BEHIND THE HEADLINES: LESSONS LEARNED FROM RECENT HIGH PROFILE ENFORCEMENT ACTIONS

Breakout Session 1A
BEHIND THE HEADLINES: LESSONS LEARNED FROM RECENT HIGH PROFILE ENFORCEMENT ACTIONS

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BEHIND THE HEADLINES: LESSONS LEARNED FROM RECENT HIGH PROFILE ENFORCEMENT ACTIONS

Breakout Session 1A
CRYPTO COMPLIANCE: TRENDS AND BEST PRACTICES IN VIRTUAL CURRENCY REGULATION

Breakout Session 2A
CRYPTO COMPLIANCE: TRENDS AND BEST PRACTICES IN VIRTUAL CURRENCY REGULATION

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CRYPTO COMPLIANCE: TRENDS AND BEST PRACTICES IN VIRTUAL CURRENCY REGULATION

Breakout Session 2A
## FATCA Training Aid

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Stanley Foodman, CPA, CFE, CFF, CAMS, CGMA is CEO of Foodman CPAs & Advisors.

Mr. Foodman has extensive experience representing U.S. and non-U.S. taxpayers with U.S. and cross border tax reporting and governmental controversies. Mr. Foodman uses his law enforcement background, extensive experience as a forensic accountant and expert witness to represent clients in resolving their tax disputes. He has represented numerous U.S. taxpayers through the U.S. Offshore Voluntary Disclosure Programs.

Mr. Foodman along with his team of CPA’s also represent clients with a full range of accounting and tax services including corporate and individual taxation, estate and trust taxation, wealth planning and banking regulatory compliance. Foodman CPAs & Advisors consistently rank as one of the top accounting firms in South Florida with offices also in the Caribbean, Central and Latin America.

Foodman CPAs & Advisors represent individuals and businesses from around the world including the United States, the Caribbean region, Latin America, Europe and the Middle East.
1. How many of you work for Foreign Financial Institutions? U.S. Financial Institutions?
2. Has your Institution completed their first internal audit review of FATCA Compliance?
3. Did all Direct Participants (No IGA or Model 2 IGA countries) submit their COPA and Periodic Certifications to the IRS before the Due Date of December 15, 2018?
4. If you are in an IGA 1 country, are you concerned about the “lack of enforcement” or “oversight” of FATCA compliance by your Local Authority?
5. Will your Financial Institution select a Third Party to “Represent It” when the IRS commences to investigate erroneous FATCA reports and inconsistencies?
October 30, 2018

IRS Announces the Identification and Selection of Five Large Business and International Compliance Campaigns


This is one of them:

- FATCA Filing Accuracy
  Practice Area: Withholding & International Individual Compliance
  
  Lead Executive: John Cardone, director of Withholding & International Individual Compliance

The Foreign Account Tax Compliance Act (FATCA) was enacted in 2010 as part of the HIRE Act. The overall purpose is to detect, deter and discourage offshore tax abuses through increased transparency, enhanced reporting and strong sanctions. Foreign Financial Institutions and certain Non-Financial Foreign Entities are generally required to report the foreign assets held by their U.S. account holders and substantial U.S. owners under the FATCA. This campaign addresses those entities that have FATCA reporting obligations but do not meet all their compliance responsibilities. The Service will address noncompliance through a variety of treatment streams, including termination of the FATCA status.
IRS Campaigns to Improve FATCA Reporting Compliance

IRS has received FATCA reports in XML file format from FFI’s or local authorities for all U.S. accounts identified since 2015 (some FFI’s have used thresholds).

