

USA FATCA

How successful has FATCA been in its original aim?

The Foreign Account Tax Compliance Act (FATCA) was enacted in 2010 and the main idea was to reduce tax evasion by U.S. citizens or residents who invest outside of the U.S. or indirectly earn income through a foreign entity. FATCA's reach is astonishingly broad and it appears to be succeeding, if one considers that more than 70 nations have entered into inter-governmental compliance agreements with the U.S. Two of the key features of FATCA are: (i) requirements that foreign financial institutions (FFIs) (a term that is broadly defined to include banks, custodians, broker-dealers, investment managers, investment funds, and certain insurance companies and holding companies) enter into compliance agreements with the United States Treasury to identify and report U.S. accounts annually and (ii) requirements that U.S. withholding agents perform enhanced diligence on foreign accounts and perform withholding and reporting in addition to existing regulatory obligations under U.S. tax laws. Non-compliance has a real impact - a 30 percent withholding tax is required on payments where FATCA requirements are not met. Of course, disclosure and taxation issues relating to "offshore" money is increasingly a hot-button issue in a lot of jurisdictions, but FATCA is unique in how far-reaching its scope is outside the U.S.

What headaches has FATCA compliance brought?

While FATCA affects U.S. withholding agents and certain U.S. multinational entities, the burden of FATCA falls heavily on the participating FFIs. They need to classify all of their accounts under the appropriate FATCA classification. The work involved in identifying and documenting foreign entity status can be significant. FFI's must report account numbers, balances, names, addresses and U.S. identification numbers. The changes required by FATCA have been incremental but extensive and disruptive from an operational perspective. We have worked with client FFIs to distill the FATCA requirements into understandable rules, to ensure compliance while minimizing the disruptive impact.

The Foreign Account Tax Compliance Act (FATCA) was enacted in 2010 in an attempt to detect and deter offshore tax abuses and to encourage improved foreign tax compliance. To find out more and how successful it has been in its aim, Lawyer Monthly speaks to Stacey Mesler, Tax partner at Becker, Glynn, Muffly, Chassin & Hosinski LLP, a full-service New York City law firm with a wide-ranging domestic and international practice. In addition to her general tax practice, Ms. Mesler regularly provides tax advice in connection with international tax planning matters for foreign individuals and entities.



Does FATCA eliminate other U.S. reporting requirements?

No, U.S. citizens who have foreign financial assets or bank accounts are still subject to other reporting obligations. For example, U.S. persons with foreign bank accounts exceeding \$10,000 must still file a Foreign Bank Account Report (FBAR) each year. A non-willful civil FBAR penalty can equal a \$10,000 fine. A willful FBAR violation can equal 50% of the account for each violation and each year is considered separately. These numbers add up quickly. Earlier this year a U.S. District Court upheld severe FBAR penalties in a willful failure to file case. The court ultimately determined that the taxpayer and not his preparer had the ultimate responsibility to file his return and pay the tax due. Between FATCA, the FBAR and other tax reporting obligations, U.S. taxpayers can very easily run into significant penalties even when there is no intent to hide assets or income. It is always better to consult with counsel

sooner rather than later, as this is definitely a case where an ounce of prevention is worth a pound of cure.

Should FATCA be modified or repealed?

Many U.S. and international practitioners were shocked by the sweeping nature of FATCA. In an ideal world, FATCA would have been part of a broader multilateral reform effort to systematically address issues of tax avoidance and the use of offshore accounts and tax havens. But it does not look like such an effort will come together anytime soon. And there is not much domestic political support for FATCA reform. So like it or not, FATCA is going to be with us for some time and those individuals and institutions subject to its requirements would be wise to consult counsel and put in place compliance mechanisms if they have not already done so. **LM**



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