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Bank Depository User Group Annual Meeting

Foreign Account Tax Compliance Act (FATCA)

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Agenda

General overview and concepts

Planning for compliance

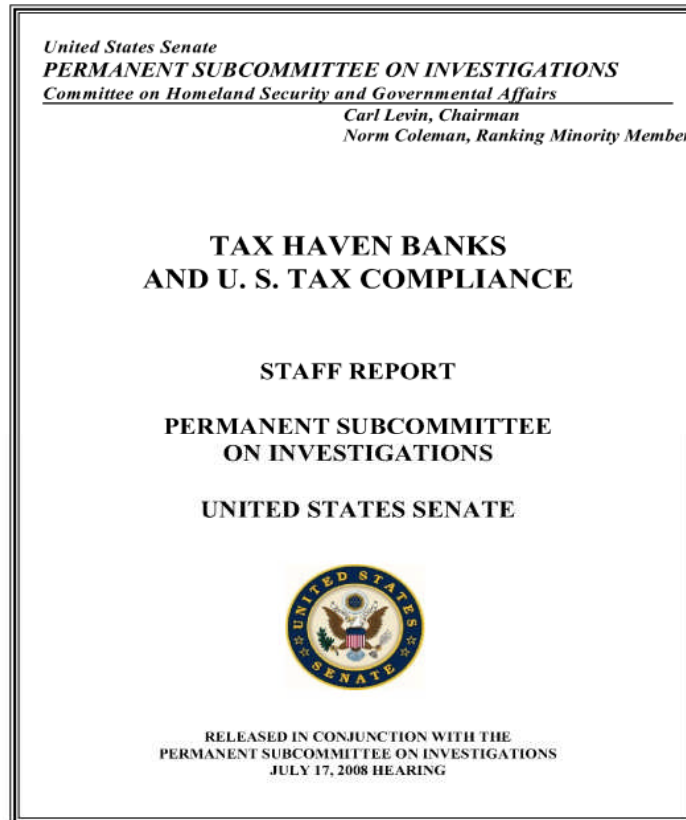
FATCA certification and registration process

What others are doing today

Questions

General overview and concepts

Congressional action



Issue:

U.S. persons are using foreign entities to invest and avoid U.S. reporting and backup withholding

- Certifying to be foreign persons
- Availing themselves of treaty benefits
- U.S. loses an **estimated \$100 billion in tax revenues annually** due to offshore tax abuses
- Financial institutions may be **facilitating international tax evasion**

The congressional reaction – FATCA

What?

FATCA – Foreign Account Tax Compliance Act

The purpose of FATCA is to “detect, deter and discourage offshore tax evasion” by U.S. citizens or residents

Major functions impacted:

- Pre-existing account management
- Client on-boarding
- Tax reporting
- Tax withholding
- Governance

Why?

What is the intent?

Create greater transparency by strengthening information reporting and compliance with respect to U.S. accounts

How?

What needs to be done?

FATCA requires reporting to the IRS certain information on direct and indirect U.S. account holders

FATCA imposes a 30% withholding tax on U.S. source “withholdable” and “foreign passthru” payments made to non-compliant parties

What should we expect?

- FATCA will require more documentation/information to be collected from clients
- Doing it wrong can cause reputational risk
- Withholding should not apply except in situations where a customer does not adequately respond to requests for information or documentation, or where the customer is a non-participating FFI
- Increased US tax reporting of US persons' income and assets

IRS expects to collect little revenue from FATCA withholding tax – intent is to generate revenue through enhanced reporting of income paid to US persons

High Level Requirements

Foreign Financial Institution (FFI)

- Need to enter into a FFI agreement with IRS or qualify for a deemed compliant category
- Perform account due diligence on pre-existing Individual **and** Entity account holders
- Certify completion of account due diligence for Individual and Entity accounts holders
- Implement new account opening procedures to identify accounts owned either directly or indirectly by US persons
- Implement new account opening procedures to identify accounts owned by compliant entities
- Implement a process to withhold (if necessary) on US source fixed, determinable, annual or periodic (FDAP) income, gross proceeds
- Annually reporting information on payments to US accounts

U.S. Withholding Agent (USWA)

- Perform account due diligence on pre-existing Entity Account-holders
- Implement new account opening procedures to identify accounts owned indirectly by US persons
- Implement account opening procedures to identify new accounts owned by compliant entities
- Implement a process to withhold (if necessary) on US source fixed, determinable, annual or periodic (FDAP) income, gross proceeds
- Annually reporting information on payments to US accounts

