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TAX

Foreign Account Tax Compliance Act (FATCA)

Implications for Banks

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What is FATCA?

The U.S. government intends to combat tax evasion from the United States more intensively. As such, the Foreign Account Tax Compliance Act (FATCA) was enacted into law on 18 March 2010. It will impose a 30% withholding tax on U.S. source income unless the financial institution enters into an agreement with the IRS and reports its U.S. customers.

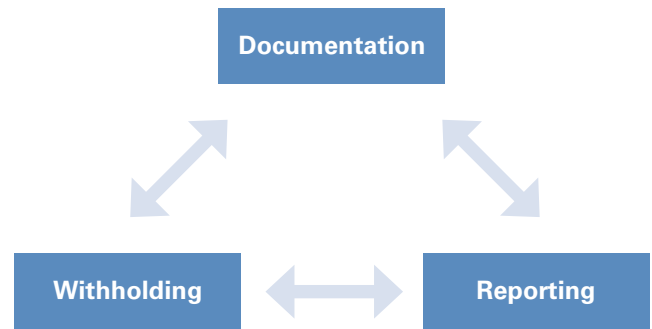
Who is impacted?

- > Any bank invested in the U.S. market for its customers' accounts or for its own account; and
- > Any bank which is part of a group which invests in the U.S. market for its customers' accounts or for its own account.

Overview of FATCA

The provisions are additional and not substitutive to the current QI regime already in place. Under FATCA, a 30% withholding tax is applied on any payment (interest, dividend or sales proceeds) on U.S. securities made to a Foreign Financial Institution, unless it agrees to:

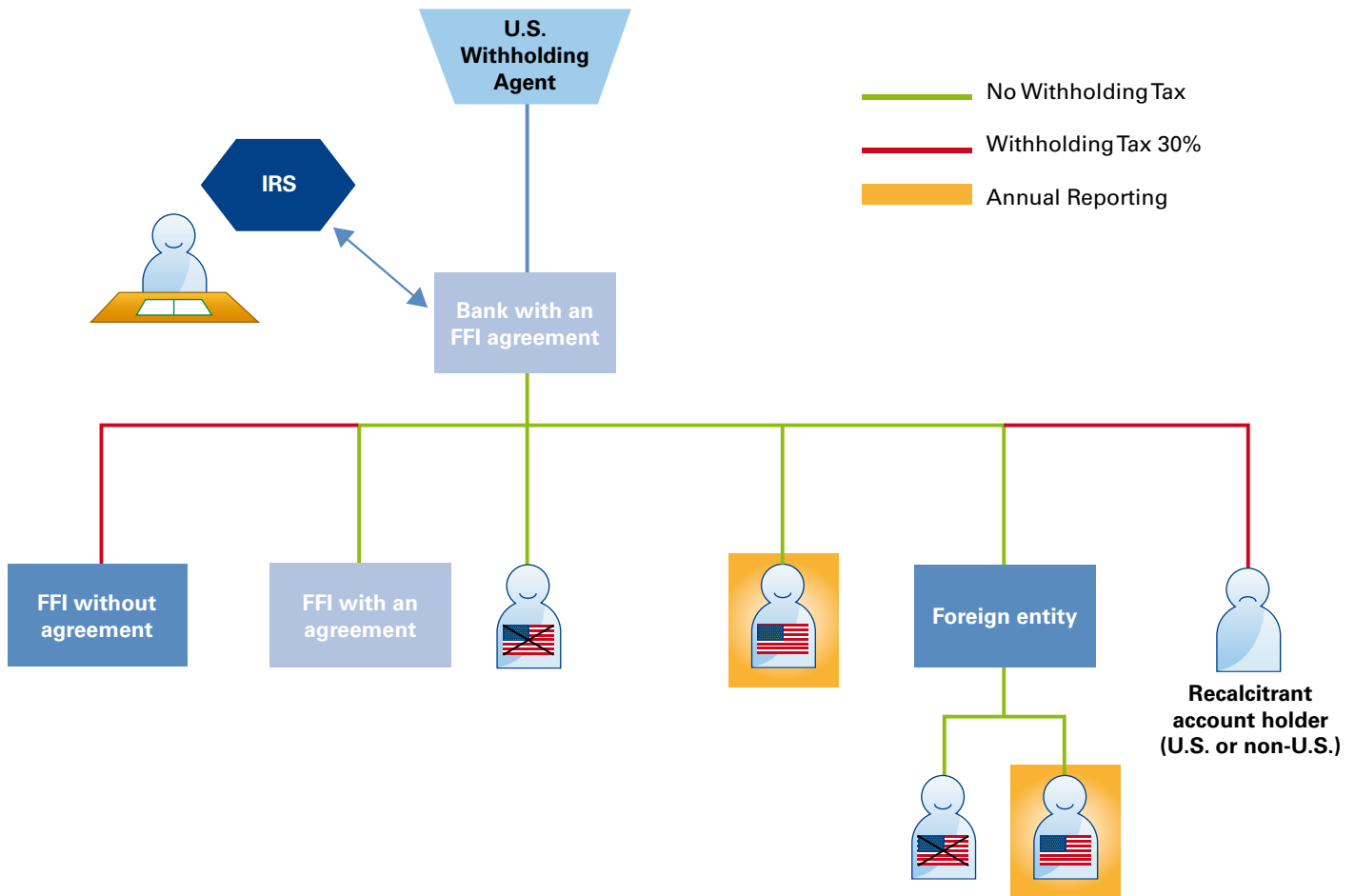
- Identify U.S. accounts;
- Comply with verification and due diligence procedures;
- Perform annual reporting;
- Deduct and withhold 30% from any passthru payment made to a recalcitrant account holder or another institution without an FFI agreement; and
- Comply with requests for additional information.



