FATCA GOES GLOBAL

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Over the last five years, the financial industry mobilized to execute a range of programs to comply with the Foreign Account Tax Compliance Act (FATCA). FATCA officially took effect on July 1, 2014 – the first of several key compliance deadlines that investors must address between now and 2017.

While many funds' eyes have been turned toward meeting FATCA's myriad requirements and deadlines, other governments have not been idle. FATCA may be the most visible anti-tax evasion regulation, but other governments are taking note and following FATCA's lead with similar regulations of their own.

FATCA'S UNITED KINGDOM COUNTERPART

The United Kingdom has implemented substantially similar requirements through bilateral agreements with the Crown Dependencies and Overseas Territories (CDOT). These rules (referred to by some as "U.K. FATCA"), also took effect on the July 1, 2014. They are similar to FATCA, but have some key differences, including but not limited to:

- How they define classifications and specified persons.
- U.K. financial institutions (UKFIs) must not only search records for U.K. indicia, but also indicia for Gibraltar, Guernsey, Isle of Man, and Jersey.
- Unlike U.S. FACTA, the CDOT agreements do not impose a withholding requirement.

In Europe and the United Kingdom, the CDOT agreements are well known, but in other parts of the world, including the United States, the intensive coverage of FATCA overshadowed CDOT. As a result, the requirements have taken some investment managers by surprise.

MEET GATCA: INTERNATIONAL ADOPTION OF FATCA PRINCIPALS

The CDOT agreements appear to be the tip of a far larger international iceberg: as of this writing, France, Spain, Germany, Italy and more than 60 other nations have publicly announced their intent to implement their own versions of FATCA. While each nation's regulations will be thematically similar to the FATCA standard, they have the potential to differ in the particulars. Without proper coordination, the new rules could exponentially increase the compliance burdens placed on the market.

To help manage the plethora of tax compliance regulations on the horizon, the Organisation for Economic Co-operation and Development (OECD) has issued a Common Reporting Standard (CRS), designed to rationalize tax reporting standards across jurisdictions. The standard and the growing list of participating nations are becoming commonly known as the Global Account Tax Compliance Act, or GATCA, which is projected to start taking effect in 2016.

Because the CRS is FATCA-based, managers may be able to support many requirements by leveraging FATCA processes. However while the CRS recommendations will help promote consistency across reporting standards, it does not necessarily promote uniformity, and managers can expect that nuances and inconsistencies will remain. Two key differences to the U.S. version of FATCA are already clear: GATCA will be based on residency rather than citizenship, and GATCA contains no provision for withholding tax.

To address this new reality, fund managers will need to work with their providers to determine how best to accommodate additional requirements. For example, while U.S. financial institutions are required under the Internal Revenue Service's regulations for FATCA to search for U.S. indicia, those same U.S. financial institutions could be required to search for many additional jurisdictions' indicia under GATCA. The most forward-looking firms in the market are anticipating this need, proactively examining both technology and procedural adaptations that will be required to comply with FATCA-like regulation on a global scale.

CHANGE BEGETS CHANGE

Change is the only constant in the realm of regulatory compliance. While the specifics will become clearer in the months and years ahead, we know that FATCA is here to stay and that it will continue to evolve. The interest shown by international tax authorities suggests the industry can expect the globalization of the FATCA concept, and the international community has already set out to facilitate consistency where feasible.

Even so, we can expect that FATCA's transformation into GATCA will bring with it as-yet unforeseen operational complexities that increase the administrative burden placed on fund managers. More than ever, robust compliance practices, strong vendor partnerships and a proactive approach to addressing global regulation are vital to firms that wish to succeed in a post-FATCA world.

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