Questions FIs Should Ask External FATCA and CRS Service Providers

OECD Guide Offers Financial Institutions Advice on Hiring External Service Organizations to Handle Compliance

While financial institutions (FIs) have final responsibility for compliance with the Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standards (CRS), many engage outside service providers. Advice on establishing agreements with the providers and on how to thoroughly vet the organizations are provided in a new report.

Issues that should be considered are addressed in the **"Guide on Promoting and Assessing Compliance by Financial Institutions"** (the Guide) published by the Organization for Economic Co-operation and Development's (OECD) Forum on Tax Administration.

The Guide notes that with FATCA and CRS it is crucial that FIs have a full understanding of FATCA and CRS Governance and Implementation when working with external service providers.

Processes that should be in place before hiring an external service provider:

Before engaging an external service provider, FIs also must have a risk management framework with timely processes to:

- Handle FATCA and CRS compliance risks arising from changes in business activities or operating processes.
- Identify, evaluate, and manage FATCA and CRS risks to ensure that these are addressed
- Ensure that FATCA and CRS developments are assessed regularly to determine if there are direct or indirect impacts to the FI's operations or specific markets
- Communicated any changes to the appropriate local and global stakeholders

The OECD Guide suggests 11 "hallmark" questions FIs should consider:

1. Will your external service provider provide assurance that legislative updates impacting their functions will be considered?
2. For risk or time sensitive matters, does the FI have a process to inform or escalate the matter to the external service provider?
3. Is there an agreed upon timeframe for responses or resolutions?
4. Are the external service providers roles, duties and responsibilities clearly laid out?
5. What is the recourse for lack of performance on the obligations?
6. What are the FIs' due diligence procedures to ensure the external service provider is performing in the capacity agreed upon?
7. Does the external service provider handle potential inquiries from tax authorities?
8. Were there any gaps in services for functions performed by the external service providers? If so, which person and or department assumed the responsibilities in the interim?
9. Is the Responsible Officer (RO) aware of functions performed by the external service provider for which the RO is ultimately responsible?
10. If the external service provider maintains the FATCA registration (GIIN registration and maintenance), how does the RO obtain assurance?
11. What reviews of external service providers functions are performed to ensure the RO can make an accurate FATCA certification?

In addition, the understanding and working relationship should be documented in a contract and should include a governance structure that details:

- all applicable functions
- a description of such functions
- names of parties responsible for the functions
- where the responsible personnel reside.

With a view to ensuring that FIs effectively carry out their FATCA and CRS obligations, it is key that they implement and maintain an appropriate overall governance structure in tandem with external service providers if the FI is working with them. ©

How to Ensure FATCA and CRS Stakeholder Collaboration

OECD Report suggests compliance regime elements for FIs and Stakeholders

Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standards (CRS) stakeholders are key to financial institutions' (FIs) successful implementation, compliance, and maintenance efforts. These activities require funding, monitoring and approval.

A pilot group of tax administrations of Canada, Singapore, the United Kingdom and the USA (US) worked jointly to issue a report explaining what might constitute a "robust" compliance regime for FI's and their key stakeholders.

Guide on Promoting and Assessing Compliance by Financial Institutions (the Guide) was published by the Organization for Economic Co-operation and Development's (OECD) Forum on Tax Administration. The report is intended to assist tax administration government officials with their obligations for monitoring and ensuring FI's FATCA and CRS reporting obligations.

The Guide recommends that FIs have a written or documented project plan in place involving key stakeholders within the FI.

Key Stakeholders

Stakeholders with FATCA and CRS monitoring of FIs' reporting obligations may include:

- Tax Department
- Operations Departments (departments responsible for payments, submission of documentation to tax authorities)
- Legal Counsel
- Department responsible for Information Reporting & Withholding (FATCA)
- Key Departmental roles (President, Vice President, Senior Officers, and Managing Directors (COO, CFO, CEO)
- Subject Matter Experts (SME)
- Responsible Officer(s) (RO) for FATCA
- External Service Providers

Stakeholders, the Guide maintains, should take an active role in:

- Assessing the implementation and ongoing activities related to the FI's FTCA and CRS compliance obligations
- Holding periodic meetings in person, virtually or by phone to discuss implementation and ongoing compliance activities including on-boarding, withholding (for FATCA), reporting, self-certifications and due diligence
- Examining challenges and items that may need to be escalated