Notice 2010-60, released on 27 August 2010, sets forth the general framework for implementing FATCA. Further implementation guidelines are still to come.

Highlights

- Provisions apply as from 1 January 2013 on payments of interest, dividend or sales proceeds on U.S. securities;
- In absence of an agreement with the IRS, a 30% withholding tax will apply on payments of interest, dividend or sales proceeds on U.S. securities;
- Additional reporting and withholding obligations compared to the current QI regime;
- Enlarged due diligence and documentation requirements;
- Obligation to withhold 30% U.S. withholding tax on payments made to recalcitrant account holders (U.S. customers refusing disclosure and non U.S. customers without proper FATCA documentation); and
- Annual Reporting of all assets held indirectly or directly by U.S. persons.



What are the challenges for the banking industry?

The key issues the bank will encounter with the implementation of FATCA are:

- Performing a strategic analysis on whether the bank remains invested in the U.S. market (for its customers' accounts and for its own account);
- The time allowance for implementation. The provisions will apply to payments made after 1 January 2013. This is an ambitious deadline if we take into consideration the fact that banks will need to operate full impact analysis and adapt procedures and IT systems;
- Complying with additional documentation requirements of FATCA. Searching for U.S. indicia in the whole customer base;
- Deciding either to maintain or withdraw contact with U.S. clients; and
- Obtaining waivers from all U.S. customers to report to the IRS.

What has to be done?

2010

- Definition of the strategy of the bank (Decision on becoming a participating FFI or not)
- Impact analysis of FATCA on the business
- Risk assessment
- Awareness workshops

2011 - 2012

- Communication with stakeholders and customers
- Gap analysis, system analysis and assessment
- Staff training
- FFI Application: formalities to become FFI
- Verification process on client information
- Electronic search on databases
- Verification of paper documentation
- Monitoring
- Documentation
- Obtaining waivers

2013

- Reporting
- Withholding
- Audits

2014 - 2015

- Follow-up on accounts over \$1 million
- Reporting
- Audits

2016 - 2018

- Follow-up on accounts over \$50,000
- Reporting
- Audits

Did you know that?

- QI regime is maintained in parallel;
- Investment funds, wealth managers and insurance companies/policies (life and unit linked) will also be impacted;
- Obligation of electronic filing for QIs as from 2013;
- Repeal of the portfolio exemption for targeted bearer bonds;
- Dividend equivalent payments made after 14/09/2010 to non-U.S. person will be in the scope of FATCA; and
- New additional regime for financial institutions involved in securities lending on US securities (QSL status).

How can KPMG help your bank?

Considering the implications of FATCA, an FFI which wants to maintain relations with U.S. clients will not only have to comply with FATCA but also with other applicable regulations. The impact on the bank is not negligible and requires assistance of specialists.

KPMG can:

- Inform senior management;
- Help develop and train a dedicated team in your bank;
- Create visibility for your organization;
- Perform an impact analysis; and
- Assist you on technical issues, documentation, reporting and withholding.

Why KPMG?

To stay up to date and develop knowledge on FATCA, KPMG Luxembourg has been active conducting different initiatives:

- KPMG in Luxembourg has set up a dedicated team composed of experienced professionals to perform an in-depth analysis of the new FATCA rules, with the support of KPMG U.S.;
- Speakers at various conferences on FATCA;
- Regular publication of newsletters with regard to new FATCA provisions;
- KPMG in Luxembourg is a leading contributor to the KPMG network efforts in this area; and
- According to IRS, KPMG is the market leader in QI audits worldwide (42% market share).

Our team is at your disposal to help develop the right strategy for the implementation of FATCA within your bank.

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