

1. **Panamá.** ¿Qué posibilidades existe de que en medio de una campaña electoral en EEUU el tema de **FATCA** va a quedar rezagado hasta que pasen las elecciones?

Will the US elections affect the implementation date of FATCA?

We have no way of knowing whether upcoming elections will effect the implementation. We are charged with implementing the provisions enacted.

2. **Panamá.** ¿Podrían los países que tienen firmados acuerdos de intercambio de información fiscal con EEUU ser exceptuados del **FATCA**?

Are countries which already have tax treaties with the US be exempted from FATCA?

No.

3. **Colombia.** ¿Teniendo en cuenta que el REG-121647-10 constituye una Propuesta de Regulación y que el 15 de de mayo está programada una audiencia pública en Washington, ¿en qué consiste el proceso para la aprobación de la regulación definitiva y para la entrada en vigor de la norma en todo el mundo?

Given that this is a proposed regulation and there will be a public hearing in DC, how will the process work for the final approval and date when the reg becomes effective?

After we receive written and oral comments, we consider those comments and make changes that are appropriate.

4. **Colombia.** La posible aplicación de una retención del 30% establecida por **FATCA** generará un menor valor a pagar a las contrapartes al momento del cierre de una operación financiera. Teniendo en cuenta que esta retención no está regulada en el régimen tributario local podrían generarse litigios a cargo de las entidades financieras por incumplimiento de las operaciones. ¿De qué forma podrían asegurarse las entidades financieras de que no serán objeto de demandas o litigios derivadas de esta situación?

Will the withholding of the 30% open up the financial entities to litigation for non compliance by customers?

The provision itself has a hold harmless provision for withholding agents who withhold pursuant to FATCA. You may wish to comment on provisions of local law that would cause problems.

5. **Colombia.** Teniendo en cuenta que las entidades financieras deben cumplir localmente un principio del derecho público como es el derecho a la reserva bancaria, ¿de qué manera consideran ustedes que se asegura el cumplimiento de este principio y de qué

forma podrían asegurarse las entidades financieras de no encontrarse inmersas en un litigio derivado de la aplicación de una norma supranacional como es FATCA?

How can Banks comply with local laws on bank secrecy and FATCA without ending up being sued by clients?

See above.

6. Perú. ¿Se está considerando la opción de prescindir del requerimiento de firmar el contrato entre el IRS y las instituciones extranjeras no estadounidenses, y en cambio ajustar la ley por medio de acuerdos de intercambio de información fiscal suscritos con otros países, como el que tiene con Panamá?

Will tax treaties substitute for FATCA compliance?

Not at this time. There will likely be separate country to country agreements regarding FATCA.

7. Perú. La norma genera un efecto transversal y supera al sector financiero. Tiene implicaciones legales en los países y bancos latinoamericanos relacionadas con el secreto bancario, la legislación de defensa del consumidor y las leyes tributarias locales, estando algunas de ellas incluso establecidas en las constituciones nacionales; en ese sentido para muchos países será imposible aplicar esta legislación. ¿Se ha considerado este escenario?. ¿Qué alternativa plantean?

How can financial institutions comply and not go against the laws of their countries, including their own tax laws?

We understand that there may be foreign law conflicts and are interested in working with foreign governments to implement FATCA. The NPRM acknowledges that this may be an issue in some jurisdictions and provides a transitional rules for affiliated groups (so-called Limited FFIs and Limited Branches).

8. Perú. ¿Cómo se determina que un agente es considerado US person. La Ley define a las personas involucradas, pero no define los mecanismos que hay que aplicar para poder identificar a alguien como sujeto de esta regulación?. ¿Qué ocurrirá con las personas con doble o triple nacionalidad, o con los poseedores de visa estadounidense que a la vez tienen nacionalidad sin restricciones de entrada a Estados Unidos?

How do you identify the US taxpayer subject to FATCA, for example with double or triple nationality of a US visa with unlimited entry?

