and professional services firm. We have deep experience in financial services and a multi-disciplinary approach combining tax, regulation, risk and IT specialists.
- We provide services to clients in 119 countries and have teams in all the major financial services centres.
- We have a US-based tax team who closely monitor all aspects of FATCA rules.

CONTACT US

TIM KIRK

Partner, National Head of Financial Services
+44 (0) 207 893 2254
tim.kirk@bdo.co.uk

ANGELA FOYLE

Partner, Tax
+44 (0) 207 893 2475
angela.foyle@bdo.co.uk

GEORGE QUIGLEY

Partner, Risk and Advisory Services
+44 (0) 207 893 2522
george.quigley@bdo.co.uk

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