STEP Policy Points

The Foreign Account Tax Compliance Act (FATCA)

Executive summary

The US Foreign Account Tax Compliance Act (FATCA) was enacted in 2010 by US Congress to target non-compliance by US taxpayers using foreign accounts. It was originally part of the US Hiring Incentives to Restore Employment (HIRE) Act provisions on foreign account tax compliance, a US measure intended to help tackle tax evasion in the US.

Foreign Account Tax Compliance Act

Lines to take

- STEP condemns tax evasion and those who seek to facilitate it.
- It is important to ensure that international initiatives to improve tax transparency and combat evasion are proportionate as well as having strong guarantees that the information exchanged will be secure and used legitimately.
- FATCA potentially puts obligations on all trusts, whether or not they have US connections.

Context

The Bill was introduced in 2010 and FATCA became effective on 1 July 2014. The measures require all non-US financial institutions (FIs) to identify all ‘US Persons’ who are using foreign accounts before reporting their identities, balances, withdrawals and receipts to the US Internal Revenue Service (IRS). Those deemed to be US Persons include the following:

- A citizen of the US, including an individual born in the US but resident in another country or territory (who has not been given their US citizenship).
- A person residing in the US, including US green card holders.
- Certain persons who spend a significant number of days in the US each year.

By 2014, all G7 countries had signed agreements to begin reporting under FATCA. Currently, 103 jurisdictions have entered into agreements with the US.
Reports are made by banks and other FIs on an annual basis. There are two forms this reporting can take, both are deemed to be intergovernmental agreements (IGAs):

- **Model 1**: where FIs in non-US jurisdictions report information to their tax authorities which subsequently pass the information to the US.
- **Model 2**: where FIs report their information directly to the US.

The majority of jurisdictions that participate in FATCA have signed Model-1 IGAs. Countries that have entered into Model-2 agreements include Armenia, Austria, Japan and Moldova.

Any FIs that do not comply with FATCA will become liable to receive a 30 per cent withholding tax on any US financial assets they hold. Individuals who do not report assets worth over USD50,000 as part of the US tax returns will also be subject to a 30 per cent tax on the holdings in question.

FATCA has been criticised by some for its impact on the rising number of overseas Americans renouncing their citizenship. There have been various Bills to repeal the legislation tabled in both the US House of Representatives and the US Senate.

Regardless of whether a trust is related to the US, the use of FATCA can bring it within scope of the legislation because in signing the Model-1 IGA, jurisdictions are agreeing to incorporate FATCA reporting requirements into their own tax codes and take responsibility for its enforcement.

The US Treasury list of FATCA agreements and understandings in effect by jurisdiction can be found [here](#).

**STEP response**

STEP has jointly produced a number of briefing notes with organisations such as the England and Wales Law Society and Institute of Chartered Accountants in England and Wales (ICAEW) to provide guidance to practitioners who may need to comply with the legislation.

The STEP briefing notes and guidance can be found below:

- [STEP Briefing Note: FATCA recalcitrant entity account reporting](#)
- [STEP FATCA Guide: Trusts under a Model 1 Intergovernmental Agreement: Jurisdiction X](#)
- [STEP FATCA Flowchart: Trusts under a Model 1 Intergovernmental Agreement: Jurisdiction X](#)
- [Joint organisation guide: FACTA – UK trusts under the UK-US IGA](#)
• FATCA: Flowchart – UK trusts under the UK-US IGA

STEP provides members with the latest developments relating to FATCA through guidance, articles, blogs and its News Digests.

Stakeholders

The US government, the US Treasury Department and the Internal Revenue Service (IRS) are key stakeholders.

In addition, the FIs carrying out the reporting and the jurisdictions that have committed to taking part in the process will be important stakeholders.

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