

FATCA Legislation

Reference Text: US 'Internal Revenue Code' chapter 4 sections 1471-1474

Link:

Date(s) of Application:

01/01/2013 to 01/07/2013: contractualisation of agreements with the IRS (for application 2014)

01/07/2014: beginning of withholding tax application on US securities revenues

01/07/2014: start of due diligence for individuals

15/03/2015: beginning of reporting to the IRS

01/01/2015: start of due diligence for entities

01/01/2017: beginning of withholding tax on other US payments (gross proceeds ...)

Presentation

The American FATCA (Foreign Account Tax Compliance Act) voted on 18 March 2010 has the objective of reinforcing the fight against tax evasion of US taxpayers. It aims to require that foreign financial institutions (i.e. outside the US) report revenue paid to American taxpayers, thus enabling automated data cross-checking with the individual declarations of these taxpayers.

Participating Foreign Financial Institutions (PFFI) must therefore identify and document all accounts for clients susceptible of being US taxpayers. In the event that FFI's governing state has concluded a cooperation agreement with the IRS, the PFFI status is acquired; if this is not the case, FFI must set up an agreement directly with the IRS. It should be noted that management companies and UCITS are included in the scope of the financial institutions targeted by the FATCA. Information about PFFI payments to US taxpayers must be sent on an annual basis to the Internal Revenue Service (IRS) either from their own tax authorities in the case of an inter-state partnership or directly to the IRS if such partnership does not exist. In the latter case, the IRS is asking PFFIs to deduct a punitive tax of 30% on all revenues and proceeds from assets from a US source, received directly or indirectly, intended for counterparties not having the status of PFFI and to "recalcitrant" clients, i.e. clients that may be US persons and having not offered evidence to the contrary, or having recognised their status as US person but having refused to withdraw banking secrecy.

In the event where a financial institution is not considered as a PFFI, it will itself be subject to an upstream deduction of a punitive tax of 30% on all payments from a US source (direct or indirect) that will be paid whether the final beneficiary of these revenues is itself or its clients.

Current Situation:

Update in march 2010 of internal Revenue Code" by the IRS further to the FATCA law.

Publication of several manuals during 2010-2011 and, on 8 February 2012, the regulation project which have been then amended again on 24 October 2012.

Publication on 26 July 2012 of the first Intergovernmental Agreement (IGA) model drafted by the IRS and several European states (France, Germany, the United Kingdom, Italy and Spain) explaining the partnership approach with bilateral exchange of fiscal information.

Publication on 14 November 2012 of a second IGA model for countries that don't require reciprocity from the IRS (only one-way communication of fiscal information to the IRS)

Publication on 17 January 2013 of the final FATCA regulation.

Publication on 12 July 2013 of the notice 2013-43 announcing a delay of six months on key timelines and specifying the practical arrangements for the FFI during the period preceding the signing of an intergovernmental agreement between their country and the U.S.

Opening on 19 August 2013 of the FATCA portal for PFFI agreements registration.

Publication on 27 June 2014 of the new IQ agreement endorsing the coordination points with FATCA.

July 1, 2014: Start date of FATCA procedures for opening new accounts and for withholding tax on U.S. source payments.

January 1, 2015: Start date of FATCA procedure for opening new accounts for entities.

March 15, 2015: beginning of the first FATCA reporting

Next Steps

01/01/2017: beginning of withholding tax on other US payments (gross proceeds ...)

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