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**Foreign Account Tax Compliance Act:**
**„Joint Statement On International Tax Compliance And Implementing FATCA"**

## Introduction

In February 2012 the US Treasury and the IRS have published the expected „FATCA Proposed Regulations". At the same time a „Joint Statement" from the USA and different member countries of the European Union (France, Germany, Italy, Spain and the United Kingdom) was released. The Joint Statement contains an „Intergovernmental approach to improving international tax compliance and implementing FATCA" and could have a substantial impact on banks and other financial intermediaries in Switzerland.

In this newsletter we will provide an overview of the Joint Statement and deal with the possible implications that this has on the Swiss financial industry.

## Contents of the Joint Statement

The Joint Statement contains the following basic principles:

- The participating countries (USA, France, Germany, Italy, Spain and the United Kingdom) want to intensify their co-operation in combating international tax evasion.
- The intended intergovernmental approach should eliminate local legal impediments, ease the implementation of FATCA and reduce the costs for the FFI's.
- The USA is willing to reciprocate in collecting and exchanging on an automatic basis information on accounts held in US financial institutions by residents of France, Germany, Italy, Spain and the United Kingdom.
- The participating countries intend to keep compliance costs as low as possible for financial institutions and other stakeholders and are committed to working together over the longer term towards achieving common reporting and due diligence standards.

Furthermore the Joint Statement outlines a possible framework for the intergovernmental approach. The USA and a participating country (FATCA partner) would enter into an agreement under which the FATCA partner would agree to:

- Pursue the necessary implementing legislation to require FFIs in its jurisdiction to collect and report to the authorities of the FATCA partner the required information;
- Enable FFIs established in the FATCA partner to apply the necessary diligence to identify US accounts; and
- Transfer to the United States, on an automatic basis, the information reported by the FFIs.

In consideration of this the United States would agree to:

- Eliminate the obligation of each FFI established in the FATCA partner to enter into a separate comprehensive FFI agreement directly with the IRS;
- Allow FFIs established in the FATCA partner to comply with their reporting obligations under FATCA by reporting information to the FATCA partner rather than reporting it directly to the IRS;
- Eliminate US withholding under FATCA on payments to FFIs established in the FATCA;
- Identify in the agreement specific categories of FFIs established in the FATCA partner that would be treated as deemed compliant or presenting a low risk of tax evasion;
- Commit to reciprocity with respect to collecting and reporting on an automatic basis to the authorities of the FATCA partner information on the US accounts of residents of the FATCA partner.

The FFI's in the partner countries would not have to:

- Terminate the account of a recalcitrant account holder;
- Impose passthru payment withholding on payments to recalcitrant account holders.

Furthermore the participating countries are committed to working with other FATCA partners, the OECD, and where appropriate the EU, on adapting FATCA in the medium term to a common

model for automatic exchange of information, including the development of reporting and due diligence standards.

**Impact on FFI’s in Switzerland**

One goal of the Joint Statement is to offer further EU member countries to enter into similar agreements. For Swiss FFI’s this could result in substantial disadvantages:

- Necessity to enter into FATCA-agreements with the IRS directly and to bear the risk of having to implement regulations that could possibly be in conflict with Swiss law.
- Higher FATCA-related costs as the FFI’s of the participating EU-countries will profit from substantially reduced costs in implementing and applying FATCA under the conditions of the Joint Statement.
- FATCA favors the FFI’s in the EU over their Swiss competitors already today in respect to ‘foreign’ clients (EU-citizens are not regarded as ‘foreign’ clients).
- With the intention stated in the Joint Statement to make FATCA the standard for exchanging information on an automatic basis in the medium term, the pressure on the Swiss banking secrecy will continue to grow.
- It cannot be ruled out that Switzerland will be confronted with demands from the EU for similar agreements after the implementation of FATCA. The pressure of the USA would therefore serve as the door-opener for other countries.
- Smaller FFI’s will be affected by these disadvantages relatively stronger. FFI’s for which based on their business model the US-business (and also the business with EU-domiciled clients) is not relevant are forced to implement a regulation that will result in substantial cost- and competitive disadvantages for them.

The threat of ‘FATF’ also weighs on the Swiss financial industry. The intended change of policy to classify tax evasion as a predicate crime to money laundering together with the above mentioned consequences of the Joint Statement will increase the pressure on the Swiss financial industry to free itself from its liabilities.

**Costs of implementing FATCA**

For the impacted FFI’s the costs of implementing and operating FATCA are of vital importance. If they are forced to implement a complex (and in the view of many FFI’s unnecessary) regulation the costs associated with it should be kept at an absolute minimum. A special focus should be on maintaining flexibility, in such a way that future regulations and changes to existing rules can be implemented easily and in a timely manner.

The combination of tax-, business- and IT-know-how enables Banking Concepts to support financial institutions implementing regulatory requirements such as FATCA and to offer real added value.

The next FATCA newsletter will be published in summer 2012.

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