



Nederlandse
Vereniging van **Banken**

FATCA AND DATA PROTECTION

Does the IGA solve all our problems ??



FATCA acceptance: the five stages of grief.

- The denial stage



FATCA acceptance: the five stages of grief.

- The anger stage



FATCA acceptance: the five stages of grief.

- The bargaining stage



FATCA acceptance: the five stages of grief.

- Depression stage



FATCA acceptance: the five stages of grief.

- Acceptance stage !!



Main privacy issues FATCA (final regs)

- FATCA obligations may conflict with local law requirements related to privacy, data protection, anti-discrimination, consumer protection and account/closing regulations.
- The level of data protection in the USA is not equal to the one in Europe
- Accountholders should give their explicit consent.



Main privacy issues FATCA (final regs)

- Is it a free consent? Does the individual has a real choice about giving it.
- Is the bank allowed to exit an existing account and refuse to open a new account?



Reaction Art. 29 Working Party

June 2012:

“More selective, less broad measures should be considered in order to respect the privacy of law-abiding citizens.”

Without domestic law and/or European law to recognise FATCA, FFIs will not have any lawful grounds upon which to process the personal data required.



The IGA model 1: problems solved?

Guidance of the BBA :

“The IGA and the national legislation introduced to enact it, will remove some of the implementation problems faced by Financial Institutions, for instance the legal difficulty of complying without breaching data protection restrictions.”

Does the IGA remove all data protection issues?



Implementation

- The financial institution must inform those customers whose accounts it has reported to the local tax authority.
- There is no consent of the customer necessary, because there is a legal obligation.
- Customers have the right to request a copy of the information (either to the bank or to the tax authority) sent to the US.
- Customers have the right to request that inaccurate information is corrected.



Implementation IGA

Are all problems solved?

Possible issue

Is there a data protection issue if a financial institutions chooses not to apply the due diligence thresholds?



FATCA IGA

Conclusion:

The IGA seems to bring the information exchange with the US more in line with the existing data protection laws.

and

If there still is a problem, it's now an issue for governments.



FATCA and customers

Acceptance by customers by:

- Adjustment of the general banking conditions
- Information campaign (general info, the indicators for a United States tax subject and what a customer can do if he/she is a US person).
See: www.nvb.nl
- Data Protection FAQ in the UK (see www.hmrc.gov.uk/budget-updates/march2012/draft-dpa-fatca-faqs.pdf)