NPRM sets forth due diligence rules for identifying and documenting US individual accounts and there are rules for pre-existing individual (high-value and other than high-value accounts) and new individual accounts. NPRM provides very specific examples of what may cause an account to be treated as a “US account”.

9. El Salvador ¿Se ha considerado realizar reformas a **FATCA**? Por ejemplo elevar el monto promedio de las cuentas bancarias sujetas a **FATCA**?

Will there be revisions to FATCA? For example, the minimum amount subject to FATCA?

Treasury and the IRS may modify the NPRM upon further review. In this regard, written comments are helpful.

10. Ecuador. En los casos en que la normativa interna de un País, ya sean constitucional, legal o infralegal, restrinja, prohíba o limite el uso o transferencia de datos personales de los clientes de las Instituciones Financieras, el **IRS** ha previsto o preverá causas de excepción a la aplicación de las retenciones de impuestos a las que hace referencia **FATCA** respecto de las transacciones realizadas por Instituciones Financieras de ese país.

What about countries where transfer of information is against the law?

See above.

11. Uruguay. 1. Atento a las dificultades inherentes a la identificación de los “cuentahabientes estadounidenses”, considerando que **FATCA** se refiere como tales no sólo a los ciudadanos estadounidenses, sino también a aquellas personas respecto a las que existan “indicios” que puedan hacer considerarlos como tales, además de los numerosos casos de nacionalidad múltiple: ¿Qué responsabilidad, desde el punto de vista de la legislación estadounidense, cabe a las IFE’s y en particular a los funcionarios de las mismas responsables por la información, en caso de detectarse en la misma errores u omisiones?

To what degree will foreign Banks be held responsible for discovering that a persona has double nationality and what provision is there for errors or omissions in spite of best faith efforts?

If FFIs follow the procedures set forth in NPRM (or FFI Agreement) and they don’t have actual knowledge that the account is a US account, then FFIs will not be strictly liable for failure to identify the account.

12. Uruguay. Atento al alto costo que implicará para las IFE’S la Debida Diligencia especial que deberán implementar respecto a los cuentahabientes estadounidenses, no cree que **FATCA** puede perjudicar directamente a los ciudadanos estadounidenses, al ser posible que las IFE’s adopten como política el cierre de todas las cuentas de dichos ciudadanos a los efectos de **disminuir este costo, con el consiguiente perjuicio para los mismos, e incremento del flujo de dinero por los canales informales?**

Has the IRS considered that foreign Banks will close all the accounts of US persons outside the US? And this could drive money into unregulated informal channels?

Not the goal of FATCA to cause FFIs to close US accounts. Working with external stakeholders (and foreign gov'ts) to provide rules that are administrable by FFIs and that still meet the objectives of chapter 4.

13. Guatemala. Por ser las relaciones internacionales conducidas por los gobiernos de cada país, cómo es posible que las agencias del gobierno de los EUA pretendan celebrar convenios con entidades privadas extranjeras mediante las cuales estas adquirirían compromisos ante dicho gobierno extranjero, cuando lo pertinente sería la celebración de convenios multilaterales o bilaterales para que cada gobierno nacional requiera a su sistema financiero el envío de la información respectiva. ¿no debiera de ser esta la vía para el logro de los objetivos del **FATCA**?

How can **FATCA** enter into agreements with a private financial institution? Shouldn't this be a government to government agreement?

IRS can enter into agreements with FFIs. As mentioned in preamble to the NPRM, Treasury and IRS are interested in alternatives to implementing FATCA, including through the use of agreements with foreign governments.

14. Guatemala. Ha habido acercamientos del gobierno de los Estados Unidos de América con gobiernos de otros países para proponerles la celebración de convenios de envío de información que requiere la **FATCA**?

Has the US met with foreign governments to figure out how the information will be transferred?

Yes.

15. Secretaría General de FELABAN. Cuales beneficios económicos y legislativos existen para países que cooperen con **FATCA** en relación con los países que no muestran ningún interés de cooperar?

