FATCA Offspring

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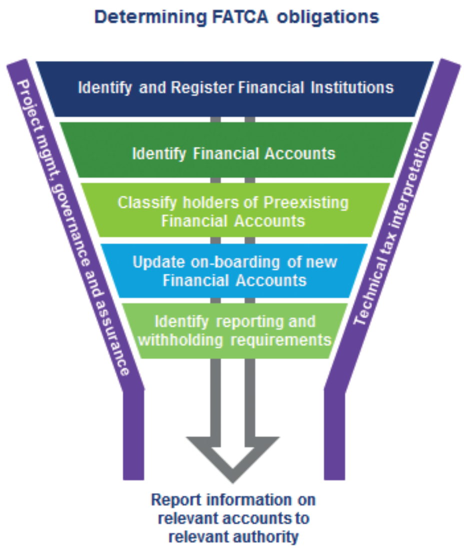
The term FATCA has been circulating for a while now, however, not everyone is aware of what this means other than perhaps what the acronym stands for.

It all began in March 2010 when the United States created new withholding and reporting rules under the Foreign Account Tax Compliance Act (FATCA). The driver for this significant change was the number of high profile failures to prevent tax evasion by US persons through existing US information reporting systems. These measures have been implemented to address the US IRS's concerns about US persons escaping their US tax obligations via the use of non-US structures and products.

Under FATCA, foreign financial Institutions (FFIs) and other financial intermediaries such as funds, trusts, custodians and wealth managers, will be required to comply with a number of obligations, including reporting on accounts held by specified US persons. To encourage compliance FATCA introduced a 30 per cent withholding tax on US source payments to non-compliant institutions (although this has now been superseded through Inter-Governmental Agreements (or 'IGAs', see below). It should be noted, however, that this not only affects FFIs and financial intermediaries with US clients but also those with non-US clients as other third party FFIs may require that these institutions be participating in FATCA in order to transact with them. A monthly list of all registered FFIs will be made publically available from June 2014.

The key issues for businesses affected by this are primarily interpreting the FATCA legislation and what this means to their own internal compliance procedures as well as the interaction with their own customers. Operational processes and internal controls will need to be reviewed and adjusted to factor in the additional requirements introduced by FATCA both from an initial implementation perspective as well as a continuing perspective.

The main elements of FATCA commence from 1 July 2014 and there are a number of steps that FFIs need to take before this date to ensure compliance. The FATCA compliance journey for most firms is illustrated by the following diagram:



A number of governments, including the UK, have signed IGAs with the US with the intention of facilitating compliance. The UK has signed a Model 1 IGA with the US, which means that compliance with FATCA will take place under UK domestic legislation instead of under US regulations. The IGA enables entities within said jurisdiction to comply with the FATCA requirements without contravening local legislation. By complying with these rules, the entity would not be subject to the 30 per cent withholding tax for non-compliance. There are still a number of significant steps that an entity needs to complete in order to achieve compliance and, due to the specific local legislation, the FATCA obligations for some FFIs may differ depending on the location. This variation may make compliance more complex for multinational organisations where they operate under several different agreements.

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