

## **FATCA: A US legislation with far reaching consequences for all**

On October 27, 2009, influential Democratic Congressmen introduced a bill before Congress with the goal of a stricter implementation of US tax laws applying to assets outside the US and designed to minimize US tax evasion. The arcane sounding legislation, entitled the *Foreign Account Tax Compliance Act* (FATCA), contains a very simple requirement: Foreign Financial Institutions (FFI) wanting to do business in US investments should be subject to similar reporting requirements as US financial services providers. The law will present enormous challenges for approximately 200,000 financial services providers and many other industries around the world. The bill was passed by the US Congress on March 17 and enters into effect in various stages up until January 2013.

FATCA imposes a withholding tax of 30 % on all payments flowing out of the USA in cases where the FFI has not concluded an agreement with the US tax authorities. Such an agreement will require from all FFIs to automatically report accounts which they manage for US persons and "US-controlled" foreign legal entities. This will, in turn, require massive administrative, legal, compliance and IT work in order to regularly discover all US Persons and automatically report all data in the format required by the IRS. Regulatory conflicts are certain. This will impact all FFIs worldwide, but also all corporates. Switzerland, with its over proportional engagement in the USA, will be over proportionally impacted.

Initially designed as a domestically focused law intended to improve tax transparency, FATCA may become a monster causing havoc in the world economy, through which all participants will lose, including Americans. Many describe FATCA as the „neutron bomb of the global economic system“. The predicted additional tax revenue for the IRS of approximately USD 850 million annually is countered by enormous implementation costs, not to mention the resulting operating costs. A provisional and very rough estimate shows average implementation costs of approximately \$ 5-10 million per FFI, which if introduced by all FFI's results in global costs of \$ 1000-2000 billion over two years. This represents approx. the annual GDP of Brazil or India. Higher costs for all clients of these FFIs and lower tax revenues for all governments outside the USA are certain. Financial and direct investments in the US will decrease, possibly in considerable amounts, to the detriment of employment and tax revenue in the USA. US persons abroad will certainly be met with less enthusiasm as clients.

We call on the US Government and US Congress to review FATCA and to pursue the stated, very valid, goal of improved compliance with the US tax laws with more proportionate measures, and thereby avoid a descent into an economic and administrative nightmare.