FATCA Background

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Agenda

- Reasons FATCA was adopted
- Key design features
- Major concerns during drafting
- Key policy questions
Major Reasons FATCA was Adopted

- Major loopholes in the Qualified Intermediary (QI) regime surrounding US taxpayers:
  - No reporting of non-US source income/assets
  - Not clear whether QI needed to look-through shell entities beneficially owned by US taxpayers
  - Could have undeclared accounts

- Highly publicized cases of tax evasion (e.g., LGT and UBS)

- Maintain integrity of US self-assessment system:
  - Improved communication makes it much easier to establish offshore accounts
  - Tax evasion on both principal and income in an offshore account

- But you know something is going to be done when….
Pope attacks Tax Havens for Robbing Poor

Hard-hitting Vatican report lays blame for the global financial crisis at door of 'offshore centres'

The Observer, Saturday 6 December 2008

It is a message sent from on high to the world's financial and political elite. The Roman Catholic Church is calling for the effective closure of secretive tax havens as a 'necessary first step' to restore the global economy to health.
FATCA Designed to Close QI Loopholes

- Requires participating FFIs to:
  - Report both US and non-US source income
  - Look through shell foreign entities to determine US beneficial owners
  - Review all customer accounts, including affiliates

- 30% withholding tax adopted to encourage FFIs to participate in FATCA (i.e., penalize FFIs that do not participate)
Misc. Other FATCA Provisions

- Requires tax specific FBAR (IRS Form 8938)

- Extends statute of limitations for foreign accounts:
  - Generally from 3 years to 6 years
  - Suspends statute of limitations if tax specific FBAR not filed
Major Concerns During FATCA Drafting

- Would US tax evaders find ways to easily avoid FATCA?
  - Would reputable FFIs decide not to participate in FATCA?
  - Would investments be shifted from private banks to mutual funds, insurance companies, etc…?

- Would FATCA drive material foreign investment away from the US?

- Could the US unilaterally adopt FATCA, or would multilateral action be needed?
Other More Technical Concerns

- Would FFIs be willing to perform detailed customer due diligence on their entire customer base, including affiliates?

- Would local law outside the US allow:
  - FFIs to close accounts of “recalcitrant” customers?
  - Report information to the US?

- Would US taxpayers resident overseas have FFIs that would still service their financial needs?
Key Policy Questions

- **Fundamental Questions:**
  - Should countries be allowed to adopt bank secrecy and favorable tax laws?
  - Should other countries be allowed to take steps to prevent the use of offshore accounts to evade tax (e.g., FATCA)?

- Should US citizens resident overseas be taxed on their worldwide income?

- Should the US have acted unilaterally?
  - Can FATCA be successful without multilateral cooperation?
  - What types of multilateral action are possible? – see next slide
Multilateral Action

- Short-run - Likely aimed at overcoming local law issues surrounding FATCA (e.g., intergovernmental agreements)

- Longer term - several countries could join in multilateral FATCA regime:
  - Benefits to both US and non-US countries. For example:
    - Reduce US tax evader’s investment options
    - Leverage US to accomplish non-US country’s goals
  - System can accommodate multiple design features:
    - If withholding model part of design, should apply to both new money and income in offshore accounts
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