Questions for stakeholders suggested by the Guide include:

1. Has the FI identified its FATCA and CRS stakeholders?
2. Is there active participation of the FI stakeholders to ensure ongoing compliance with FATCA and CRS?
3. Does the FI have periodic established meetings to discuss FATCA and CRS compliance?
4. Does the FI have an escalation process for raising ad-hoc internal or client matters pertaining to FATCA and CRS?
5. Can the FI provide documentation of its collaboration with internal stakeholders for initial FATCA and CRS implementation, such as internal meeting minutes and correspondence noting key implementation decisions?
6. Can the FI describe its FATCA and CRS implementation process beyond the provided documentation and/or in lieu of documentation?
7. Can the FI provide documentation of its collaboration with internal stakeholders for its ongoing FATCA and CRS compliance obligations, such as internal meeting minutes, documentation indicating the assignment of responsibilities, including the Responsible Officer for FATCA purposes?

Making sure these questions can be answered thoroughly can make the difference between compliance and the consequences of non-compliance. ©

How Tax Administrations Handle FATCA, CRS Non-Compliance

OECD Report Details Preventative and Corrective Measures for Financial Institutions' FATCA and CRS Non-Compliance

Tax administrations can use a combination of detective, preventative and corrective measures to assess and treat Foreign Account Tax Compliance (FATCA) and Common Reporting Standard (CRS) non-compliance, according to the "**Guide on Promoting and Assessing Compliance by Financial Institutions**" (the Guide). The report is published by the Organization of Economic Cooperation and Development's (OECD) Forum on Tax Administration.

Tax administrations assess financial institutions' (FIs) compliance from the information they provide. The Guide states that where the risk level is assessed to be relatively high and the root cause analysis points towards a systematic and behavioral issue with an FI or a cluster of FIs, tax administrations may use more targeted compliance measures and thematic reviews.

Administrators search the content for "visible errors" including:

- Above average number of undocumented or recalcitrant accounts
- Use of terms such as "Ltd." or "trust" to describe Controlling Persons
- Missing information in fields including missing addresses or TINs
- Use of 1/1/1900 or 1/1/1901 for DOB
- Inclusion of "bank", "authority" "test", or "plc" in the name field (could indicate that accounts may have been reported which should not have been)

When studying compliance, the Guide notes that behavior of FIs can be broadly categorized into four groups:

- voluntarily compliant
- ignorant
- negligent
- errant

Tax Administrations consider the behavior of the FIs in the context of their overall compliance environment for purposes of applying appropriate risk treatments. They may also

- issue questionnaires to FIs,
- conduct desk-based audits of responses, clarifications and evidence from FIs.
- make on-site visits
- conduct face-to-face interviews with relevant personnel to review the FI's CRS or FATCA policies, processes, and documentation.

For FIs that are "generally compliant" but make minor mistakes, tax administrators may offer timely assistance and education, as well as warnings or penalties. For FIs that are considered negligent, making similar reporting errors repeatedly, or deliberately non-compliant with FATCA and CRS reporting, administrators may institute mandatory compliance programs.

Among the stronger methods that may be used in those cases are:

- Questions to determine the soft or hard documentation the FI has available for desk or on-site review.
- Documentation of current Responsible Officers (RO) awareness of their responsibilities with FATCA Documentation of RO turnover (names, dates), as applicable for a Desk review.
- Interview with the RO about their role and responsibilities
- Documentation of RO turnover (names, dates), as applicable
- Review of FATCA Registration system for compliance activities relates to Renewal of FFI Agreement, Registration, Certifications, etc. for an on-site review.

Clearly, FIs need to practice due diligence in their FATCA and CRS reporting, or face the consequences. ©

How Tax Administrations Can Monitor FIs' FATCA and CRS Compliance Training

Governance and Implementation Compliance Hallmarks for FIs

A new report from the Organization for Economic Cooperation and Development (OECD) says that tax administrations can assess financial institutions' FATCA and CRS compliance by monitoring their staff training initiatives.

