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## FATCA: A Big Concern for Fat Cats and Small Fries Alike

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# FATCA: A Big Concern for Fat Cats and Small Fries Alike

October 26, 2012

By: [Wayne C. Wood](#), Associate, The Global Business Law Review

Amidst international dread and loathing, the Foreign Account Tax Compliance Act (FATCA) will become effective on January 1, 2013.<sup>[1]</sup> Section 501 of the HIRE Act amends the Internal Revenue Code of 1986 by adding Chapter 4 (§§1471-1474), “Taxes to Enforce Reporting on Certain Foreign Accounts.”<sup>[2]</sup> Congress purportedly enacted FATCA to combat tax evasion through the use of offshore accounts.<sup>[3]</sup>

Stated simply, FATCA requires foreign financial institutions (FFIs) to supply the Internal Revenue Service (IRS) with detailed information on U.S. persons with accounts in their institution, and for certain non-U.S. entities to provide information about any U.S. owners.<sup>[4]</sup> Additionally, entities that pay tax withholdable payments to U.S. persons, or receive tax withholdable payments from U.S. source income must collect applicable taxes on the payments and remit the revenue to the IRS.<sup>[5]</sup> Entities that run afoul of FATCA’s stringent reporting requirements are subject to a 30% withholding tax.<sup>[6]</sup>

Foreign banks are in a panic to become FATCA compliant as the New Year is fast approaching. To allay concerns, the Treasury Department issued two models for FATCA implementation.<sup>[7]</sup> Model I calls for a domestic reporting regime with automatic exchanges of information at the government-to-government level.<sup>[8]</sup> The alternative, Model II would create a structure of direct reporting by FFIs to the IRS, augmented by information exchanged upon request by the foreign government and the U.S.<sup>[9]</sup> Model II was unveiled simultaneously with two joint statements on FATCA implementation struck between the Treasury Department and the nations of Japan and Switzerland.<sup>[10]</sup>

There is a concern in the industry that joint statements and/or bilateral agreements on FATCA could lead to a relatively fractured global reporting system.<sup>[11]</sup> As a result of the supremacy clause, taxpayers and foreign nations cannot rely on prior international tax treaties to guarantee compliance with FATCA.<sup>[12]</sup> Officials in the U.K. are particularly unhappy with being subjected to the same threat of withholding despite joining Spain, Italy, France, and Germany in February 2012, announcing an intergovernmental approach (IGA) with the U.S.<sup>[13]</sup> Malcolm White of Her Majesty’s Revenue and Customs was quoted as saying, “[d]o we like the way FATCA does it? Not really...It’s too burdensome, it’s too complicated, and in many instances, it’s extraterritorial and puts onerous conditions on businesses, in effect identifying every customer in the world.”<sup>[14]</sup>

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[1] Press Release, Deloitte, FATCA Frequently Asked Questions (Sept. 22, 2012), [http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/Tax/us\\_tax\\_FAQs\\_Final\\_040511.pdf](http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/Tax/us_tax_FAQs_Final_040511.pdf) [hereinafter Deloitte].

[2] Jeff N. Mukadi, *FATCA and the Shaping of a New International Tax Order*, TaxProf Blog (Sept. 22, 2012), [http://taxprof.typepad.com/taxprof\\_blog/2012/06/fatca-and-the-.html](http://taxprof.typepad.com/taxprof_blog/2012/06/fatca-and-the-.html) [hereinafter Mukadi].

[3] Deloitte, *supra* note 1, at 1.

[4] Deloitte, *supra* note 1, at 1; *see also* 26 U.S.C. § 1471(c) (2012) (the required information includes, the account holder's name, address, taxpayer identification number, and a summary of the accounts gross receipts and gross withdrawals or payments).

[5] Mukadi, *supra* note 2, at 1228.

[6] 26 U.S.C. 1471(a) (2012).

[7] *See* Shamik Trivedi and Eric Kroh, *U.S. Issues Joint Statements on FATCA*, 67 TAX NOTES INT'L 1, 7 (2012).

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] Marie Sapirie, *Finding a Silver Lining in FATCA*, 67 TAX NOTES INT'L 10 (2012).

[12] Mukadi, *supra* note 2, at 1231. ("Fourth, a unilateral implementation and enforcement of FATCA by the United States brings about another U.S. demon just when the world has started to look the other way—the issue of tax treaty override by the United States").

[13] Jeremiah Coder, *U.K. Hoping U.S. Will Make FATCA Easier to Swallow*, 67 TAX NOTES INT'L 95 (2012).

[14] *Id.*