

## Briefing

# US Foreign Account Tax Compliance Act and its relevance for Tanzanian financial institutions

Following the implementation of the Foreign Account Tax Compliance Act (**FATCA**) by the United States government in 2010, financial institutions around the world will be obliged to disclose any US citizen account holders' names, addresses, TINs, and the accounts' balances, receipts and withdrawals to the US Internal Revenue Service (**IRS**) for US tax purposes. We consider the implications of these requirements for Tanzanian financial institutions.

### Who should comply?

Three main categories of persons/entities will be affected by the implementation of FATCA, namely individuals, governments and financial institutions.

- **Individuals:** US citizens owning foreign accounts or assets worth more than USD 50,000 are required to declare them by filling in a form accompanying their tax returns. Individuals who understate their income in an undisclosed foreign financial asset will be liable to a steep 40% penalty.
- **Governments:** governments may implement FATCA through Inter-Governmental Agreements (**IGAs**). These were introduced to address concerns about potential legal hurdles which may otherwise prevent financial institutions from revealing their customers' account details under applicable national

laws, such as privacy laws.

Two model IGAs have been adopted so far: Model 1 and Model 2. Model 1 requires that the partner country's Foreign Financial Institutions (**FFIs**) report the necessary information regarding accounts held by US citizens to their respective tax authority which in turn relays the information to the US. Alternatively, Model 2 provides for a partner country's FFI to report directly to the IRS and in turn the partner country agrees to lower any legal barriers to that reporting.

As of 7 June 2013, only ten countries had entered into IGAs with the United States. Tanzania is not among them, and we understand that it is not expected that an IGA will be agreed imminently with Tanzania.

- **Financial institutions:** FFIs which include, but are not limited to, depository Institutions (*eg* banks), custodial institutions (*eg* mutual funds), investment entities (*eg* hedge funds or private equity funds) and insurance companies that have cash value products or annuities, are required to register with the IRS, as set out below.

### Obligations for FFIs

FFIs are required initially to register on the FATCA Registration Website (**Website**). However certain institutions are exempted from the requirement to register and report, such as government entities, non-profit organisations, certain small, local FFIs and certain retirement entities.

Upon registration and approval, the FFI receives a Global Intermediary Identification Number (**GIIN**) from the IRS that will be used for reporting purposes as well as to identify the FFI's status to withholding agents. A list of registered FFIs and their respective GIINs will appear on the secure Website and will subsequently be updated every month.

Other obligations on the FFIs will include:

- Maintain a verification and due diligence procedures to identify US accounts.
- Obtain information of each account holder.
- Report detailed information regarding US accounts to IRS on an annual basis including (at least) the following information:
  - the name, address, and TIN of each account holder;
  - the account number;
  - the account balance or value; and
  - the gross receipts and gross withdrawals or payments from the account.
- Provide IRS with additional information regarding US accounts upon request.

### Timeline for registration

Registration on the Website for FFIs commenced on 19 August 2013 and will run through to 31 December 2013. However, during this period no final submissions will be made and GIINs will not be issued. FFIs can use the remainder of 2013 to familiarise themselves with the Website as well as to fill in preliminary information.

At the beginning of 1 January 2014, final registration and submission will commence and the first IRS list will be published on 2 June 2014 (FFIs must register by 25 April 2014 in order to qualify to appear in this list). The official deadline for registration is 1 July 2014, however Model 1 FFIs will have additional time beyond this deadline in order to obtain a GIIN and ensure that they are included on the IRS FFI list before 1 January 2015.

### Penalties and consequences of non-compliance

Since Tanzania has yet not entered into an IGA, this means that there is no legal safety net for Tanzanian banks if an affected individual were able to successfully make out a claim for breach of privacy under Tanzanian law due to disclosures made by the bank to the IRS under FATCA.

Further, given that Tanzania has yet not entered into an IGA nor enshrined any FATCA obligations into national law, there will be no domestic legal penalties for a Tanzanian FFI which fails to comply with its obligations under FATCA.

However, FATCA provides that FFIs which fail to comply with their FATCA obligations will face a 30% withholding tax on certain US source payments made to them. This remains the case notwithstanding the lack of an IGA with the relevant government. This may be a major issue for some financial institutions and their clients, depending on the nature of their business and clients and the volume of payments received from the US.

When determining their compliance obligations under FATCA, Tanzanian banks therefore need to consider carefully their domestic privacy obligations on the one hand, and the potential implications of the 30% withholding tax on the other, including the risk of claims from clients if the withholding tax is applied. We understand that on this basis a number of major Tanzanian banks have already taken the decision to comply with FATCA, and are

initiating the registration process. Banks should also closely monitor the progress of any discussions between the Tanzanian government and the US in agreeing a Tanzanian IGA.

#### **Further information**

If you would like further information on any issue raised in this update please contact:

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