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FStaxworld
Your July snapshot

In this month's FS*taxworld*, the Deloitte Global FATCA leader provides insights into the course of FATCA after one year and beyond.

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The View from Deloitte

Dear Reader,

The first day of July marked the one-year anniversary for foreign financial institutions (FFIs) having to comply with the U.S. Foreign Account Tax Compliance Act (FATCA), the law targeting tax noncompliance by U.S. taxpayers with foreign accounts. While FATCA has been an effective tool over the past year for compliance with the IRS's financial reporting requirements, challenges associated with FATCA adoption and compliance still exist.

A top challenge that foreign jurisdictions and FFIs face is meeting FATCA implementation deadlines. The past few months alone have been a watershed in reporting deadlines related to the 2015 FATCA filing season. For instance, in May and June, a bevy of countries with FATCA intergovernmental agreements (IGAs) faced reporting deadlines. FFIs not under a FATCA IGA, or otherwise exempted, were given an automatic extension this year and needed to provide the IRS with information on accounts held by U.S. taxpayers by 28 June.

The reporting ramp-up represents a new phase in FATCA's rollout. Since FATCA's enactment in 2010, FFIs have worked to document accounts, develop onboarding procedures, build withholding capabilities, establish a compliance program, and prepare for reporting. Now it is time for the data to actually begin flowing to the IRS, and it is likely that many institutions are not prepared to deliver that information. Moreover, FATCA reporting requirements will continue to grow beyond 2015, as the remediation of preexisting accounts is completed.

At the same time, governments and FFIs face another challenge on this first anniversary of FATCA compliance: The OECD has established the common reporting standard (CRS) for exchange of financial account information between global jurisdictions. Implementation of that standard, while varying from country to country, will increase the focus on account opening and client identification procedures globally, and the amount of reporting will grow exponentially.

Together, the FATCA and OECD CRS provisions represent significant new requirements for global data collection and information reporting. Those requirements will compel financial institutions to establish processes that both protect their clients' interests and meet government mandates.

Despite those challenges, there may be opportunities. The requirements might allow financial institutions to look beyond simply meeting the next deadline and instead seek to leverage compliance efforts and investments for meeting the requirements, while capitalizing on valuable information gathered in the process. A clearer understanding of the issues and opportunities may help financial institutions chart their path to compliance and serve their clients better.

A Closer Look at Reporting Challenges

The difficult balance that FFIs try to achieve with FATCA compliance is to provide authorities with the information they require while protecting client privacy. Information accuracy is paramount in meeting both requirements. For example, an FFI that mistakenly identifies an account holder as a U.S. taxpayer or that provides the IRS with incorrect financial data could face both business and compliance consequences.

Accurate reporting hinges on a detailed understanding of the institution's customers, a very real challenge for many financial institutions. Client information often resides on multiple IT systems, with name and address in one place and information on various accounts scattered elsewhere.

Another issue is that some foreign governments are themselves behind in FATCA implementation. Many countries have entered into Model 1 IGAs requiring that the country itself issue detailed FATCA regulations and guidance and that FFIs convey FATCA-related information to their own governmental agencies. Those agencies in turn will begin transmitting that information to the IRS starting 30 September. Each country is in a position to interpret the FATCA rules within its own jurisdiction and can add its own specific requirements on top of the FATCA provisions. From country to country, those requirements may vary a little or a lot, potentially creating dozens of versions globally.

The OECD's CRS adds even more reporting requirements and complexity. In addition to identifying U.S. accounts that must be reported under FATCA, FFIs will also need to report accounts in countries that have agreed to CRS. As with FATCA, implementation of CRS provisions will vary among countries. Each country that agrees to adopt the standard will enact it locally, with the option to modify what must be reported, how accounts are identified, and other factors. As with FATCA, compliance requirements can technically differ from country to country, even if only slightly. Ultimately, implementation of CRS could make every customer's account reportable.

New Opportunities, Helpful Steps

Beyond financial reporting requirements, the substantial data collection required by FATCA and OECD CRS may offer important benefits for forward-looking FFIs. The information can provide FFIs a better understanding of who their clients are, the products they use, and new products in which they might be interested.

Some organizations may see the requirements as a catalyst for system consolidation. FFIs, particularly those that have grown through acquisitions, might have numerous systems housing client information, an environment possibly ready for technology streamlining. Data about a single client that might reside on multiple systems could be brought together to provide new insights for enhancing client services and experience. Those insights might even help identify clients with difficulties.