Will there be any benefit to the countries that comply with FATCA vs those that show no interest in complying?

Chapter 4 imposes withholding on withholdable and/or passthru payments made to nonparticipating FFIs. The benefit for participating FFIs is that they will not be subject to withholding under chapter 4.

16. Secretaría General de FELABAN. Si el cliente de una institución bancaria traslada sus capitales a sistemas bancarios que no acojan el acuerdo del **FATCA**, podría considerarse en un momento un posible sujeto de lavado de activos ?

IF a Customer takes his funds to a non FATCA jurisdiction, might this be considered Money Laundering?

If this is a problem for your local jurisdiction, you may consider written comments.

17. Secretaría General de FELABAN. Dentro de las instituciones que aceptan el acuerdo, los litigios que surjan a causa del incumplimiento de la ley **FATCA** deben dirimirse según la normatividad de cual país ?

In the event an institution does not comply with FATCA, which country's laws will be applicable in the event of litigation?

We welcome comments on this issue.

PREGUNTAS ADICIONALES:

1. What is the relationship between **FATCA** and OFAC, and which will be in effect in the future? (Pat's note: I think people believe there will be lists that they have to refer to or cross match in order to identify US citizens). **At this point, interaction has not been established.**

2. What obligations does the bank have once they sign the agreement with the IRS? **See 1.1471-4 of the NPRM. In general, participating FFIs will be required to perform due diligence to identify and document their accounts. The NPRM provides separate rules for pre-existing and new accounts and also distinguishes between entity and individual accountholders. In addition to identifying their accounts, participating FFIs may have reporting obligations associated with their accounts and, under certain circumstances, may have to perform withholding on withholdable and/or passthru payments it makes. [Note that NPRM has phase-in reporting and phase-in scope of passthru payments. Rules with respect to PFFIs will be fleshed out in more detail in the FFI Agreement .**

a. Who should sign the certification and agreement?

If referring to certifications about pre-existing high-value accounts and/or confirmation that the FFI has identified and documented its accounts, the NPRM states that it is the responsible officer who must certify. Although, note that we haven't defined responsible officer. In terms of signing FFI Agreement, this will be fleshed out in more detail in the revenue procedure setting forth the FFI Agreement.

b. What happens if a client lies to the bank? For example, in the case of dual nationality which is not disclosed to the bank, then how does the bank protect itself? **If the**

FFI performs due diligence as described in the NPRM and, it has no reason to know that the client is lying, it will not be held strictly-liable for any under-withholding that results.

3. Will tax treaties exempt the bank from having to sign the IRS agreement? **The NPRM does not exempt FFIs from having to enter an FFI Agreement solely based on whether there is an income tax treaty in force between the United States and country in which FFI is resident. However, in the preamble to NPRM, Treasury and IRS are interested in alternative approaches to implementation of FATCA rules/objectives, that may involve entering into an agreement with the foreign country governments.**

4. IF a person or corporation (non US tax payer) does business with the United States and has money in a foreign financial institution(FFI), how can they be sure that the FFI has an agreement with the IRS and that this person or corporation is not going to find themselves being impacted by the withholding tax (Pat's note: I think they mean that the person or corporation is not a US taxpayer, doesn't owe any US tax, but has the misfortune to do business with an FFI what didn't sign the agreement- might he end up having his money withheld?) **Ask the FFI if it has an agreement with the IRS or if it is an institution that is deemed compliant. There will be a published IRS FFI list that persons may also use to confirm PFFI or registered deemed-compliant FFI status.**

5. Could you explain the criminal/legal responsibility or penalties for the person who signs the agreement with the IRS and for the compliance officer that will be doing the report annually for the bank? (Pat's note: I think in some foreign countries the aml compliance officer can be held legally responsible under their country laws) **I discuss liability to the United States above. You may wish to comment on legal impediments in your jurisdiction.**