HM Revenue & Customs

Implementation of the UK-US Agreement to improve International Tax Compliance and to implement FATCA

Who is likely to be affected?

Anyone carrying on a business as a financial institution in the United Kingdom (UK). This includes companies, trustees, partnerships and authorised operators of funds.

General description of the measure

The measure implements the UK's international obligations under an Intergovernmental Agreement (IGA) entered into with the United States (US).

In 2010 the US introduced legislation to combat tax evasion by US persons. These provisions, known as the Foreign Account Tax Compliance Act (FATCA), require financial institutions outside the US to pass information about the accounts of US persons to the US tax administration, the Internal Revenue Service. Any financial institution that fails to comply with the US legislation is subject to a 30 per cent US withholding tax on any US source income.

UK data protection law currently precludes financial institutions from complying with the US requirements. However under the IGA, the UK has agreed to introduce legislation which will enable UK financial institutions to provide the data the US requires without breaching data protection restrictions. This is ensured by requiring the financial institutions to first pass the information to HMRC, who will then exchange it with the US, under the terms of the IGA as supplemented by existing tax information exchange arrangements. As a consequence, the US has agreed to carve out UK institutions from the US legislation and as part of the Agreement the US has agreed a simpler and less burdensome approach to compliance by the financial institutions and agreed to provide the UK with reciprocal data in respect of UK persons with US accounts.

The UK legislation that implements the UK's international obligations in the IGA will set out the reporting requirements on financial institutions, including the due diligence procedures they need to apply to identify and then report relevant account information.

Policy objective

There are two main policy objectives for this measure: to enhance HMRC's compliance activities (stemming from the additional data); and to assist UK financial institutions by addressing the legal issues preventing them from complying with the US legislation as well as reducing their compliance costs. Addressing the legal issues and providing a mechanism for UK financial institutions to supply the US with information it requires for its tax compliance purposes removes the threat of a 30 per cent withholding tax which would have had a significant negative impact on UK business - potentially leading to reduced lending and increased costs to customers.

Background to the measure

On 12 September 2012 the UK and the US signed an IGA which this measure implements.

HMRC launched a public consultation on 18 September on the practical implementation of the IGA. The consultation closed on 23 November 2012. The response to this consultation will be published on 18 December 2012.

Detailed proposal

Operative date

The measure will have effect after the date that Finance Bill 2013 receives Royal Assent.

Current law

Current law does not allow financial institutions to pass FATCA information either direct to the US or to HMRC on a voluntary basis, nor does it enable HMRC to require it.

Proposed revisions

Finance Bill 2013 will include a power to make regulations under which financial institutions will be required to identify prescribed information using specified due diligence procedures, and return that information annually to HMRC.

Summary of impacts

<table>
<tr><td rowspan="3">Exchequer impact (£m)</td><td>2012-13</td><td>2013-14</td><td>2014-15</td><td>2015-16</td><td>2016-17</td><td>2017-18</td></tr>
<tr><td>-</td><td>negligible</td><td>negligible</td><td>+5</td><td>+55</td><td>+25</td></tr>
<tr><td colspan="6">These figures are set out in Table 2.1 of the Autumn Statement and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside the Autumn Statement.</td></tr>
<tr><td>Economic impact</td><td colspan="6">This measure will reduce the costs for financial sector companies in providing the information required by the US and alleviate the risk of suffering the 30 per cent withholding tax imposed by the US. By helping mitigate some of the most significant impacts of FATCA, the IGA will support lending in the sector, help keep customer costs down and thereby support economic growth.</td></tr>
<tr><td>Impact on individuals and households</td><td colspan="6">None except for impacts on those who evade tax.</td></tr>
<tr><td>Equalities impacts</td><td colspan="6">There are no impacts on any group which share protected characteristics.</td></tr>
<tr><td>Impact on business including civil society organisations</td><td colspan="6">FATCA imposes new burdens on UK businesses in order to provide information relating to their US citizen customers to the IRS, but this measure will reduce both the number of businesses affected and numbers of accounts that need to be reviewed and, as compared with complying with FATCA itself, will significantly cut the costs of compliance for UK businesses.

The initial registration process is eased for UK businesses, making it quicker and easier for them to register with the IRS for FATCA purposes. The required due diligence processes in UK legislation will contain relaxations and alternative processes that will enable business to develop more tailored processes as they can build on existing business models and relationships with third party service providers. A new reporting process which will not commence until 2015 (in respect of data for 2013 and 2014), will be introduced to address the data protection issues that prevent UK business from complying with FATCA. This will enable UK businesses to report information to HMRC who will pass it onto the IRS thereby removing the withholding tax risk.</td></tr>
</table>

	Businesses will still incur the one-off costs already imposed by the US regulations as they will still need to familiarise themselves with the new rules, undertake a detailed risk assessment, acquire new IT systems, and establish internal systems to allow them to comply with their obligations. There remain on-going costs for these businesses, as they will still need to collect and report information on an annual basis. However, the removal of a large number of financial products from the scope of reporting and through obtaining exclusions for a large number of smaller financial entities will significantly reduce the overall costs incurred. HMRC will continue to consult with businesses to determine the level of these costs as part of the evaluation of the impact of this policy. These will feed into a full analysis of costs, once the business design for this policy has been finalised. At that time a revised tax information and impact note will be published.
Operational impact (£m) (HMRC or other)	Additional information exchange will impose increased costs on HMRC who need to collect and exchange the additional tax information as well as receive and process significantly more information.. While HMRC will build on the infrastructure already required to fulfil their existing agreement with the US, there will still be additional costs imposed. Furthermore, setting up a new team and new IT to ensure information is used effectively will also require additional investment. A full analysis of the ongoing impacts for HMRC will be established once the business design for this policy has been finalised and the impact fully evaluated.
Other impacts	<u>Small firms impact test</u>: the US provisions generally do not provide relaxations from the reporting requirements based on the size of a firm. To address a disproportionate administrative burden being placed on small UK financial institutions, the Government has from the start of this policy process consulted with small firms (and will continue to do so). As a result the Government has negotiated further exemptions and easements around reporting and registration for a large number of affected small businesses and reduced the number of reportable accounts that need to be reviewed. These should reduce the impact of FATCA on small firms significantly. Other impacts have been considered and none have been identified.