The report, **"Guide on Promoting and Assessing Compliance by Financial Institutions"** (the "Guide") offers questions for tax administrators to ask FIs about their training initiatives. The report identifies various governance and implementation hallmarks that FIs should consider when fulfilling their CRS and FATCA reporting obligations. It is published by the Forum on Tax Administration.

According to the Guide, to determine the impact of new FATCA and CRS legislation, FIs need to monitor local tax authority guidance and IRS updates. The due diligence requirements for the CRS and FATCA are the same for all types or sizes of FIs.

The purpose of the FATCA & CRS Compliance Guide is two-fold:

- To help government officials and FIs understand their obligations to monitor and ensure compliance of CRS and FATCA reporting obligations
- To provide a practical overview of what a robust compliance regime may involve.

Given higher than normal employee turnover, FIs are advised to incorporate FATCA and CRS compliance information into all employee and stakeholder onboarding and training materials.

The first chapter looks at the initiatives related to education, service initiatives and the development of self-help tools. Many related activities will be more effective when carried out in cooperation with other agencies, industry associations and stakeholders.

The second chapter looks at the options for the identification of the FI population. These include registration requirements, the use of analytical tools, dialogue with industry associations and other stakeholders as well as risk-based compliance activities.

Sample questions about FATCA & CRS compliance for tax administrators:

- Does the FI require mandatory training for stakeholders and employees who have responsibilities pertaining to the CRS and FATCA?
- Is the FI's training updated annually to account for legislation or guidance changes?
- Does the FI have periodic evaluation of changes and its communications on these changes?
- Did the FI have training specific to employees responsible for on-boarding and documentation validation?
- Did the FI inform its clients of their CRS and FATCA obligations?
- Did the FI update its intranet and public webpage to address CRS and FATCA?

Ways tax administrations can review FI training compliance:

- Including sample FATCA and CRS questions to ascertain the soft or hard documentation available for desk or on-site review.
- Examine training to staff, business units and other foreign offices based on impact assessment of legislative updates
- Evaluate timeliness of CRS and FATCA compliance training schedules, materials, proof of completion, and public FI web page information
- Research content of FI Intranet for employee access to information on CRS and FATCA
- Review web-based training demo for staff, business units and other foreign offices. This should be based on impact assessment of legislative updates, training schedules, timelines, materials and proof of completion of training.
- Evaluate public FI webpage information on CRS and FATCA compliance.

Is your Financial Institution ready? Who is your FATCA and CRS Expert Provider? ©

OFAC Puts Virtual Currency industry on Notice

New Guide Includes Reporting Requirements and Potential Penalties

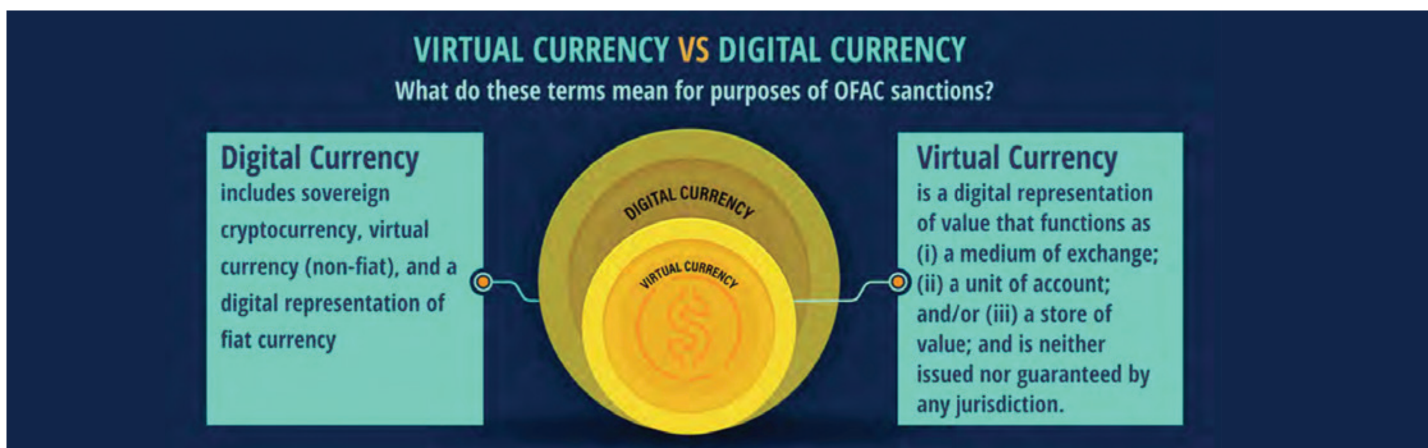
In a new Sanctions Compliance Guide, The Office of Foreign Assets Control (OFAC) of the U.S. Treasury reiterates that compliance obligations apply equally to transactions involving virtual currencies and those involving traditional fiat currencies.

