

Look what the cat dragged in... FATCA



The Foreign Account Tax Compliance Act (“FATCA”) was enacted into law in March 2010 by the U.S. Congress in response to the continued perception that American individuals are not reporting all of their income earned outside the United States, either due to lax standards or the intentional actions of certain foreign entities. The act will continue to add to the regulatory burden that foreign financial institutions will have to bear in 2012 and beyond.

Who does FATCA affect and how?

FATCA is far reaching and can impact any person, American or foreign, who is involved in making or receiving payments that fall within the scope of FATCA. While FATCA certainly affects American withholding agents (an individual, corporation, partnership, trust, association, or any other entity, including any foreign intermediary, foreign partnership, or American branch of certain foreign banks and insurance companies that has control, receipt, custody, disposal, or payment of any withholdable payment), the greatest impact will likely be to foreign financial institutions, including financial institutions in Slovakia. FATCA imposes a 30 percent withholding tax on any American-source income paid either to a Foreign Financial Institution (“FFI”) or Non Financial Foreign Entity (“NFFE”).

To avoid this withholding tax, the FFI or NFFE must enter into an agreement with the Internal Revenue Service (IRS), which is the American tax authority. This agreement will bind the institution to comply with the new reporting and disclosure requirements obliging it to identify all accounts owned by an American or an American-owned foreign entity, to report yearly information on these accounts, and to comply with any required verification procedures. Alternatively, local banks with-

out international operations can choose to apply for the “Deemed-Compliant FFI” status. In this case they have to implement procedures to ensure that they do not open or maintain accounts owned by non-residents of their jurisdiction and by non-participating FFIs.

Preparing for FATCA

Those foreign financial institutions that choose to comply with FATCA will need to adjust their processes and underlying technology in order to accommodate the identification, reporting and withholding requirements. As a start they should consider:

- Evaluating their legal entities to determine if they are an FFI or are otherwise covered by FATCA.
- Performing a current state assessment of their systems and operations
- Conducting gap analysis against the FATCA requirements.
- Developing action plans to implement changes required for FATCA compliance.

The ability to align all the key stakeholders, including operations, technology, risk, legal, and tax, will be paramount to success.

What’s next?

While substantial portions of the law haven’t been

finalized yet, the IRS has issued preliminary guidance in “Notices” that primarily focus on the retail banking industry. Although these notices don’t have any authority, they indicate the direction of the IRS’s thinking.

There are three notices: Notice 2010-60 issued in 2010, Notice 2011-34 issued in April 2011, and Notice 2011-53 issued in July 2011. They allow affected institutions time to start to implement changes required to fully comply with the new withholding, documentation and reporting obligations resulting from FATCA. The definitive rules are expected to be

ready by the middle of this year.

Awaiting additional guidance from regulators, many FFIs have postponed the process of preparing for FATCA, a process that is expected to take almost two years to complete. Given that the first major milestone to enter into an agreement with the IRS by July 1, 2013, is fast approaching, we recommend starting with FATCA impact analysis as soon as possible.

If they wait until the last minute, foreign financial institutions run the risk that they might not be able to modify their existing processes and meet the application deadline in time. If the deadline is not met, institutions will be subject to the 30% withholding tax on all of their American-source income. At any rate, FATCA will not go away.



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	2013	2014	2015
FFI Governance	Jan 01 2013 – FFI can enter into FFI Agreement online Jul 01 2013 – IRS encourages FFIs to sign up by July 01 2013 to ensure readiness by 01 Jan 2014	March 31 2014 – First Passthru Payment Percentage Calculation due Jul 01 2014 – Certify completion of steps 1 - 3 for identification of pre-existing individual accounts 1	Jul 01 2015 – Certify completion of all steps for identification of pre-existing individual accounts 1
Due diligence for pre-existing accounts		Jul 01 2014 – Complete due diligence for high value private banking accounts (over \$500,000) Dec 31 2014 – Complete due diligence for all other private banking accounts	Jul 01 2015 – Due diligence completed for all other accounts
Due diligence for new accounts	Jul 01 2013 – Account opening procedures in place to identify US accounts opened on or after Jul 01 2013		
Withholding		Jan 01 2014 – FATCA withholding applies to US source FDAP income	Jan 01 2015 – FATCA withholding applies to gross proceeds and passthru payments
Reporting		Jun 30 2014 – Cutoff for reporting accounts for which a Form W-9 has been received Sep 30 2014 – Limited reporting to IRS for documented US persons and recalcitrant accounts as of 30 June 2014	March 2015 (Anticipated) – Full FATCA reporting for FFIs is anticipated to begin with respect to 2014 in early 2015. Guidance issued to date has not specified a specific start date 2

(1) FFIs must also certify prohibition on advising US accounts on how to avoid detection. Guidance has not been issued specifying the date certifications must be made.
(2) Full FATCA reporting includes transactional data, such as interest, dividends and gross proceeds from sale of securities.

