

COMPLYING WITH FATCA IN 2014

The Foreign Account Tax Compliance Act (FATCA)—with critical effective dates of March 2014 and July 2014 for its key provisions—requires foreign financial institutions to report to the IRS about U.S. taxpayers' overseas accounts worth \$50,000 or more and requires U.S. banks to report on nonresident alien earned interest to overseas authorities. Intended to combat offshore tax evasion, FATCA raises both U.S. diplomatic as well as privacy concerns here and abroad.

Intergovernmental Agreements (IGAs)

The framework for the IRS to obtain information on U.S. account holders is based on two IGA models. The first one provides for a “partnership agreement” between the United States and certain partnership jurisdictions, i.e., the UK, France, Germany, Italy and Spain. Under this IGA model, partner countries' Foreign Financial Institutions (FFIs) are required to turn over information on U.S. account holders directly to their own national tax authorities—who will in turn hand this over to the IRS.

The second model relates to reporting to the United States by Switzerland and Japan. This model took into consideration local privacy laws that might have been violated if FFIs in those countries were required to make such reports to their own revenue authorities; therefore, this model was drafted to require reporting by Swiss and Japanese FFIs directly to the IRS rather than via their local tax authorities.

Is an IGA a Treaty?

Congressman Bill Posey of Florida has expressed concern over aspects of FATCA's diplomatic mechanism. In his July 1, 2013, letter to the Secretary of the Treasury, he wrote: “Despite the absence of any specific legislative authority, these IGAs are not being submitted to the Senate as treaties or treaty amendments for its advice and consent, nor—apart from the enhanced reporting authority described above—is any request being made to Congress for the statutory authority to implement these IGAs.”

The Flip Side of FATCA: Nonresident Alien Interest Reporting

It is not just U.S. ex-patriots whose overseas account activity is being reported under FATCA. Under the reciprocity agreements with foreign countries, the United States has committed to reporting on nonresident aliens' U.S. interest gains (as little as \$10 per year) to Mexican, UK and other foreign tax authorities. This provision of FATCA is the subject of a lawsuit filed by some U.S. banks who could face a \$100 penalty per violation if they fail to so disclose to the IRS.

FATCA Regulatory Compliance

Despite lawsuits filed by various banking associations against FATCA, global tax-sharing pacts are not going to disappear. Businesses operating in the banking sector must, therefore, examine their Risk Management policies to assure compliance with FATCA in advance of the looming effective dates.