With a broad stroke, OFAC defines the Virtual Currency Industry as technology companies, exchanges, administrators, miners, wallet providers and financial institutions that may have exposure to virtual currencies or their service providers and users.

According to the Guide, non-compliance by the Virtual Currency Industry carries the same civil and criminal penalties as those faced by traditional financial institutions. In other words, OFAC seems to perceive certain actors in the virtual currency industry as financial institutions.

To avoid possible financial and criminal sanctions, members of the virtual currency industry must not engage, directly or indirectly, in transactions prohibited by OFAC sanctions. These include dealings with blocked persons or property or engaging in prohibited trade or investment related transactions.

OFAC is particularly concerned with cryptocurrency facilitating illicit activities, including money laundering and ransomware attacks as well as business conducted with sanctioned states and other parties.



Because a prepackaged universal OFAC compliance program does not exist, the Virtual Currency industry must take steps to avoid engaging in sanctions violations.

Non-compliant Virtual Currency Industry members could be subjected to adverse publicity, fines, and penalties and the complete blocking of their financial assets. OFAC has also issued Frequently Asked Questions on sanctions compliance and several case studies as examples of issues.

Crypto exchanges operating in the United States are required to

- register with FinCEN as money services businesses,
- license themselves in the states in which they operate
- exclude users in sanctioned jurisdictions and those on OFAC's SDN List from transacting on the exchange.

How to create a sanctions compliance program for crypto exchanges and users

According to OFAC, these are key steps that crypto exchanges and users can take to create a sanctions compliance program:

1. Management Commitment

- Review and support sanctions compliance policies and procedures
- Ensure adequate resources (human capital, expertise, information technology, and other resources)
- Delegate sufficient autonomy and authority to the compliance unit
- Appoint a dedicated sanctions compliance officer with the requisite technical expertise

2. Risk Assessment and Internal Controls

The Guide says that creating an adequate compliance solution for members of the industry will depend on the type of business involved, its size and sophistication, products and services offered, customers and counterparties, and geographic locations served, as well as any sanctions-specific risks the company identifies during its risk assessment process.

3. Testing and Auditing

OFAC states that some of the best practices for testing and audit procedures in sanctions compliance programs for the virtual currency industry include:

- Sanctions List Screening,
- Keyword Screening,
- IP Blocking, and Investigation/Reporting Review procedures.

4. Training

OFAC training should be provided to all appropriate employees and should be conducted regularly on a periodic basis, incorporating emerging technologies in the Virtual Currency space.

OFAC Penalties

The Guide also lists the penalties for sanctions noncompliance and makes clear that they will be severe.

The most comprehensive sanctions programs that OFAC administers typically include several or all of the following types of sanctions, while other sanctions programs may only employ some of these options:

- **Broad trade-based sanctions or embargoes**
  - These usually include a prohibition on importing or exporting goods or services to or from the sanctioned jurisdiction. Such sanctioned jurisdictions currently include Cuba, Iran, North Korea, Syria, and the Crimea region of Ukraine.
- **Government or regime sanctions**
  - either (1) require the blocking of all property and interests in property of a particular foreign government or regime that are or come within the United States or the possession or control of a U.S. person, or (2) prohibit specific types of transactions and activities involving a particular foreign government or regime.
- **List-based sanctions**
  - These target specific, listed individuals and entities and either (1) require the blocking of all property and interests in property of those listed persons or (2) prohibit specific types of transactions and activities with listed persons.
- **Sectoral sanctions**
  - target individuals and entities operating in specific sectors of a foreign country's economy or prohibit specific activities associated with a sector of a foreign country's economy. ©

How will FinCEN Implement the Beneficial Ownership Information Reporting Provisions of the Corporate Transparency Act (CTA)? They want your input.

