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FATCA Deadlines Have Changed, but the Urgency of Compliance Planning Should Not

To give itself more time to finalize regulatory rules, the IRS on October 24, 2012, released deadline changes to the Foreign Account Tax Compliance Act (FATCA), moving certain compliance dates from January 1, 2013, to January 1, 2014 and extending others.

The implementation schedules for both U.S. and non-U.S. withholding agents are now better aligned, benefitting worldwide financial institutions. While this provides some relief for due diligence requirements, other FATCA compliance deadlines have not been changed. There is still no time to lose in preparing to meet FATCA requirements efficiently and effectively.

This underscores how critical it is to begin (or continue apace) developing a sound compliance plan for what is still an ambitious implementation schedule, even with the recent deadline extensions.

The significant regulatory change FATCA brings is intended to provide the IRS with an increased ability to detect U.S. tax evaders—specifically, those among U.S. "persons" (individuals or entities) who maintain foreign accounts and investments either directly or indirectly through their ownership in foreign entities.

Along with the release of FATCA requirements, the U.S. Department of Treasury (Treasury) has taken an intergovernmental approach to removing barriers to improving international tax compliance and implementing FATCA. Several governments have signed intergovernmental agreements (IGAs) with the U.S. government, according to which they will share with the IRS specific tax information of U.S. account holders with financial accounts in their countries. Other governments are expected to follow suit. IGA reporting financial institutions must have new account procedures in place by January 1, 2014, the date with which certain new FATCA deadlines now align.

FATCA Compliance Considerations:

Resources—Do you have the resources required for timely compliance?

Cost-effectiveness— Can you efficiently implement systems modifications to capture relevant data?

Maintenance—Does your plan cover both Day 1 and ongoing support?

Partnership—Do you have the proper tools and know-how to achieve and sustain compliance?

However, Treasury has also committed to heightened due diligence requirements and the implementation of information reporting for these governments in return for their cooperation in FATCA compliance, which represent a significant challenge for U.S. financial institutions (USFIs).

"To meet their FATCA compliance obligations, most firms realize the need for and are actively securing outside expertise in reviewing and analyzing their capabilities and personnel needs, and developing sound implementation plans—for smooth, reliable withholding compliance," says Cyrus Daftary, Partner Burt Staples & Maner, LLP.

USFIs should not wait to plan for due diligence, withholding, and reporting compliance. Both systems and personnel must be geared up to effectively and agilely address these additional FATCA requirements—in the near term and as they may evolve.

FATCA non-compliance will be burdensome—and expensive.

Due Diligence

Among other things USFIs will need to screen new individual and entity accounts for documentation for certain information FATCA requires, including: U.S. citizenship, residency, or country of incorporation; U.S. place of birth; U.S. residence address or U.S. mailing address; and U.S. telephone number. Being prepared by the new deadline—January 1, 2014—to capture and securely store this and other data for use during withholding or reporting means USFIs should quickly:

- Adopt new account onboarding procedures
- Modify systems to capture additional data elements
- Revise due diligence checklists

Withholding

FATCA mandates a punitive 30% withholding tax absent required documentation. Accordingly, USFIs will need to enhance their payment processors and withholding systems in order to initiate FATCA withholding. The effective date for withholding U.S. source FDAP income has not changed; it remains January 1, 2014. However, the withholding date for gross proceeds on the sale of U.S. securities has been changed, from January 1, 2015 to January 1, 2017. Withholding on foreign pass thru payments would still commence on January 1, 2017, at the earliest; however, withholding agents are still waiting for the IRS to provide actionable guidance on this topic.

Reporting

While managing withholding is essential to FATCA compliance, it is also essentially the IRS's lever for obtaining FATCA compliance's ultimate goal: additional information reporting on U.S. persons. USFIs will be required to report on substantial U.S. owners of NFFEs and owner-documented FFIs as early as March 2014. This is in addition to existing Form 1099 reporting on payments to U.S. persons.

There's no time to waste, even though certain FATCA deadlines have been extended – but, take care not to sacrifice thoughtfulness for speed. *"Focus should be on identifying your firm's gaps and having a clear understanding of what needs to be modified or built, some or all of which may require the assistance of third party service providers,"* says Glen Bover, Vice President of Broadridge Tax Services. Consider, for instance, the potential for business disruption that building strictly internal solutions may present. Ask yourself:

- Am I confident that the structure we have in place can adequately capture the required data for onboarding and performing proper due diligence?
- Can we track transactions that are subject to FATCA and correctly apply the appropriate withholding?
- Will we be fully prepared to accurately report to the IRS and annually re-certify our agreement, on time?

FATCA will impose new due diligence, withholding, and reporting requirements on financial institutions.

Mr. Bover went on to say, *"A myriad of new firms are entering the FATCA solutions arena, so weeding through the field of start-up versus proven providers is an important step in the process. This new regime presents significant risk, so making the wrong choice could prove even more costly."*

FATCA is coming. Will you be ready? Act now to leverage a partner and adopt sound compliance solutions that ensure agile, effective, timely responses to this far-reaching regulatory change.

Also, for a more detailed discussion of FATCA requirements and deadlines please see Broadridge publication, **FATCA Compliance: Riding a Roller Coaster of Regulatory Change**.

Key FATCA Compliance Dates	
• FATCA Effective Date for USFIs and FFIs to implement new account due diligence procedures	**January 1, 2014** (was January 1, 2013)
• Commence withholding on payments of U.S. source FDAP income paid to:	
- new account holders who are NPFFIs, non-compliant NFFEs, PFFIs electing to be withheld upon, and recalcitrant account holders (FFI only)	**January 1, 2014** (unchanged)
- undocumented prima facie FFIs	**July 1, 2014**
- undocumented high value account holders (FFI only)	**January 1, 2015**
- all other undocumented account holders	**January 1, 2016**
• Commence withholding on payments of gross proceeds of U.S. securities paid to certain recipients	**January 1, 2017** (was January 1, 2015)
• Earliest effective date for withholding on foreign pass thru payments (FFI only)	**January 1, 2017**
• USFI reporting of substantial U.S. owners of passive NFFEs for CY 2013	**March 15, 2014***
• USFI reporting of specified U.S. persons who are owners of owner-documented FFIs for CY 2013	**March 31, 2014***
• USFI reporting of CY 2014 payments of Chapter 4 reportable amounts	**March 15, 2015**

* Will potentially be delayed by final FATCA regulations to harmonize with revised effective date for new account procedures.

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