

FOREIGN ACCOUNT TAX COMPLIANCE ACT

Uncle Sam gets tough

Punitive 30% tax if offshore financial institutions don't disclose US nationals

THE UNITED STATES TREASURY has issued rules to force financial institutions worldwide to hand over the account details of up to 5m Americans in an assault on tax evasion that many say is unworkable. The legislation follows outrage over the UBS tax evasion affair – in which Switzerland's biggest bank was forced to hand over the names of thousands of Americans holding offshore accounts – and comes amid a drive to close the US's record-high budget deficit.

Tens of thousands of banks, fund managers, insurers and hedge funds worldwide face having to give the names of US clients with at least US\$50 000 in assets to the Internal Revenue Service (IRS) under the Foreign Account Tax Compliance Act (Fatca), passed in March this year, or pay a 30% tax on funds.

In terms of Fatca, those entities will be treated as foreign financial institutions (FFIs) that earn income from US investments. South African and other non-US financial institutions are compelled to enter into an agreement with the IRS to report information about their US account holders who have been allocated such income. Failure to comply with Fatca requirements will result in the withholding of 30% tax on income from all their US investments.

"The legislation is effectively attempting to initiate a worldwide exchange of information on US citizens aimed at curbing the use of non-US entities by US individuals to evade US taxes," says Nazrien Kader, Service line leader for Taxation Services at Deloitte. "The provisions are intended to promote compliance with US law, demanding US individuals and financial entities throughout the world to report income from offshore accounts."

The US Congress joint committee on taxation says the law could prevent the

evasion of US\$8,7bn of taxes over the next decade. The rules will be phased in between this year and 2013, with certain payments from derivatives already applicable from this year.

But international institutions are stepping up lobbying ahead of guidance from the US Treasury on the implementation of the law. Some argue the legislation will cost them billions of dollars in compliance costs and expose them to the risk of flouting their domestic laws on data protection.

Others are pressing for a light touch – for example, by the US Treasury limiting the scope to bank clients they have "reason to believe" are US citizens – due to the difficulty in getting all clients to prove they aren't US citizens.

A Geneva-based representative body called American Citizens Abroad says it fears US citizens could become "pariahs", with foreign banks closing their accounts to avoid costly adherence requirements. The rules could drive smaller financial institutions out of the US market to escape the impact of the withholding tax, say many industry groups.

The US Treasury has responded to criticisms, saying it wanted to implement



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Time to "Act" is now.

this new law in a manner that minimises any potential impact on cross-border investment and existing financial relationships. It said it was in the final stages of preparing guidance.

Though Fatca has essentially five parts, the rules are considerably more detailed. But the summary should be sufficient to demonstrate Fatca is legislation with enormous reach and serious depth.

■ **Increased disclosure of beneficial owners.** In order for non-US financial institutions to have access to US capital markets without being subjected to a 30% withholding tax, such entities will have to provide information to the IRS about their US accounts on an annual basis.

■ **Reporting with respect to non-US assets.** If non-US-held assets held by individual US persons are valued in excess of US\$50 000, the US taxpayer must attach certain information to their income tax returns. Fatca would impose heavy penalties

for failure to disclose such information.

■ **Other disclosure provisions.** Fatca requires US shareholders of passive non-US investment companies to file information returns with the IRS every year.

■ **Provisions related to non-US trusts.** There's a new reporting requirement for US owners of non-US trusts and a new minimum penalty of \$10 000 for failure to report.

■ **Dividend equivalent payments.** Fatca will treat certain dividend equivalent payments (such as total return equity swaps) received by non-US persons as US source income.

Fatca represents a major challenge for South African institutions. It requires them to obtain information about every holder of every account across all of their affiliated entities to comply with verification and due diligence procedures to identify US accounts and to report annually with respect to any US account or suffer the new 30% withholding.

Kader says SA financial institutions must gain a clear understanding of how their business should look over the coming years and how they want to position themselves in the new environment. "If a financial institution in SA has US persons belonging to its clientele and has any US securities included in its product portfolio, it will be required to enter into an agreement with the IRS and to adapt its operating model accordingly. The identification and documentation of clients – as well as reporting thereon – is fundamental. The products offered must also be assessed with regard to the US source and flagged accordingly in the systems. Anyone offering their own products must also check the sales restrictions that apply to US persons.

"Finally, the training of compliance officers, relationship managers and staff is an essential task to be considered by institutions."

Says Kader: "Although further clarification with respect to the legislation is clearly needed, financial institutions need to act now in order to understand the scale of the compliance challenge they face."

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Integrating Project Management: A daily activity

TWO RECENT EVENTS in South Africa stand out as examples of exceptional project integration management. The first is the effort that went into completing the stadiums for the FIFA 2010 World Cup and the accompanying infrastructure upgrades. The second is the ongoing Gautrain construction with all its components.

Project management may be approached from the PMBOK[®] perspective, applying a Project Management Framework. In truth, we may already apply this framework in our private and business environments without even realising it. We identify a need (**initiate** the project); then define (or **scope**) our activity; determine if there are sufficient funds (**budget**) for the activity, and calculate our timeline (**time & schedule**) for the execution of the activity. In addition, we focus on the issue of success (or **quality**) to ensure a successful outcome.

To take the example further, one often has to purchase items or goods (**procurement**), and inform (**communication**) the parties concerned of one's intent. People might be required to assist with the activity (**human resources**) and one continuously has to evaluate the ever-present danger of failure (**risk**) due to either environmental or human action outside of our control. The fulfilment (**execution**) of this activity then takes place (**integration**).

Throughout the process, we would have had checks and balances (**monitoring and controlling**) in place to monitor progress,

possible problems or even considered issues that might cause the activity to fail. Finally, the project is either a success or a failure. Success is achieved when attention is given to all the elements and planned for accordingly; failure when the planning was insufficient or poor. This would result in the completion of the project (**close-out**).

In the broader environment, applying project management principles is not just about following a particular knowledge group e.g. the Project Management Frame-

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into the project
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work, but also the integration into the Process Groups (System Development Life Cycle). Integrating the various functions (core and facilitating from the project management framework), results in the integration management required to complete a project. At this time there is no guarantee that the project will be successful. However, integrating the project management process groups into the project management framework and applying each of the functions results in improved opportunities for success even if a 100% guarantee is not possible at this time. By defini-

tion, a project is any endeavour that has a specific start and a specific end time/date, and a project life cycle should be considered. It is this consideration and the further integrativeness of the project environment in its holistic view, which substantially improves the chances of project success. ■

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