FinCEN has been busy in the quest to fight corruption as evidenced by back-to-back issuance of Notices of Proposed Rulemaking (NPRMs). On 12/6/21, they issued the (Regulatory Process for New Real Estate Sector Reporting Requirements to Curb Illicit Finance) and on 12/7/21, they issued the Proposed Rule for Beneficial Ownership Reporting to Counter Illicit Finance and Increase Transparency with commentary due by February 7, 2022 in tandem with a Fact Sheet: Beneficial Ownership Information Reporting Notice of Proposed Rulemaking (NPRM).

The Beneficial Ownership Information (BOI) reporting provisions of the CTA proposed rule is designed to protect the US financial system from illicit use and impede malign actors from abusing legal entities, including shell companies, to conceal proceeds of corrupt/criminal acts. The goal of the Beneficial Ownership rule is to collect information and provide access to law enforcement, financial institutions, and other authorized users to combat corruption by covering:

- who must report beneficial ownership information
- when they must report
- what information they must provide

Who must file a BOI report, what information must be reported, and when is a report is due?

The proposed rule would require reporting companies to file reports with FinCEN that identify two categories of individuals:

1. the beneficial owners of the entity
2. individuals who have filed an application with specified governmental or tribal authorities to form the entity or register it to do business

There would be two types of Reporting Companies:

1. Domestic company: a corporation, limited liability company, or any other entity created by the filing of a document with a secretary of state or similar office under the law of a state or Indian tribe.
2. Foreign company: a corporation, limited liability company, or other entity formed under the law of a foreign country and that is registered to do business in any state or tribal jurisdiction.

23 types of entities would be exempt from the definition of "reporting company". Some examples are:

- limited liability partnerships
- limited liability limited partnerships
- business trusts
- most limited partnerships
- certain trusts

Who is a Beneficial Owner?

Any individual who:

- exercises substantial control over a reporting company, or
- owns or controls at least 25 percent of the ownership interests of a reporting company

Who are the Company Applicants?

In a domestic reporting company, the company applicant is the individual who files the document that forms the entity as well as anyone who directs or controls the filing of the relevant document by another would also be a company applicant

In a foreign reporting company, the individual who files the document that first registers the entity to do business in the United States as well as anyone who directs or controls the filing of the relevant document by another would also be a company applicant.

BOI Information Reports

The proposed rule would require a reporting company to identify itself and report four pieces of information about each of its beneficial owners and company applicants: name, birthdate, address, and a unique identifying number from an acceptable identification document (and the image of such document).

BOI Report Timing would depend on:

- when a reporting company was created or registered
- whether the report at issue is an initial report, an updated report providing new information, or a report correcting erroneous information in a previous report

Buckle up! There is More coming:

The Fact sheet states that the BOI reporting NPRM is one of three rulemakings planned to implement the CTA. FinCEN will also bring on board additional rulemakings to:

- establish rules for who may access BOI, for what purposes, and what safeguards will be required to ensure that the information is secured and protected
- revise FinCEN's customer due diligence rule following the promulgation of the BOI reporting final rule
- develop the infrastructure to administer these requirements, such as the beneficial ownership information technology system ©

Treasury Attachés, Foreign Financial Intelligence Unit Liaisons and Foreign Financial Institutions

The AML Act of 2020 includes the creation of "Treasury Attachés" (SEC. 6106, appointed by the US Treasury Department) and the "Foreign Financial Intelligence Unit Liaisons" (SEC. 6108, appointed by FinCEN) to be stationed abroad.

The Treasury Attachés will:

- Assist the Department of the Treasury with developing and executing the financial and economic policy of the United States Government and the international fight against terrorism, money laundering, and other illicit finance.
- Be co-located in a United States Embassy, a similar United States Government facility, or a foreign government facility, as the Secretary determines is appropriate.
- Establish and maintain relationships with foreign counterparts, including employees of ministries of finance, central banks, international financial institutions, and other relevant official entities.
- Conduct outreach to local and foreign financial institutions and other commercial actors.
- Coordinate with representatives of the Department of Justice at United States Embassies who perform similar functions on behalf of the United States Government.
- Perform such other actions as the Secretary determines are appropriate.
- Be at least 6 more employees than the number of employees of the Department of the Treasury serving as Treasury Attachés on the date of enactment of this section.