U.S. Persons file their declarations and details of their offshore accounts annually ($10,000 threshold) (FBAR & 8938)

- IRS systems automatically compare taxpayer files
- Individuals and/or entities that do not report their offshore accounts are ‘not in compliance’
- FFI’s that do not submit FATCA reports on their accounts owned by U.S. Persons are ‘not in compliance’

CONSEQUENCES

New IRS Campaigns

The FATCA form - Statement of Specified Foreign Financial Assets Form (8938) now requests the GIINs of the FFI’s where the U.S. taxpayer maintains their offshore accounts
Database Cross Matching (previous slide)
Notification Responses
Consistency:
FATCA Reports
Results of Certifications of Compliance
Requests for additional Information:
Client FATCA Documentation (Withholding Certificates or Local Equivalents)
Copies of Internal Audit reviews
Copy of Documented FATCA Policies and Procedures
Requests for External Audit (at your expense)
Cancelation of your GIIN for non compliance
Financial Penalties
Certifications of FATCA Compliance should have been sent on or before 15 of December 2018 based on the results of your own Internal FATCA Audit

Those of you who registered in FATCA after July 1, 2014 may have a later deadline

FATCA Reports for 2018 activity, due by the end of this month, must also be consistent with your audit review and certification of compliance

Any pending remediation (including FATCA client documentation) completed in case of receipt of IRS information requests

You should consider 3rd party “Representation” during conversations with the IRS
• You should already have completed an Internal Audit Review of FATCA Compliance and any remediation
• Establish communication channel with your local authority
• Enquire as to the Local Authorities “FATCA Supervision Plans” (Certifications of Compliance or External / Supervisory Audits)
• If your Local Authority has yet to “enforce” their IGA 1, understand the risks of “possible Loss of IGA1 Status” and prepare contingency plan to convert to Direct Participant (in 6 months)
• You will also be receiving IRS Notifications / Information Requests directly from the IRS (or through your Local Authorities) and should consider 3rd party “Representation” during conversations with the IRS
• You should already have completed an Internal Audit Review of FATCA Compliance and any remediation
• Expect FATCA requirements to be incorporated in the Supervisory Audits you are already subjected to.
• The IRS has incorporated FATCA (chapter 4) requirements into your IRS regulation publishing amended NRA Withholding, Pub-515 and Chapter 3 (1.1441-1) notices and updated withholding certification forms and instructions. Ensure your FATCA Compliance is updated accordingly
• Latest IRS Notice of Proposed Rulemaking) – which is summarized in next slide) includes 50 pages of changes that have significant impact on USFIs and Withholding Agents
As the title implies, the most recent Notice of Proposed Rulemaking (NPRM) is aimed at reducing burden on FFIs imposed by certain FATCA requirements; namely:

- Eliminating FATCA withholding on “Gross Proceeds” from the sale of financial assets that were producing /could produce U.S. source FDAP. No longer needs to be implemented by January 1, 2019!! Main impact is on U.S. FFIs.
- Deferring (again) withholding requirements on Foreign Pass Thru Payments (until the IRS can clearly define what they are and how to identify them.
- Eliminates withholding requirements on certain insurance premiums on Policies with no “cash” value.
IRS 2019 Notice of Proposed Rulemaking (2)

- Clarification of Definition of Investment Entity and exempting investment entities from being considered FFIs simply because their manager, trustee or advisor has a discretionary mandate to invest their assets in a “non-customized” mutual fund or similar vehicle. This might significantly reduce the burden that Sponsoring FFIs have had to assume.
- Modifications to Due Diligence Requirements of Withholding Agents (mainly USFIs) under Chapter 3 and 4 and related to Withholding Certificates that claim Treaty Benefits.
- Revisions Related to Credits and Refunds of Over withheld Tax- again mainly impacting USFIs
• How many of you are:
  – Already exchanging CRS data in 2018 (for 2017 activity)?
  – Getting ready for your first exchange in 2019 (for 2018 activity)?

• Is your reporting done manually or is it automated?
## AEOI: STATUS OF COMMITMENTS

The table below summarises the intended implementation timelines of the new standard.\(^1\)

### JURISDICTIONS UNDERTAKING FIRST EXCHANGES IN 2017 (49)

- Anguilla, Argentina, Belgium, Bermuda, British Virgin Islands, Bulgaria, Cayman Islands, Colombia, Croatia, Cyprus\(^2\), Czech Republic, Denmark, Estonia, Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Guernsey, Hungary, Iceland, India, Ireland, Isle of Man, Italy, Jersey, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Montserrat, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Seychelles, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Turks and Caicos Islands, United Kingdom