FATCA may also create opportunities for service providers. FFIs might want to work with a service provider to fulfill their FATCA and CRS requirements. Tapping the resources of a service provider focused on the emerging requirements might help an FFI avoid having to build internal infrastructure, while allowing it to access leading implementation practices. Areas in which that approach could be beneficial include documentation and validation to confirm the consistency and accuracy of account information. Also, assistance with the actual reporting process could prove helpful, including normalizing data so that information is consistent and readable across jurisdictions, organizing the data for specific data points required for tax forms, and handling report filing.

Conclusion

FATCA reporting is here to stay. Along with imposing new, real demands on businesses and individuals, FATCA serves as a harbinger of similar dictates by other governments. Financial institutions that leverage FATCA compliance efforts to address the continuing expansion of reporting requirements around the globe, as well as use the data gathered for reporting to increase customer knowledge, may be able to both meet regulatory requirements and strengthen their market position.

Regards.

Denise Hintzke

Deloitte Global FATCA Leader

Equity-based Compensation Schemes: Often Overlooked but Important Swiss Tax Considerations

Equity-based compensation (EbC) is an important element of modern compensation structures, especially in the FS industry with its sophisticated remuneration models, increased public exposure and regulatory requirements. Besides considerations around incentive effects and compensation levels, the operation of such schemes also imposes legal, tax and accounting challenges on organizations. Looking at the corporate tax dimensions, there a number of often overlooked, but nonetheless important, tax considerations that need to be considered.

Recipients of EbC are often not employed by the issuing entity, but by an operational subsidiary, so initially the costs are not incurred by the entity for which the corporate tax expense is expected to be deductible. Certain countries (e.g. the U.S. and the UK) have a strict “matching principle,” stating that the employing entity can deduct an amount of expenses from their income equal to the taxable benefit to the individual, even if there is no actual charge to the local books. Switzerland does not have such a strict “matching principle”. In general, only those costs can be deducted that relate to work for the respective local entity and that are actually charged to the books of the local entity. Thus, in order to benefit from possible tax deductions, there has to be an actual inter-company charge. A written recharge agreement is strongly recommended to substantiate the deduction. Although the common accounting treatment would be to charge the actual costs only when shares are transferred to employees (share value less purchase price), a defensible tax planning opportunity for the employing Swiss entity would be to recognize the expense by booking accruals based on the recharge agreement. If no costs are charged to the employing Swiss entity, the potential risk of a hidden contribution should be considered.

If the employing entity qualifies as a securities dealer in Switzerland, Swiss stamp tax implications will need to be taken into account, notably with respect to share transfer tax (STT):

• In the course of the past few years, the Federal Tax Administration (FTA) changed its practice (confirmed in various rulings). Previously, only the purchase price paid by the employee determined the amount subject to STT. Example: Share value 100. Employee pays 60. Therefore, 60 was subject to STT. Under the new practice, it is the purchase price plus the taxable amount on the individual. Following the previous example: Purchase price 60 + taxable benefit 40 to the employee = 100 subject to STT (basically the total share value in most cases).

• If the employing entity itself is not actively involved in the share transfer, but bears the costs through inter-company charges, this may already trigger qualification as an “intermediary” for STT purposes (a generally unwelcome outcome, as it may result in the imposition of a Swiss share transfer tax duty on the Swiss employer).

Finally, if a Swiss-registered company buys back its own shares for the purposes of an employee participation scheme, the so-called “dedication” of own shares according to the Swiss withholding tax law should be analyzed prior to the purchase. If the shares will serve to settle already outstanding employee rights, they can be booked into a so-called “dedication” account. This is an account separate from the normal treasury account which extends the deadline for partial liquidation and withholding tax impacts from 6 to 12 years. Booking the shares on a dedication account at the time the shares are purchased is important because according to the very strict practice of the Swiss FTA, once the shares are booked on a normal treasury account, they can no longer be “dedicated” to an employee participation scheme, and consequently, the partial liquidation and withholding tax impacts would occur after 6 years instead of 12.

In summary, equity-based compensation is a complex area, requiring significant judgement and expertise, and therefore professional advice may be beneficial.

Please also note our Tax Alert dated June 2015 that presents some recent developments in this area (available **here**).

For more information, please contact **Marc Seematter**.

Recent U.S. Legislation Increases Information Reporting Penalties

The Trade Preferences Extension Act of 2015, Public Law No: 114-27 ("Legislation"), which was signed into law on 29 June 2015, amends penalties applicable under IRC section 6721, Failure to file correct information returns, and IRC section 6722, Failure to furnish correct payee statements. The amendments apply to returns and statements required to be filed after 31 December 2015, including the assorted forms relevant to FATCA reporting. These increases may impact taxpayers across all industries, not just within financial services.

Section 6721(a) imposes a penalty on the following:
• Any failure to file an information return with the Secretary on or before the required filing date
• Any failure to include all of the information required to be shown on the return or the inclusion of incorrect information.
Section 6722(a) imposes a penalty on the following:
• Any failure to furnish a payee statement on or before the required filing date
• Any failure to include all of the information required to be shown on the return or the inclusion of incorrect information.

