



## ***Impact of FATCA on venture capital and private equity funds***

**The US Government enacted the Foreign Account Tax Compliance Act (FATCA) regime in March 2010 to counter perceived tax evasion by US individuals through investing in offshore financial accounts.**

**In this Newsbrief Mark Russell and Henry Risk of PwC explain how FATCA will impose new compliance burdens on New Zealand venture capital and private equity funds.**

FATCA will require New Zealand managed funds and other investment entities such as venture capital and private equity funds to enter into an agreement with the US Internal Revenue Service (IRS), and provide details to the IRS about the financial affairs of certain investors with links to the United States.

If these rules are not followed, the funds can have 30% of their US sourced income as well as proceeds from the sale of certain US assets from funds withheld by the IRS.

Even where funds do not invest directly in US assets, proposed 'passthru' payment rules – to come into effect after 1 January 2017 – could impose withholding tax on payments made by other financial institutions to non-compliant funds.

Other financial institutions, such as banks, will seek to manage their own risks in relation to the FATCA withholding requirements. As a result, those financial institutions may also put pressure on venture capital and private equity funds to comply with FATCA.

On the 25<sup>th</sup> of October the New Zealand government announced that it would seek to enter into an Intergovernmental Agreement (IGA) for FATCA with the US government. Under the agreement the New Zealand government will effectively help the US government achieve the objectives of FATCA by implementing a local regime to facilitate reporting of US investors details to the IRS.

An IGA will have an overall beneficial impact on how FATCA will apply to the New Zealand financial services and investment sectors as it will automatically remove the obligation to withhold tax on payments made to New Zealand funds, provided those funds comply with the new investor information reporting requirements. However, the IGA will mean that local institutions which do not invest in US assets and which intended simply to ignore the FATCA rules will now have to comply with the local information reporting rules to be implemented by the New Zealand Inland Revenue.

Another benefit of the IGA is the opportunity for New Zealand to negotiate specific concessions from FATCA that fit with the local environment and business structures.



Inland Revenue and Treasury have been working with industry to identify appropriate concessions to include in the IGA.

Concessions already included in the draft FATCA regulations and in IGAs that have already been agreed by other countries provide a good indication of the types of concessions that the US is likely to grant New Zealand financial institutions.

The concession most relevant for venture capital and private equity funds applies to funds where at least 98% of the interests (measured by value) are held by New Zealand residents. Another potentially relevant concession applies to funds where all of the interests in the fund are held by other funds or financial institutions, which themselves comply with FATCA.

Under an IGA regime, funds that qualify for these concessions will need to register and perform regular due diligence to ensure they continue to comply, but should not have any further reporting obligations.

In contrast, funds which do not meet these concessions will need to register, carry out due diligence on their customers and report details of investors with a connection to the US to the US IRS via Inland Revenue.

Funds with reporting obligations may be able to reduce their compliance burden by providing details of their investors to a US withholding agent which will undertake reporting in relation to US investors on the fund's behalf.

Another significant impact of FATCA on the funds industry will be the need to provide documentation of the fund's FATCA status to financial institution counterparties and collect additional documentation from investors and counterparties to ensure they are in compliance with FATCA. This will require changes to a number of processes including investor on-boarding and transaction approvals.

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