

FATCA Background

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Agenda

- ▶ Reasons FATCA was adopted
- ▶ Key design features
- ▶ Major concerns during drafting
- ▶ Key policy questions



Major Reasons FATCA was Adopted

- ▶ Major loopholes in the Qualified Intermediary (QI) regime surrounding US taxpayers:
 - ▶ No reporting of non-US source income/assets
 - ▶ Not clear whether QI needed to look-through shell entities beneficially owned by US taxpayers
 - ▶ Could have undeclared accounts
- ▶ Highly publicized cases of tax evasion (e.g., LGT and UBS)
- ▶ Maintain integrity of US self-assessment system:
 - ▶ Improved communication makes it much easier to establish offshore accounts
 - ▶ Tax evasion on both principal and income in an offshore account
- ▶ But you know something is going to be done when....



The Pope gets involved....

Pope attacks Tax Havens for Robbing Poor

Hard-hitting Vatican report lays blame for the global financial crisis at door of 'offshore centres'

[The Observer](#), Saturday 6 December 2008



Pope Benedict XVI. Photograph: Max Rossi/Reuters

It is a message sent from on high to the world's financial and political elite. The Roman Catholic Church is calling for the effective closure of secretive tax havens as a 'necessary first step' to restore the global economy to health.

FATCA Designed to Close QI Loopholes

- ▶ Requires participating FFIs to:
 - ▶ Report both US and non-US source income
 - ▶ Look through shell foreign entities to determine US beneficial owners
 - ▶ Review all customer accounts, including affiliates
- ▶ 30% withholding tax adopted to encourage FFIs to participate in FATCA (i.e., penalize FFIs that do not participate)



Misc. Other FATCA Provisions

- ▶ Requires tax specific FBAR (IRS Form 8938)
- ▶ Extends statute of limitations for foreign accounts:
 - ▶ Generally from 3 years to 6 years
 - ▶ Suspends statute of limitations if tax specific FBAR not filed



Major Concerns During FATCA Drafting

- ▶ Would US tax evaders find ways to easily avoid FATCA?
 - ▶ Would reputable FFIs decide not to participate in FATCA?
 - ▶ Would investments be shifted from private banks to mutual funds, insurance companies, etc...?
- ▶ Would FATCA drive material foreign investment away from the US?
- ▶ Could the US unilaterally adopt FATCA, or would multilateral action be needed?



Other More Technical Concerns

- ▶ Would FFIs be willing to perform detailed customer due diligence on their entire customer base, including affiliates?
- ▶ Would local law outside the US allow:
 - ▶ FFIs to close accounts of “recalcitrant” customers?
 - ▶ Report information to the US?
- ▶ Would US taxpayers resident overseas have FFIs that would still service their financial needs?



Key Policy Questions

- ▶ **Fundamental Questions:**
 - ▶ Should countries be allowed to adopt bank secrecy and favorable tax laws?
 - ▶ Should other countries be allowed to take steps to prevent the use of offshore accounts to evade tax (e.g., FATCA)?
- ▶ Should US citizens resident overseas be taxed on their worldwide income?
- ▶ Should the US have acted unilaterally?
 - ▶ Can FATCA be successful without multilateral cooperation?
 - ▶ What types of multilateral action are possible? – see next slide



Multilateral Action

- ▶ Short-run - Likely aimed at overcoming local law issues surrounding FATCA (e.g., intergovernmental agreements)
- ▶ Longer term - several countries could join in multilateral FATCA regime:
 - ▶ Benefits to both US and non-US countries. For example:
 - ▶ Reduce US tax evader's investment options
 - ▶ Leverage US to accomplish non-US country's goals
 - ▶ System can accommodate multiple design features:
 - ▶ If withholding model part of design, should apply to both new money and income in offshore accounts



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