



**To the members of the  
European Federation of Building Societies**

Brussels, 13 August 2012

**FATCA:**

**Publication of the model intergovernmental agreement to improve tax compliance and to implement FATCA**

Dear member,

On the occasion of the implementation of the US Foreign Account Tax Compliance Act (FATCA) aiming at the prevention of tax evasion by US citizens, Germany, France, Italy, Spain and Great Britain have agreed – as already announced in spring 2012 (cf. circular letter of the EFBS of 6 March 2012) – with the USA on a model intergovernmental agreement. On its foundation bilateral agreements of the five negotiating countries will be concluded with the US. In future, other EU member states will be able to sign international agreements with the US government based on the model agreement.

The signing of an agreement will let financial institutions benefit from various facilitations when applying FATCA:

- Indeed, financial institutions will still be obliged to deliver information on US accounts to the US tax authority IRS (Internal Revenue Service). Yet, data will not be transferred directly to the IRS, but to the competent authority of the state in which the financial institution is based. The authority shall then forward the information to the IRS.
- Thus, the financial institution will not have to conclude a contract directly with the IRS. Only the registration of the financial institution at the IRS will be requested.
- The identification of new customers will still be based on the Know-your-customer-principle (as provided for in Art. 8 of the 3<sup>rd</sup> Anti Money Laundering Directive).
- The withhold tax of 30 % shall, according to Art. 4 II, not be applied to transactions of US citizens inside of a FATCA Partner. In addition, the financial institution shall not be obliged to cancel the customer relationship only because the customer disagrees with the transfer of its data.
- In return to the transfer of data to the USA, the US authorities will provide information on incomes of interest and dividends of citizens of the FATCA partner, which have been collected by the IRS of the US financial institutions.

- If a financial institution of a FATCA Partner has a subsidiary company in a state which has not signed a bilateral agreement with the USA, the parent company can still be treated as FATCA compliant if it respects certain conditions. Art. 4 V of the model agreement states that parent companies shall assure that the FATCA provisions are applied separately and to the extent of the nationally applicable law of the subsidiary company, without any privilege accredited by a bilateral agreement. Thus, the subsidiary company shall be constrained to identify itself as not FATCA compliant and in consequence apply the reporting requirements and the withdrawal requirements imposed to customers who disagree with the transfer of their data. Yet, a definite approach needs still to be developed.
- Moreover, the model agreement shall contain an annexe II presumably determining the financial institutions of FATCA Partners which will be treated as not constrained to report information because tax evasion by their customers is practically not possible.

A bilateral agreement shall be signed by Germany expectedly in the next weeks.

Please find enclosed the English version of the bilateral agreement. The German version will be published presumably at the end of August 2012.

For further questions, please do not hesitate to contact us.

Yours sincerely,



Andreas J. Zehnder  
Managing Director  
European Federation of Building Societies

### **Annex**

- Model intergovernmental agreement to improve tax compliance and to implement FATCA