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## The importance of Fatca

On January 22 2015, the Central Bank of Nigeria issued a directive to Nigerian banks, discount houses and other financial institutions to comply with the requirements of the US Foreign Account Tax Compliance Act (Fatca), a legislation introduced as part of the US Hiring Incentives to Restore Employment Act 2010 to check offshore tax evasion by US subjects (account holders).

Fatca ensures that the assets and incomes of US account holders held with non-US financial institutions, known as foreign financial institutions (FFIs), are disclosed to the US Internal Revenue Service (IRS). This is in view of the fact that US tax subjects are taxed on their worldwide income. Failure to comply with the reporting obligation renders the US account holder or FFI to a 30% withholding on all US-sourced profits or payments. Already the withholding penalty has become applicable to fixed or determinable annual or periodical (FDAP) payments made on or after July 1 2014, while it took effect on FDAP gross proceeds and pass-through payments on January 1 2015.

Towards mitigating the harshness of the withholding penalty, the US has entered into intergovernmental agreements (IGAs) with various countries. Nigeria has no IGA with the US, such that Nigerian financial institutions with US accounts holders on their books are required to enter into FFI agreements and report directly to the IRS. As of February 1 2015, only 87 Nigerian financial institutions had registered with the IRS.

Bearing in mind that reporting obligations begin on March 31 2015 for FFIs in non-IGA jurisdictions, compliance with Fatca by Nigerian financial institutions is not without complications. It would require maneuvering through various laws and regulatory policies affecting the privacy and confidentiality of banker-customer relationships, and in commercial transactions, contractual duties of confidentiality. On the one hand the legitimacy of the operation of a foreign law within the territory of Nigeria may be challenged, and on the other hand a recalcitrant or non-consenting account holder may institute a lawsuit for breach of confidentiality. Implementation of Fatca may also lead financial institutions in Nigeria to incur additional overhead costs in terms of the manpower, skill and technology required to effect compliance, which may be passed on to the account holder.

Nevertheless, the onus is on account holders and counterparties to ensure that their FFIs are compliant with the Fatca registration requirements.

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