

## Foreign Accounts Tax Compliance Act ("FATCA") in South Africa

On Monday 9 June 2014, the South African Revenue Services ("SARS") announced the signature of the Intergovernmental Agreement between South Africa and the United States to improve international tax compliance and to implement FATCA (SA IGA). With the SA IGA now signed, it is important that Boards of financial institutions ask themselves whether their businesses are required to be compliant with the SA IGA, and if so, whether they have taken the necessary steps to become compliant.

### Questions for Boards to ask themselves...

**I've heard that FATCA is US tax law. Why does the business need to comply?**

With the signature of the SA IGA, compliance with the obligations set out therein will become mandatory for Reporting South African Financial Institutions in terms of South African law. The IGA will be given force and effect in local law through the enabling legislation of the Tax Administration Act and will be enforced by the South African Revenue Services ("SARS").

**The business does not have any US Persons as clients/account holders, will it still need to comply?**

Yes. The SA IGA requires compliance by entities that fall within its ambit. The SA IGA does not only impact on those financial institutions that have US Persons as clients or investors. Instead, the impact is determined by the nature of the financial institutions' business activities and investment structures, and not in terms of its client base.

**What does the business need to do to comply?**

The SA IGA contemplates that all South African financial institutions (as defined) will be required to identify their clients (according to enhanced due diligence procedures) and report certain information to SARS annually in respect of these clients that are determined to be US Persons. These institutions will also be required to register on the IRS FATCA Portal. Certain ongoing compliance monitoring will also be required.

**Will my institution be subject to 30% withholding on US income?**

No. For all South African financial institutions, the threat of withholding falls away by virtue of South Africa being an IGA jurisdiction.

However, if your institution is required to comply and does not do so, this will amount to a contravention of South African law, which may attract certain penalties, such as regulatory censure or fines. In addition, various business risks are likely to flow from the contravention, including reputational risk and financial risk.

**What should I do?**

Considering the tight timelines, Boards of financial institutions should preferably already be giving focus and attention to whether or not they are impacted by the SA IGA and, if so, what the extent of that impact is, and what their FATCA implementation imperatives are.

The first important step is to identify and classify your institution (and Related Entities as may be necessary) in terms of the SA IGA. Further to this impact assessment, Reporting South African Financial Institutions (those financial institutions within scope of the SA IGA) must:

- (i) register on the IRS Registration Portal;
- (ii) give consideration to their client on-boarding systems, processes and procedures, to be able to identify clients in terms of the SA IGA (whether an internal or outsourced function);
- (iii) give consideration to developing the financial reporting system required to facilitate the flow of required client information to SARS (again, whether an internal or outsourced function).

The Board may also need to consider developing a stakeholder communication plan which will enable you to deliver a consistent, clear story to stakeholders and to manage expectations as to what changes will be required and when these will happen.

With the first effective date for SA IGA implementation being 1 July 2014, financial institutions should be prepared to prioritise their SA IGA implementation.

## Why is the SA IGA an issue for Boards?

- Risk of local penalties if non-compliant
- Reputational risk - client and counterparty risk
- Participation in a global system – FATCA and the IGA system has largely gained global acceptance
- A trend toward information sharing – Boards will be unable to escape the global movement in favour of information sharing, whether under FATCA or some other guise
- Risk of being deemed substantially non-compliant – possible withholding and IRS involvement

## How can KPMG help you?

- Dedicated FATCA team - our FATCA specialists are very well placed to provide technical advice and support to clients in their implementation of the SA IGA.
- Commercially relevant - as a leading professional services provider to the financial services industry KPMG combines its understanding of FATCA with a deep client and industry insight and sector specific knowledge and expertise to provide a commercially relevant and practical FATCA solution.
- Proven FATCA methodology with a multi-disciplinary approach - Our FATCA team brings the expertise of our Tax and Legal team, Forensics (AML) team and our IT Advisory team to provide a comprehensive solution to our clients
- Technical expertise from the inception of a FATCA programme throughout to completion and ongoing support
- Participation in industry workstreams - KPMG is at the forefront of local developments
- Close interaction with our Global FATCA teams – ability to draw on a wealth of knowledge and support from leading IGA jurisdictions
- The KPMG methodology offers a detailed audit trail to assist you during internal and external audits and regulatory examination
- Strategic expertise – provide strategic advice to business on how best to leverage off existing processes and procedures to minimise the compliance burden and associated costs



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