

**Comments invited on draft Public Notice
setting out FATCA incidences of non-compliance subject to administrative
non-compliance penalties**

An intergovernmental agreement (IGA) to improve international tax compliance and to implement the U.S. Foreign Account Tax Compliance Act (FATCA) was signed by the South African Minister of Finance, Mr Nhlanhla Nene and U.S. Ambassador to South Africa Mr Patrick H. Gaspard on 9 June 2014.

The IGA, which is an international tax agreement under the Tax Administration Act, 2011 (the TA Act), was approved by both Houses of Parliament in terms of section 231(2) of the Constitution and entered into force on 28 October 2014. In terms of the IGA, SARS will exchange information with the U.S. Treasury through a process of automatic exchange of information under Article 26 of the Convention for the Avoidance of Double Taxation and Prevention of Fiscal Evasion that exists between the two countries. The legal framework for the implementation of the IGA is therefore completed and firmly in place.

In terms of the IGA and Public Notices [508](#) and [509](#), published in Government Gazette 37778 on 27 June 2014 under the TA Act, South Africa's financial institutions are required to maintain records, collect and submit a return containing the information referred to in the IGA, to SARS with effect from 1 July 2014. The first due date for the submission of the returns is 30 June 2015, and thereafter the returns must be submitted annually for every year commencing 1 March and ending February the next year, by 31 May of that year.

In maintaining records and collecting the information, financial institutions must comply with the due diligence requirements as mandated by the Tax Administration Act and set out in the prescribed [Business Requirement Specification: Foreign Account Tax Compliance Act Automatic Exchange of Information \(BRS: FATCA AEOI\)](#) return required under Public Notice [509](#).

As required under the IGA, SARS must ensure compliance with the requirements of the FATCA international tax agreement by, amongst others, prescribing penalties. This draft Public Notice, to be issued under section 210(2) of the TA Act, prescribes administrative non-compliance penalties for incidences of non-compliance related to the obligations of financial institutions under FATCA international tax agreement.

Comments on the draft Public Notice must be submitted before or on **22 June 2015** to Catinka Smit at csmit@sars.gov.za.

SOUTH AFRICAN REVENUE SERVICE

No.

June 2015

INCIDENCES OF NON-COMPLIANCE BY A PERSON IN TERMS OF SECTION 210(2) OF THE TAX ADMINISTRATION ACT, 2011 (ACT NO. 28 OF 2011) THAT ARE SUBJECT TO A FIXED AMOUNT PENALTY IN ACCORDANCE WITH SECTION 210(1) AND 211 OF THAT ACT

In terms of section 210(2) of the Tax Administration Act, 2011, I, Thomas Swabihi Moyane, Commissioner for the South African Revenue Service, hereby list, in the Schedule hereto, the incidences of non-compliance that are subject to a fixed amount penalty in accordance with section 210(1) and 211 of that Act.

TS MOYANE

COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

SCHEDULE

1. General

Any word or expression contained in this notice to which a meaning has been assigned in a “tax Act” as defined in section 1 of the Tax Administration Act, 2011, or the intergovernmental agreement between the Republic of South Africa and the United States of America to implement FATCA, has the meaning so assigned, unless the context indicates otherwise, and the following terms have the following meaning:

“**account holder**” means an account holder as referred to in Article 1(1)(dd) or a joint holder of a reportable account referred to in Annex 1(VI)(C)(1) in the FATCA international tax agreement;

“**AEOI**” means automatic exchange of information;

“**BRS**” means business requirement specification;

“**BRS: FATCA AEOI return**” means a return required under Public Notice 509, published in *Government Gazette No. 37778* of 27 June 2014;

“**FATCA**” means the United States of America’s Foreign Account Tax Compliance Act;

“**FATCA international tax agreement**” means the intergovernmental agreement between the Republic of South Africa and the United States of America to improve international tax compliance and to implement the FATCA;

“**reportable account**” means a reportable account as defined in the FATCA international tax agreement; and

“**reporting financial institution**” means a reporting financial institution as defined in the FATCA international tax agreement.

2. Incidences subject to fixed amount penalty

2.1 Failure by a reporting financial institution to submit a true and correct BRS: FATCA AEOI return as and when required under Public Notice 509;

2.2 Failure by a reporting financial institution to submit a BRS: FATCA AEOI return that include a required reportable account;

- 2.3 Failure to comply with a due diligence requirement set out in the BRS: FATCA AEOI return or the FATCA international tax agreement for purposes of completion of the return;
- 2.4 Failure to apply a due diligence requirement set out in the BRS: FATCA AEOI return or the FATCA international tax agreement in a manner to ensure reporting of all information required under the FATCA international tax agreement in respect of an account holder of a reportable account referred to in paragraph 2.2;
- 2.5 Failure to remedy minor errors referred to paragraph 1 of Article 5 of the FATCA international tax agreement within 21 days of the notification of the errors or such longer period as may be specified in the notification; or
- 2.6 Failure to remedy an incidence of significant non-compliance referred to paragraph 2 of Article 5 of the FATCA international tax agreement within 30 days of the notification of the non-compliance or such longer period as may be specified in the notification.

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