

Write Up on FATCA

Enacted in March 2010, the aim of Foreign Account Tax Compliance Act (FATCA) is to enable the US Internal Revenue Service (IRS) to collect taxes from its citizens. The US Senate estimates revenue losses from tax evasion by US-based firms and individuals at around 100 billion dollars a year. Add in other countries and the sums run into many billions more. Tax transparency and the fight against cross-border tax evasion have been key topics at successive G20 Summits in Washington, London, Pittsburgh, Toronto, Seoul and Cannes.

The aim of FATCA is to ensure that all financial institutions, wherever based, operate a system that produces information to enable the US to impose its tax laws on US persons who otherwise would use foreign investments and foreign accounts to hide their income and assets offshore; thus, evading their US tax filing and payment obligations. The principal aim is, therefore, to prevent the avoidance of taxation on income derived by US persons outside the US through increased reporting via non US financial institutions.

FATCA will have significant implications on non-US financial institutions even if they have little or no dealings with the US as a 30% tax will be withheld of their US sourced income if they cannot document that they have no US clients. For example, a life insurance company owning bonds or equities in the US would be subject to the withholding tax.

FATCA Target

An FFI includes any non US entity that:

- a. accepts deposits in the ordinary course of its business; or
 - b. holds financial assets for the account of others as a substantial part of its business; or
 - c. is engaged primarily in the business of investing, reinvesting or trading in securities, commodities, partnerships or any interest in such.
- FFIs include institutions such as banks, building societies, brokers, asset managers, and custodians. Accordingly, most funds (including hedge funds, private equity funds and other collective investment vehicles) are financial institutions.
 - From a Mauritius standpoint, banks, management companies, Global Business Companies (“GBCs”) including funds and insurance companies having direct or indirect US persons will be required to undergo FATCA checks.

Mauritius vis-à-vis FATCA

In his speech, on 14 March 2012, Mr. Rundheersing Bheenick, Governor of the Bank of Mauritius, at the Seminar on Foreign Account Tax Compliance Act, mentioned that the best way to tame the beast would probably be for Mauritius to enter into the FATCA partnership as other jurisdictions (such as UK) have done.

On 18th February 2013, the Financial Services Commission (“FSC”) issued a communiqué whereby the FSC informed its licensees that the Government of Mauritius has signified the

interest of Mauritius to enter into an Intergovernmental Agreement (IGA) and a Tax Information Exchange Agreement (TIEA) with the US Internal Revenue Service (US-IRS) with the view of becoming FATCA compliant. While the FATCA legislation is US, the Government of Mauritius has taken this step to minimise the compliance burden on Mauritian financial institutions and now awaits a response from the US-IRS.

It is clear that FATCA will place a significant compliance and reporting burden on AXIS Fiduciary Ltd. The latter will need to identify, document and report on U.S. persons as required under FATCA failing which companies administered by Axis shall face a punitive withholding tax cost, which will be irrecoverable.

We hope that this new legislation will not undermine your relationship with Mauritius and we rely on your usual cooperation with Axis.