

MARKET BULLETIN

REF: Y4611

Title	FATCA (Foreign Account Tax Compliance Act)
Purpose	For information. To provide initial information to the Market on how the new US FATCA reporting requirements on foreign financial accounts and the associated withholding tax rules are likely to affect the Lloyd's Market, and the approach Lloyd's intends to take to minimise the impact.
Type	Event
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Date	31 July 2012
Deadline	None
Related links	http://www.irs.gov/businesses/corporations/article/0,,id=236667,00.html http://www.hm-treasury.gov.uk/joint_intl_statement_fatca_260712.htm

The US FATCA rules will impose a requirement on all Foreign Financial Institutions (FFIs) to report to the Internal Revenue Service (IRS) details of financial accounts held by US taxpayers. The final FATCA rules, expected late summer, will be lengthy and complicated (draft regulations published in February were over 200 pages and did not cover all of FATCA). Although the overall structure and approach the rules will take is largely fixed, in the interim there is considerable uncertainty over their application to Lloyd's and Syndicates. The IRS will publish guidance on the rules once final, but this is not expected to address in detail the application of FATCA to Lloyd's, the Syndicates and the Underwriters.

A further complication is that much of the implementation of FATCA will be through Intergovernmental Agreements (IGAs) which will be bilateral treaties between the US and other governments, of which the UK is one. They will differ in detail, but not principle, from the FATCA rules and will vary slightly from country to country.

What follows, therefore, is a brief summary, based on the current drafts of regulations and guidance, of what the Lloyd's tax department believe will be the main impacts of FATCA on Lloyd's, the Syndicates and the Underwriters, and the actions that the Lloyd's Tax Department are taking.

The FATCA rules are primarily aimed at banks and other financial institutions, including insurance companies, which provide banking, savings and investment products. The rules require reporting on accounts with a higher risk of being used for US tax evasion. Whilst we do not believe US tax evasion is an issue for accounts held by Lloyd's, the Syndicates and the Underwriters, if we are required to make reports as an FFI under FATCA on monies and assets held on behalf of members, we believe we are relatively well placed given the US tax reporting already done under the Closing Agreement. However, the reporting requirements of FATCA will give rise to additional burdens as the increase in the complexity of the new draft of the W-8BEN-E form shows.

The major issue we see is not the reporting, but the additional withholding taxes that FATCA introduces. To enforce FATCA reporting around the world, an FFI that is not compliant will be subjected to 30% withholding tax on all payments from the US of interest, dividends, premium, annuities and other sources of US income or gains (withholdable payments). Less well publicised, but part of the same overall scheme of rules, is that there will be a requirement on Non-Financial Foreign Entities (NFFEs) to give details of substantial US ownership (10% or more) or certify it has no substantial US ownership in order to receive a withholdable payment without suffering the 30% withholding. This will have to be done for each payment received.

Although not absolutely clear ahead of the rules being finalised, our working assumption is that Lloyd's, the Syndicates and the Underwriters will be NFFEs. Lloyd's Taxation Department has made initial contact with the IRS through our US advisers (Sutherland, Asbill & Brennan) to open discussions on how Lloyd's, the Syndicates and the Underwriters will be treated. Our intention is to seek a Closing Agreement direct with the IRS to address the differences of apply FATCA to Lloyd's rather than rely on the final regulations and IRS guidance or the IGA. However, we have not ruled out the possibility that it may ultimately be in our best interests seek an agreement to make Lloyd's a qualifying FFI in the same way that we have an agreement that puts us into the Qualified Intermediary regime. Either way we are likely to require some additional information from Syndicates and Members to ensure that we can be compliant with FATCA and that withholdable payments to Lloyd's and Syndicates continue to flow without the 30% withholding.

Lloyd's Syndicates, Lloyd's Members, Members' Agents, Managing Agents, and/or Brokers should also be considering the impact of these new rules with respect to financial accounts that are maintained outside of Lloyd's centrally and/or with respect to payments of U.S. source FDAP and Investment Gross Proceeds (as defined in the FATCA rules) which are made outside of Lloyd's centrally. Lloyd's will consider and discuss with the IRS the interaction of any agreement with Lloyd's and the non-Lloyd's interests of Members to ensure that one does not cause the other to fall foul of the rules.

If you have any questions regarding application of the FATCA rules please contact the Head of Tax, Mark Edwards in Lloyd's Taxation Department at extension 6839.