Non-Financial Foreign Entity (NFFE)

- Report substantial (>10%) US owners, or certify that there are none

FATCA Timeline – Phased Implementation

- FFIs and US Withholding agents have their own timeline
- Phased implementation starting in 2013, and ending in 2017
- Some systems and procedures need to be ready as early as Jan 1, 2013
- Major key dates:
 - January 1, 2013 – USWAs need new account procedures in place
 - By June 30, 2013 – FFIs need new account procedures in place
 - January 1, 2014 – First FATCA withholding requirements commence
 - July 1, 2014 – Certify due diligence is complete on high value accounts
 - September 30, 2014 – First FATCA reporting is due

Final regulation is expected at the end of 2012 which could impact implementation milestones if IRS regulatory dates change

Planning for compliance

Discussion Topic:

Has your firm started planning for the implementation aspects of FATCA?

Illustrative FATCA approach to plan for compliance

Program Management Office (PMO)	Entity Classification	<ul style="list-style-type: none">▪ What is the nature and degree of exposure entities have to FATCA?▪ What are the FATCA obligations associated with other stakeholders?
	Internal Business Impact	<ul style="list-style-type: none">▪ What business functions are impacted by FATCA?▪ In order to meet FATCA requirements what process, data, and systems gaps need to be addressed?
	External Business Impact	<ul style="list-style-type: none">▪ What are other business impacts to the company (distribution mechanisms, legal agreements, etc.)?
	Implementation Plan	<ul style="list-style-type: none">▪ What steps, timelines, and milestones to be followed between now and 1/1/2013?▪ What can we do now vs. wait for further guidance / notice / final regulations?
		<ul style="list-style-type: none">▪ Who needs to be included in the FATCA discussion?▪ How are we going to manage the process?

Is your preexisting entity data FATCA ready?

Analyze your own legal entity data and documents (of your FFIs) to ensure you have all supporting data and documentation to register with the IRS

Classify your own legal entities and ensure you have all the proper supporting data and documents to register with the IRS

Challenges and questions:

- How do you manage changes in classifications to your legal entities?
- How do you ensure that new entities are properly organized and characterized for FATCA readiness?

Is your preexisting investor/account data FATCA ready?

Analyze your account data to determine account/investor status to either:

- Pre-classify your existing accounts and work with those where you need to clarify or collect more information or documentation to avoid NPFPI/recalcitrant status
- Begin to capture additional documentary evidence

Challenges and questions:

- Do you build a new document management system?
- How do you manage changes in classifications?
- If account data is not electronically searchable or above certain de minimis thresholds, develop a plan to search paper files, where this information is stored (law firms, administrators, etc.)?

How will new account on-boarding be impacted?

1. New account on-boarding procedures need to be updated by January 1, 2013 (USWA), July 1, 2013 (FFI) or January 1, 2014 (IGA) depending on the type and/or location of the entity
2. Need to collect FATCA relevant information as part of the new account on-boarding process
3. Need to make sure that tax documentation is consistent with all of the information collected as part of on-boarding
4. Systems will likely need to be updated to process, store, and archive investor and account information being collected

Prepare to report...

Reporting by PFFIs on U.S. accounts as required under FFI agreement

<p style="text-align: center;">2014 (for calendar year 2013)</p> <p>Reporting due September, 30 2014 (For accounts on record as of June 30, 2014)</p>	<p><u>Specified US persons</u></p> <ul style="list-style-type: none"> • Name • Address • TIN • Account number • Account balance 	<p><u>NFFEs that are US-owned foreign entities</u></p> <ul style="list-style-type: none"> • Name of NFFE • Address of NFFE • TIN of NFFE • Account number of NFFE • Name, address, and TIN for <u>each</u> <i>substantial US owner</i>
<p style="text-align: center;">2015 (for calendar year 2014)</p> <p>Reporting due March 31, 2015</p>	<ul style="list-style-type: none"> • Same information as above 	
<p style="text-align: center;">2016 (for calendar year 2015)</p> <p>Reporting due March 31, 2016</p>	<ul style="list-style-type: none"> • Above information plus income associated with account 	
<p style="text-align: center;">2017 (for calendar year 2016)</p> <p>Reporting due March 31, 2017</p>	<ul style="list-style-type: none"> • Above information plus gross proceeds associated with account 	

Aggregate reporting

- PFFIs must report the aggregate number and aggregate value of accounts held by recalcitrant account holders in the below 3 groupings:
 - Recalcitrant with U.S. indicia
 - Recalcitrant with no U.S. indicia
 - Dormant

What Are the Top Five Implementation Challenges?

