FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA)
THE COMPLIANCE CHALLENGE FOR FOREIGN FINANCIAL INSTITUTIONS

Opportunity

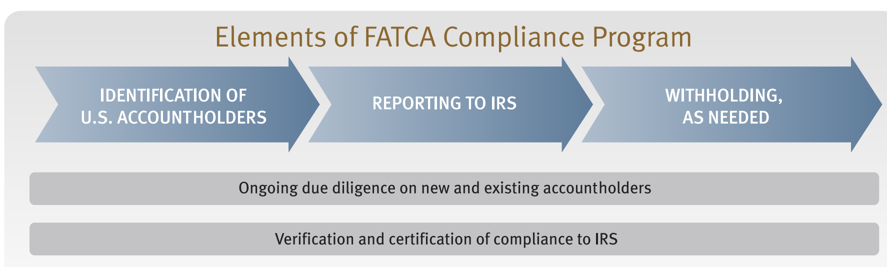
The Foreign Account Tax Compliance Act (FATCA), enacted under U.S. law in 2010, is aimed at combating tax evasion by U.S. persons holding investments in offshore accounts. Foreign Financial Institutions (FFIs) will be subject to stringent requirements to identify and report U.S. accountholders (both individuals and owners of foreign entities) to the Internal Revenue Service (IRS) in order to support FATCA's objectives. FFIs that do not agree to comply with FATCA's requirements are subject to a 30 percent withholding tax on specified U.S. source income, such as interest, dividends and securities sales. Even for FFIs that agree to comply with FATCA, withholding will be required for customers who do not agree to provide information to determine U.S. accountholder status. FATCA defines FFIs very broadly, and the definition includes banks, mutual funds, custodians, trusts, hedge funds, venture capital funds and private equity funds.

Proposed regulations were issued for comment in February 2012, and final regulations are expected by the end of the third quarter 2012. Reporting and withholding are expected to begin in 2014.

Insight

FATCA Requirements for FFIs

FATCA is a complex and detailed law that includes different tiers of definitions, exceptions and deadlines. The adjacent illustration summarizes the FATCA requirements for FFIs. The first step is to undertake a structured review of existing accounts to identify U.S. accountholders. Procedures will need to be put in place to determine the U.S. taxpayer status of all new customers. Reporting of U.S. account information, which will eventually include financial details, will be phased in beginning in 2014. Withholding for "recalcitrant" accountholders and other FFIs that do not have an IRS agreement will be phased in beginning in 2014. In addition to the ongoing reporting and withholding obligations, FFIs will need to verify and certify compliance periodically to the IRS.



Impact

Keys to success through these stages include the following:

- **Identification**
  - Involving IT and systems experts early in the process will be critical in making due diligence as efficient and effective as possible, especially as FATCA allows reliance on electronically searchable information to identify U.S. accountholders. Issues that need to be considered include identifying U.S. person indicia, "tagging" accounts of U.S. persons and entities, identifying related accounts, aggregating account balances for an accountholder, searching electronic documentation, tracking compliance efforts and assembling information required for reporting.

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  - For existing individual and entity customers, FFIs should know their "inventory" of electronically available information in order to target due diligence searches of electronic databases. In addition, FFIs will need to develop capabilities for documenting results, tracking missing documentation and monitoring deadlines.
  - For new customers, FFIs will need to incorporate FATCA status determination into client acceptance procedures and train front-line personnel and relationship managers on the identification of U.S. account ownership indicia and required follow-up.
- **Ongoing due diligence**
  - FFIs will need to create an identification and tracking system to generate listings of accounts requiring re-testing and additional due diligence and document the results.
- **Reporting**
  - Applicable privacy restrictions, including the ability of customers to waive privacy rights, will need to be reviewed closely for potential conflicts and roadblocks to FATCA reporting requirements.
  - Systems will need to be tuned or developed to track and assemble the information required for reporting purposes. FFI groups with multiple affiliates will need to assess their needs on an enterprisewide basis.
- **Withholding**
  - FFIs will need to establish capabilities and processes to identify incoming funds that are subject to possible withholding, apply proper withholding calculations, and maintain records for reporting purposes.
- **Certification of compliance**
  - Ongoing monitoring and testing of compliance will be required in order to comply with the certification requirements of FATCA.

How We Can Help

Protiviti is a global risk consulting and internal audit organization with extensive experience working with financial institutions around the world. Our parent company, Robert Half International (RHI), is the world's largest provider of specialized staffing services. Our combined global reach provides clients with access to worldwide expertise combined with local understanding. Together we can assist FFIs in preparing for compliance with FATCA in the following ways:

Project management and staff augmentation

Protiviti can deliver experienced and professional project management capabilities to FFIs in order to lead implementation project efforts. We can lead a project management office (PMO), identify core team members, create project charters, develop project plans, determine internal and external resource requirements, monitor timelines, and update plans as additional guidance is made available. Working with our affiliated RHI staffing companies, we can also provide additional staff to assist with implementation efforts.

Information technology

Our Information Technology practice professionals have extensive experience working with financial institutions and can assist FFIs with the many IT systems and data challenges presented by FATCA. We can identify systems and data needs, assist with enterprisewide data aggregation, create tracking methodologies and databases, and develop data governance strategies for FATCA.

Anti-money laundering compliance

While ostensibly a tax law, FATCA more closely resembles anti-money laundering (AML) legislation, and, indeed, the proposed FATCA regulation permits reliance on existing AML processes for compliance. Our global AML professionals and staffing resources can organize and execute efficient and cost-effective customer review and remediation plans to achieve compliance across multiple business lines and legal entities. We can also help FFIs leverage current customer identification routines to incorporate FATCA requirements into client acceptance processes, customer due diligence requirements and ongoing monitoring routines.

Training and communication

We can develop and deliver custom materials to meet the compliance training needs of front-line employees, compliance staff, auditors, senior management and boards of directors. In addition, we can develop effective communication strategies and materials for customers, shareholders and others.

Auditing and monitoring

We can draw on our internal audit and compliance monitoring skills and capabilities to design and execute programs to assess FATCA compliance on an ongoing basis, identify areas of weakness or potential noncompliance, and recommend effective corrective actions that address root cause issues.

For additional information on our FATCA services, visit our website at www.protiviti.com/FATCA.

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About Protiviti Inc.

Protiviti **(www.protiviti.com)** is a global consulting firm that helps companies solve problems in finance, technology, operations, governance, risk and internal audit. Through our network of more than 70 offices in over 20 countries, we have served more than 35 percent of FORTUNE® 1000 and Global 500 companies. We also work with smaller, growing companies, including those looking to go public, as well as with government agencies.

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