### JURISDICTIONS UNDERTAKING FIRST EXCHANGES BY 2018 (51)

- Andorra, Antigua and Barbuda, Aruba, Australia, Austria, Azerbaijan\(^3\), The Bahamas, Bahrain, Barbados, Belize, Brazil, Brunei Darussalam, Canada, Chile, China, Cook Islands, Costa Rica, Curaçao, Dominica, Greenland, Grenada, Hong Kong (China), Indonesia, Israel, Japan, Lebanon, Macau (China), Malaysia, Marshall Islands, Mauritius, Monaco, Nauru, New Zealand, Niue, Pakistan\(^4\), Panama, Qatar, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Saudi Arabia, Singapore, Sint Maarten, Switzerland, Trinidad and Tobago, Turkey, United Arab Emirates, Uruguay, Vanuatu

### JURISDICTIONS UNDERTAKING FIRST EXCHANGES BY 2019/2020 (8)


### DEVELOPING COUNTRIES HAVING NOT YET SET THE DATE FOR FIRST AUTOMATIC EXCHANGE (45)

- Armenia, Benin, Bosnia and Herzegovina, Botswana, Burkina Faso, Cape Verde, Cambodia, Cameroon, Chad, Côte d’Ivoire, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Former Yugoslav Republic of Macedonia, Gabon, Georgia, Guatemala, Guyana, Haiti, Jamaica, Kenya, Lesotho, Liberia, Madagascar, Mauritania, Moldova, Mongolia, Montenegro, Morocco, Niger, Papua New Guinea, Paraguay, Philippines, Rwanda, Senegal, Serbia, Tanzania, Thailand, Togo, Tunisia, Uganda, Ukraine

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1. CRS – Update

As at November 2018

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CRS Implementation Challenges (1)

- CRS is based on Reporting of Tax Residents of (108 to 153) Participating Countries while FATCA is based on reporting U.S. Citizens/Residents (extra-territorial)
- Local Tax Authorities of Participating Countries issue the guide/regulation for local implementation
- In CRS an account can be reported to multiple jurisdictions:
  - It has multiple owners with differing Tax Residences
  - It’s owner is a U.S. Citizen (not resident in the U.S.) with Tax Residence in a CRS Participating country
- The U.S. is not a CRS Participant
CRS/FATCA (IGA1) definitions are very similar (90%) but the differences are subtle and important to understand:
Example: A Professionally Managed Non U.S. Investment Entity where Passive Revenues are over 50% of it’s gross revenues:
• Under FATCA is classified as an FFI and needs to participate in FATCA (or be sponsored) and have it’s own GIIN
• Under CRS it will be classified as an FI if it is a tax resident of a CRS Participating Country or as a Passive NFE if is a tax resident of a non-participant of CRS (including the U.S.)
• In CRS local authorities have a lot more flexibility and can introduce, in some areas, local variations to the standard:
  Example: Thresholds to be applied to locally defined “Low Risk Accounts”
• CRS does not have a pre-existing account threshold for Individual Accounts (FATCA has a $50,000 threshold)
• Each CRS participating jurisdiction has a different format of the Tax ID Number which complicates validation and automation
• CRS lacks a standard sanctions and penalties regime and it is yet to be seen what local authorities will do/use to enforce compliance

Note: The above represents some, and not all, of the key differences between CRS and FATCA
Growing Importance of the “Wider Approach”

• CRS guidelines recommend that, where possible, a “wider approach” be adopted in the implementation of FATCA and CRS; for example:
  • Perform due diligence of all pre-existing accounts in one effort
  • Integrate all client Tax Certifications on a single form
  • Adopt the thresholds that satisfy compliance with all the different regulations

• Although the “Wider Approach Implementation” will be more complex and requires more effort, in the long term Financial Institutions will benefit from streamlined and more efficient processes, automation efficiencies and “Happier Customers”
Q & A

Thank You
MONEY LAUNDERING IN REAL ESTATE: CHALLENGES FOR FINANCIAL INSTITUTIONS

Breakout Session 3A
MONEY LAUNDERING IN REAL ESTATE:
CHALLENGES FOR FINANCIAL INSTITUTIONS

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Breakout Session 3A
AML COMPLIANCE CONFERENCE