The Legislation increases the penalties under sections 6721 and 6722 from $100 to $250 per return or statement, and the annual cap or limit on penalties per calendar year under each section is increased from $1,500,000 to $3,000,000. As such, for a filing that is both an information return for purposes of section 6721 and a payee statement under section 6722, the potential amount of penalties that could be assessed under these sections is $6,000,000. Additionally, if the failure to file information returns or payee statements is a result of intentional disregard, the Legislation increases the penalties under section 6721 and under section 6722 from $250 per return/statement to $500 per return/statement; or, if greater, 10% of the aggregate amount required to be reported correctly. Note that all of the above penalties are adjusted for inflation under sections 6721(f) and 6722(f).

For more information, please contact **Brandi Caruso**.

Report from the FATCA Frontlines: Senator Files Suit to Block FATCA

The junior Senator for Kentucky and declared Republican Presidential candidate, Rand Paul, along with a handful of other petitioners, filed a suit in federal district court in Ohio, seeking, *inter alia*, a preliminary injunction against the operations of several specified intergovernmental agreements (IGAs), including the one with Switzerland. The suit alleges that the IGAs (which were not ratified by the U.S. Senate and thus are executive agreements, rather than treaties) exceeded the President's Constitutional authority because they suspend operation of the duly-enacted FATCA law (and corresponding Treasury Regulations) in IGA jurisdictions. Other grounds set forth in the petition include violations of Constitutional protections against unequal protection, excessive fines and seizure of property (in this case, financial information) without due process of law.

Although most political observers regard the likelihood as slim that Senator Paul will emerge as the Republican nominee, much less one that could defeat a Democratic rival in next year's November Presidential election, his efforts to transform FATCA into a campaign issue will have two potential effects: First, it may galvanize right wing support in opposition to FATCA and similar cross-border tax regimes, resulting in more support for repeal from his party confederates in Congress. That remains, however, a challenging objective. Second, and more concretely, it strongly signals that Senator Paul will not relinquish the hold he placed on the revisions to the Swiss-U.S. Double Taxation Treaty, the ratification of which is a prerequisite for Switzerland to exchange data via group administrative requests on non-consenting U.S. account holders reported in the aggregate as part of FATCA account reporting. As a result, the probability that the IRS can obtain information on those U.S. person account holders this year dims considerably.

For more information, please contact **Brandi Caruso** or **Paul Millen**.

Taxparency Product Launch

FATCA went live in 2014 and global Financial Institutions struggled since to keep oversight on local developments and to ensure compliance. FATCA succeeded in redefining the scope of what a Financial Institution is and what its duties are on a global scale. In addition, the OECD used FATCA as a model to define its Common Reporting Standard (CRS). CRS will be enacted by a series of bi-/multilateral agreements between at least 94 countries. As a consequence, the financial industry is currently facing an incredible momentum with respect to global legislative change without a sustainable solution to transparently access reliable, comprehensive and up-to-date information required to comply with FATCA and CRS.

This September, Deloitte Switzerland is launching its Taxparency solution to the Swiss market. It has been designed to support global financial institutions in accessing and analyzing FATCA, CRS, and Qualified Intermediary (QI) regulatory content. Highlights of its key features include:

Collaboration

• Customized alert function for new documents or changes to existing ones.
• Ability to tag and comment on documents shared with colleagues.
• Definition of own searches or use of saved searches defined by expert users.

Operationalization

• Jurisdiction and regime specific Deloitte summaries of key requirements.
• Multi-lingual key term glossary enabling searches of documents in different languages.
• Document comparison for targeted in-depth comparisons of multiple versions of one document or two similar documents.

Knowledge management

• Alerts to user when new or updated documents are issued.

• Automatic connections amongst different searches and results to further expedite research.

• Access to key definitions hyperlinked within all documents in the document repository and fuzzy matching to improve user search experience.

Risk mitigation

• Multiple releases of documents and forms will be identified as such and superseded versions will not be used.

• Central source of information to ensure that interpretations and internal positions will be applied consistently across locations.

• One central access to the complete set of possible answers to a technical question.

For more information, please contact **Brandi Caruso** or **Michael Grebe**.

Deloitte awarded “Tax Firm of the Year” in Switzerland again in 2015

For the third year in a row, the renowned International Tax Review awarded Deloitte in Switzerland the title of "Tax Firm of the Year" (2013, 2014 and now 2015) – clearly marking the success of the firm’s ambitious strategy in Switzerland. We see this as a confirmation of our effort to create real added value for our clients and to offer them an excellent service.

For more information, please contact **Markus Weber**.

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