Monitoring and evaluation

The measure will be monitored through information collected as a result of the data exchange agreement with the US.

Further advice

If you have any questions about this change, please contact Malcolm White on 020 7147 0565 (email: malcolm.white@hmrc.gsi.gov.uk) or Neil Higgins on 020 3300 9109 (email: neil.higgins@hmrc.gsi.gov.uk).

1 International agreements to improve tax compliance

(1) The Treasury may make regulations for the purpose of giving effect to or enabling effect to be given to—

(a) the agreement reached between the Government of the United Kingdom and the Government of the United States of America to improve international tax compliance and to implement FATCA, signed on 12 September 2012;

(b) any agreement modifying or supplementing that agreement;

(c) any other agreement between the Government of the United Kingdom and the government of another territory which makes provision corresponding, or substantially similar, to that made by an agreement within paragraph (a) or (b).

(2) Regulations under this section may in particular—

(a) authorise HMRC to require persons specified for the purposes of this paragraph ("relevant financial entities") to provide HMRC with information of specified descriptions;

(b) require that information to be provided at such times and in such form and manner as may be specified;

(c) impose obligations on relevant financial entities;

(d) make provision (including provision imposing penalties) about contravention of, or non-compliance with, the regulations;

(e) make provision about appeals in relation to the imposition of any penalty.

(3) Regulations under this section may—

(a) make different provision in relation to different periods of time;

(b) make different provision for different cases or circumstances;

(c) contain incidental, supplemental, transitional, transitory or saving provision (including provision amending any enactment).

(4) In this section—

"FATCA" means the provisions commonly known as the Foreign Account Tax Compliance Act in the enactment of the United States of America called the Hiring Incentives to Restore Employment Act;

"HMRC" means Her Majesty's Revenue and Customs;

"specified" means specified in regulations under this section.

(5) The power conferred by this section is without prejudice to any other powers conferred by or under any enactment.

(6) The power of the Treasury to make regulations under this section is exercisable by statutory instrument.

(7) Any statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.

EXPLANATORY NOTE

INTERNATIONAL AGREEMENTS TO IMPROVE TAX COMPLIANCE

SUMMARY

1. This clause gives HM Treasury a power to make regulations for the purpose of giving effect to the agreement between the Government of the United Kingdom and the Government of the United States of America to improve international tax compliance and to implement FATCA. FATCA means the United States' provisions commonly known as the Foreign Account Tax Compliance Act contained within the hiring Incentives to Restore Employment Act. The power also enables HM Treasury to make regulations in respect of agreements entered into which are corresponding or substantially similar.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that HM Treasury may make regulations for the purpose of giving effect to certain agreements regarding international tax compliance.

3. Subsections 1(a) - 1(c) set out the type of agreements to which the regulations may give effect.

4. Subsection (2) permits HMRC to require specified persons to provide certain information to HMRC in a specified manner at a designated time.

5. Subsections (2)(d) and (e) set out that the regulations may make provision (including provision on penalties) for non compliance and appeals in relation to any penalties imposed.

6. Subsection (3) allows for further provisions to be made as needed.

7. Subsection (4) provides relevant definitions.

8. Subsection (5) provides that the exercise of this power does not affect any powers under any other enactment.

9. Subsection (6) provides that regulations made under this power are to be made by statutory instrument.

10. Subsection (7) provides that orders made under the provision are subject to the negative resolution procedure.

BACKGROUND

11. This clause enables the United Kingdom to implement the United Kingdom's (UK) international obligations under an Intergovernmental Agreement (IGA) entered into between the United States (U.S.) and the UK.

12. In 2010 the U.S. introduced legislation to combat tax evasion by US persons. These provisions known as the Foreign Accounts Tax Compliance Act (FATCA) require financial institutions outside the U.S. to pass information about the accounts of US persons to the US tax administration, the Internal Revenue Service (IRS). Any financial institution that fails to comply with the U.S. legislation is subject to a 30% withholding tax on any US source income. Current law does not allow financial institutions to pass FATCA information either direct to the U.S. or to HMRC on a voluntary basis, nor does it enable HMRC to require it.

13. Under the IGA, if UK financial institutions comply with legislation that meets the terms negotiated between the U.S. and the UK, and the UK shares this information with the U.S., those institutions will be deemed to have complied with FATCA and will not be subject to the 30% withholding tax. The legislation to implement the IGA will also set out what financial institutions have to report to HMRC, and the due diligence that needs to be applied to identify and then report relevant account information.

14. As part of the Agreement the US has agreed to provide the UK with reciprocal data on the US accounts of UK persons. The information provided to HMRC (both by the UK banks and by the U.S.) is expected to generate additional compliance cases. Financial institutions will be required to begin collecting data in 2013, with HMRC receiving the data from 2015.

15. If you have any questions about this change, or comments on the legislation, please contact Malcolm White on 020 7147 0565 (email: malcolm.white@hmrc.gsi.gov.uk) or Neil Higgins on 020 3300 9109 (email: neil.higgins@hmrc.gsi.gov.uk).