



Australian Government

The Treasury

FATCA (FOREIGN ACCOUNT TAX COMPLIANCE ACT)

SUMMARY OF CONSULTATION PROCESS

The Government announced on 6 November 2013 that it would work towards signing and enacting a treaty-status intergovernmental agreement with the United States (US) to enable the financial sector to comply with US FATCA reporting rules.

This measure was included in Tax Laws Amendment (Implementation of the FATCA Agreement) Bill 2014, which was introduced into Parliament on 29 May 2014.

Consultation process

Consultation on the advantages and disadvantages of an intergovernmental agreement was conducted between 28 August and 28 September 2012. Thirty one submissions were received, including five which were marked as confidential.

Consultation meetings were held in Sydney on 27 November 2012, followed by numerous targeted stakeholder discussions with industry throughout 2013.

Consultation on the draft legislation was conducted between 28 April and 9 May 2014. A consultation meeting was held with industry in Canberra on 29 April 2014, in conjunction with an 'open door' consultation policy leading up to formal consultations. Ten submissions were received, including one which was marked as confidential.

Submissions can be viewed on the [Treasury website](#).

Summary of key issues

The Intergovernmental Agreement and Consultation

The intergovernmental agreement signed with the United States is based on a model agreement developed by the United States in conjunction with France, Germany, Italy, Spain and the United Kingdom.

The Australian financial services industry was primarily concerned with implementing the FATCA regulations in Australia. Domestic legal impediments would significantly restrict industry's capacity to comply directly with the US FATCA regulations and generating significant economic and reputational costs for Australian businesses. It is within this framework that the majority of the financial services industry has supported the signature and implementation of an intergovernmental agreement.

The need to maintain consistency with the United States' FATCA regime prevented substantive departures from the model agreement in the development of the agreement signed by Australia. However, a number of significant issues raised by industry were able to be addressed.



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Due Diligence Obligations

Under the US FATCA regulations, individual financial institutions would be required to conclude special agreements with the US Internal Revenue Service (IRS) and would be required to comply with those regulations. The intergovernmental agreement will remove the need for such agreements, and direct FATCA compliance, for Australian financial institutions.

In response to Australian concerns, the content of Annex II of the intergovernmental agreement was drafted to exclude key Australian participants from the scope of FATCA, including superannuation funds, sovereign investment funds and State and Territory treasuries.

Furthermore, due to industry concerns regarding timeframes for compliance, the definition of 'financial account' in the intergovernmental agreement was drafted to allow an 18 month extension of time for Australian exchange traded funds to develop appropriate FATCA reporting systems.

Reporting Obligations

Complying with FATCA directly would require Australian financial institutions to periodically report directly to the IRS certain information about financial accounts held by US individuals or US-controlled entities.

The intergovernmental agreement facilitates the use of the existing Australia-US tax treaty, to enable required financial institutions to report to the Australian Taxation Office in fulfilling their FATCA reporting obligations. The treaty-status document provides a legal authority to collect and report tax information for this purpose, and provides safeguards concerning the handling and confidentiality of the information exchanged.

The intergovernmental prevents the US Internal Revenue Service from making direct contact with Australian financial institutions for the purpose of addressing minor and administrative reporting errors. Financial institutions will only be required to deal with the Australian Taxation Office in relation to such matters.

Implementing Legislation – Giving effect to the Australian Governments Obligations in under the FATCA Intergovernmental Agreement with the United States of America

As is typical of international treaty negotiations, the text of the IGA, as a treaty-status document remained confidential until such time as signature took place on 28 April 2014. The text and exposure draft legislation was released concurrently following signature.

Submissions were generally supportive of the IGA and the legislative approach.

The submissions identified practical implementation issues arising from the text of the IGA. Several also pointed to the need for greater clarity on certain legislative provisions. Where appropriate, amendments have been made to the draft explanatory memorandum to address these concerns. One submission raised the relationship between the intergovernmental agreement and the Common Reporting Standard (CRS) which was recently adopted by the Organisation for Economic Cooperation and Development. The Government is expected to release a discussion paper and consult with business in 2014 on the possible implementation of the CRS.



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Feedback

Feedback on the consultation process for this measure can be forwarded to consultation@treasury.gov.au . Alternatively, you can contact Lyn Redman on 6263 2887. Thank you to all participants in the consultation process.