



TECHNICAL UPDATE

'FATCA' – INTERGOVERNMENTAL AGREEMENT BETWEEN AUSTRALIA AND THE UNITED STATES – AUSTRALIAN FINANCIAL INSTITUTIONS TO REPORT ON US TAXPAYERS

ON 28 APRIL 2014 THE AUSTRALIAN GOVERNMENT SIGNED AN INTERGOVERNMENTAL AGREEMENT WITH THE UNITED STATES UNDER THE US FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA). FATCA WAS ENACTED BY THE US CONGRESS IN MARCH 2010 IN AN EFFORT TO TARGET TAX NON-COMPLIANCE BY US TAXPAYERS WITH FOREIGN ACCOUNTS.

The objective of FATCA is to cause the reporting of foreign financial accounts held by US taxpayers in order to detect US taxpayers who are concealing income from the US Internal Revenue Service (IRS). It is important to note that the US taxes its citizens on world wide income whether they are resident in the US or not. Therefore US citizens who are residents of Australia may be 'US taxpayers' and therefore would be subject to these new reporting requirements.

Intergovernmental agreements (IGAs) were developed by the US along with other foreign jurisdictions in order to implement FATCA and simplify domestic compliance with the legislation. The Australian government has released an exposure draft bill which, if implemented, would insert Division 396 – FATCA into the *Tax Administration Act 1953*. That legislation would give effect to the FATCA Agreement and, in addition, create record-keeping and due diligence obligations for Australian taxpayers.

Beginning 1 July 2014, affected Australian financial institutions will be required to obtain certain information about their account holders that are US taxpayers and report it to the Australian Tax Office (ATO), which will then automatically report the information to the IRS. Those financial institutions that do not comply with FATCA will be subject to a 30% withholding tax on their US sourced income in addition to Australian penalties for non-compliance with the applicable Australian laws.

SECTOR

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The reporting requirements apply to a broad range of Australian financial institutions, including banks, some building societies and credit unions, specified life insurance companies, private equity funds, managed funds, exchange traded funds and some brokers.

BDO COMMENT

The impact of the proposed law is far reaching and the sanctions for non-compliance are onerous. In addition there is a very short time period before obligations commence. The contents of this Technical Update represent a very broad summary of the affected Australian financial institutions and the obligations that will be imposed upon them. If the FATCA legislation may apply to you, you are strongly urged to contact your BDO tax adviser who can provide more detailed information.

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