#	Topic	Key Challenges
1	<i>Analysis and remediation of pre-existing Accounts</i>	<ul style="list-style-type: none"> • Insufficient information in existing data sources (e.g., AML/KYC, customer data warehouse) • Diverse data environments • Coordinating manual work • Needs to be auditable
2	<i>Tech & Ops governance</i>	<ul style="list-style-type: none"> • Number of processes and systems (e.g., onboarding, reporting) requiring remediation • Driving consistency • Aligning initiatives • Building in flexibility
3	<i>3rd party dependencies</i>	<ul style="list-style-type: none"> • On boarding, reporting and withholding responsibility or dependencies with 3rd parties • Contractual obligations • Reputational risk of non-compliance by a 3rd party
4	<i>Increased number of FATCA Classifications</i>	<ul style="list-style-type: none"> • Information to perform classification • Differences and impacts of classifications
5	<i>Aggregation of accountholder balances</i>	<ul style="list-style-type: none"> • Data quality or integrity issues • Data privacy laws • Defining “relationship manager” • “Special Aggregation” based on RM knowledge

FATCA certification and registration process

Discussion Topic:

***Has your firm identified a
“Responsible Officer”?***

Who is responsible for all of this?

FATCA requires certification of compliance by a “Responsible Officer” (RO)

- FATCA requires that a responsible officer must certify to the IRS regarding the organization’s compliance with FATCA
- Should be involved in the development of the company's FATCA compliance policies and procedures
- Should ensure that appropriate evaluation of the effectiveness of controls is conducted and supports the certification
- Should leverage the internal audit and sub-certification network to perform its responsibilities
- The provisions of FATCA are closely linked to an organization's operations functions
- Certifying officer must be in a position within the organization to be able to leverage resources across the organization

Details on Registration Process

- In two recent industry conferences, the IRS technology team outlined proposed details and steps regarding the registration process and asked for input
- The details of the registration process are not finalized

High level details

- ***Most*** FFIs (except for certified deemed compliant, exempt) will need to register with the IRS, including those from IGA countries
- Each FFI will have to be entered separately into the on-line registration site. Bulk uploads will not be available
- There are 26-plus questions in the registration process that entail some complexity and require preparation

Verification of compliance

Certifications required of a “responsible officer”:

- To the best of the responsible officer’s knowledge, from August 6, 2011 until the date of certification, no formal or informal practices or procedures were in place to assist account holders in the avoidance of FATCA.
- Within one year of the effective date of the FFI agreement, the responsible officer is required to certify to the IRS that the participating FFI has completed the review of all preexisting high value accounts.
- Within two years of the effective date of the FFI agreement, the responsible officer is required to certify to the IRS that the participating FFI has completed the review of all other preexisting accounts. Conducted periodic reviews of the FFI's compliance with due diligence, withholding and reporting obligations under the FFI agreement.
- The responsible officer may be required to provide certain factual information and to disclose material failures with respect to the participating FFI’s compliance with any of the requirements of the FFI agreement.

How to prepare for the FATCA certification process?

1. Responsible Officer should take center stage and actively manage this process....starting now
2. Develop a framework for Governance and Controls
3. Identify existing governance and controls processes that can be leveraged for FATCA
4. Design controls for entire end to end FATCA process
5. Identify service providers and their responsibilities
6. Schedule and resource end of year controls review

What are others doing today

What are others actually doing now to address FATCA?

1. Setting up formal FATCA Governance structures to determine how to proceed forward (including Tax, Ops, Legal, IT & Inv Relations)
2. Participating in industry lobbying efforts around key issues (privacy issues, deemed compliant status, passthru payment percentage, etc.)
3. Communicating the impact/status of FATCA to investors
4. Coordinating discussions with responsible parties to determine their role and under FATCA (distributors, custodians, transfer agents, administrators, etc.)
5. Reviewing legal implications of FATCA to determine required changes (distribution, custodial, subscription, prospectus, etc.)
6. Conducting a FATCA Impact Assessment to determine their entities FATCA footprint and the implications on their operational processes, data and systems

Challenges and questions:

- Is it always clear who owns FATCA compliance responsibility between parties? Pre-existing account compliance, new account on boarding, and withholding and reporting obligations)

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