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LT in Focus
First prosecution for FATCA non-compliance

Justice Department Announces First-Ever Conviction for FATCA non-compliance

On 11 September 2018 in federal court in Brooklyn, Adrian Baron, the former Chief Business Officer and former Chief Executive Officer of Loyal Bank Ltd pleaded guilty to conspiring to defraud the United States by failing to comply with the Foreign Account Tax Compliance Act (FATCA). The Loyal Bank is an off-shore bank that has offices in Budapest, Hungary and Saint Vincent and the Grenadines.

According to court documents, in June 2017, an undercover agent met with Baron and explained that he was a U.S. citizen involved in stock manipulation schemes and was interested in opening multiple corporate bank accounts at Loyal Bank. The undercover agent made it clear to Baron that he did not want to appear on any of the account opening documents for his bank accounts at Loyal Bank, even though he would be the true owner of the accounts. Baron responded that Loyal Bank could open such accounts and provide debit cards linked to them.

During the meeting, Baron stated that Loyal Bank would not submit a FATCA declaration to regulators unless the paperwork indicated "obvious" U.S. involvement. Subsequently, in July and August 2017, Loyal Bank opened multiple bank accounts for the undercover agent. At no time did Baron or Loyal Bank request or collect FATCA Information from the undercover agent. Thereafter, Baron was arrested and extradited to the United States from Hungary.

Baron's guilty plea is unique in the sense that this is the first-ever conviction for failing to comply with FATCA. When sentenced, Baron faces a maximum of five years in prison.

As we discussed earlier, new regulatory reporting requirements, including FATCA, present substantial compliance challenges to financial institutions (FIs). FIs should now be considering the strategic and readiness steps that should be undertaken to ensure that effective processes and procedures are in place to comply with the regulations.

The sentencing of an officer of a foreign financial institution (FFI) for non-compliance with FATCA requirements became the first in the US judicial practice. Pursuant to FATCA responsible officer certification due on 15 December 2018, the Internal Revenue Service (IRS) will be able to draw a massive data in order to review FFIs, including Russian ones, for compliance with FATCA.

Taken into account the additional impetus given to the IRS by the Treasury Inspector General for Tax Administration (TIGTA) audit in 2017-2018, new precedents might be expected to follow.

In light of the above, we recommend that all FIs that are subject to FATCA requirements review their procedures and take pro-active measures to ensure FATCA compliance before the Responsible Officer submits certifications. We also recommend to work out in detail FATCA anti-avoidance rules.

For more details, please refer to U.S. Department of Justice's press release dated September 11, 2018.

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We hope that you will find this newsletter interesting and informative. Please feel welcome to contact us for more information on the topics covered.

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