

# FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA)

## THE COMPLIANCE CHALLENGE FOR U.S. 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. While much of the burden of FATCA will fall on foreign financial institutions (FFIs), U.S. financial institutions (USFIs) are subject to FATCA requirements if they are withholding agents.

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 USFIs

FATCA is a complex and detailed law that includes different tiers of definitions, exceptions and deadlines. Under the requirements of the law, USFIs will be required to withhold 30 percent of the proceeds of funds sent to non-participating FFIs and “recalcitrant” non-financial foreign entities (NFFE). The adjacent illustration summarizes the FATCA requirements for USFIs that are withholding agents. The first step is to undertake a structured review of existing accounts to determine the FATCA status of FFI customers and NFFE customers, and then implement procedures to determine the FATCA status of all new FFI and NFFE customers. Withholding will be phased in beginning in 2014 for FFIs that are not participating in FATCA agreements with the IRS (or otherwise excepted from FATCA compliance) and for NFFEs that refuse to certify non-U.S. ownership or fail to disclose the identity of substantial U.S. owners. Reporting to the IRS of the U.S. owners of NFFEs will begin in 2014.



USFIs that have foreign financial institutions under their overall corporate structure, such as overseas affiliates or offshore funds, face the additional FATCA compliance challenges of implementing compliance programs at each FFI and coordinating these programs across the enterprise. Please see our related discussion paper, “Foreign Account Tax Compliance Act (FATCA): The Compliance Challenge for FFIs,” for information on the additional FATCA requirements for FFIs.

### 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 determine accountholder status. Issues that need to be considered include identifying related accounts, aggregating account balances for an accountholder, searching electronic documentation, tracking compliance efforts and assembling information required for reporting. Enterprisewide capabilities will be critical for FATCA program support.

- USFIs should know their “inventory” of electronically available information in order to target due diligence searches of electronic databases. In addition, USFIs will need to develop capabilities for documenting results, tracking missing documentation and monitoring deadlines.
- For new customers, USFIs will need to incorporate FATCA status determination into client acceptance procedures and train front-line personnel and relationship managers on the required due diligence and follow-up.
- **Ongoing due diligence**
  - USFIs will need to create an identification and tracking system to generate listings of accounts requiring periodic review and additional due diligence and document the results.
- **Reporting**
  - Systems will need to be tuned or developed to track and assemble the information required for reporting purposes.
- **Withholding**
  - USFIs 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.

## 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 USFIs 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 USFIs 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. Efficient project management will be especially important for USFIs with FFI affiliates. 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 USFIs 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 resembles in many respects anti-money laundering (AML) legislation, and, indeed, the proposed FATCA regulation permits reliance on existing AML compliance processes for customer status determination. 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 USFIs 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](http://www.protiviti.com/FATCA).

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### **About Protiviti Inc.**

Protiviti ([www.protiviti.com](http://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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