The Foreign Financial Intelligence Unit Liaisons (At Least 6) will:

- Be knowledgeable about domestic or international anti-money laundering or countering the financing of terrorism laws and regulations.
- Possess a technical understanding of the Bank Secrecy Act, the protocols of the Egmont Group of Financial Intelligence Units, and the Financial Action Task Force as well as its recommendations.
- Be co-located in a United States embassy, a similar United States Government facility, or a foreign government facility.
- Facilitate building capacity and performing outreach with respect to anti-money laundering and countering the financing of terrorism regulatory and analytical frameworks.
- Establish and maintain relationships with officials from foreign intelligence units, regulatory authorities, ministries of finance, central banks, law enforcement agencies, and other competent authorities.
- Participate in industry outreach engagements with foreign financial institutions and other commercial actors on anti-money laundering and countering the financing of terrorism issues.
- Coordinate with representatives of the Department of Justice at United States Embassies who perform similar functions on behalf of the United States Government.
- Perform such other duties as the Director determines to be appropriate.

FFIs Could Face More Enforcement Activity

The Treasury appointed "Treasury Attachés," and the FinCEN appointed "Foreign Financial Intelligence Unit Liaisons" will be on the ground and in the backyard of FFIs. These appointments translate as "cross-border" AML enforcement through establishing and building an AML/CFT culture with FFIs, Foreign Regulators and Foreign Law enforcement Units.

Will FFIs be ready for this "on the ground" AML scrutiny?

FFIs ought to revise their AML programs and ensure that they are compliant with US AML requirements.

Is your FFI AML compliant?

Is your FFI up to date with the AML Act of 2020?

Who is your Corporate Governance Expert? ©

Foreign Bank and the New Longer Arm of the US Treasury and DOJ

Before passage of the AML ACT of 2020 (the "ACT"), The US Department of the Treasury, and the US Justice Department (DOJ) had US legal authority to subpoena foreign banks with US correspondent accounts for related US records including records held in a foreign country.

AML ACT of 2020 expands the subpoena reach of the US Treasury and DOJ

The ACT empowers the US Treasury and DOJ to subpoena foreign banks for "records related to their correspondent account or any account at the foreign bank," including records held in a foreign country. So, if a foreign bank maintains a correspondent account in the US, the US Treasury and the DOJ may now subpoena that bank for records related to any account at the bank, not only its U.S. correspondent account.

According to the ACT, the Secretary of the Treasury or the Attorney General may issue a subpoena to any foreign bank that maintains a correspondent account in the United States for records relating to the correspondent account or any account at the foreign bank, including records maintained outside of the United States, that are the subject of:

- any investigation of a violation of a criminal law of the United States.
- any investigation of a violation.
- a civil forfeiture action.
- an investigation pursuant to section 5318A ("Special measures for jurisdictions, financial institutions, international transactions, or types of accounts of primary money laundering concern").

Understanding the expanded subpoena Reach

Following are key takeaways:

1. PRODUCTION OF RECORDS: The foreign bank on which a subpoena is served shall produce all requested records and authenticate all requested records with testimony of the Federal Rules of Evidence.

2. ISSUANCE AND SERVICE OF SUBPOENA: A subpoena shall designate a return date; the judicial district in which the related investigation is proceeding; may be served in person; by mail or fax in the United States if the foreign bank has a representative in the United States; or in a foreign country under any mutual legal assistance treaty, multilateral agreement, or other request for international legal or law enforcement assistance.

3. RELIEF FROM SUBPOENA: At any time before the return date of a subpoena, the foreign bank on which the subpoena is served may petition the district court of the United States for the judicial district in which the related investigation is proceeding, as designated in the subpoena, to modify or quash the subpoena; or the prohibition against disclosure.

4. CONFLICT WITH FOREIGN SECRECY OR CONFIDENTIALITY: An assertion that compliance with a subpoena would conflict with a provision of foreign secrecy or confidentiality law shall not be a sole basis for quashing or modifying the subpoena.

5. MAINTAINING RECORDS IN THE UNITED STATES: Any covered financial institution that maintains a correspondent account in the United States for a foreign bank shall maintain records in the United States identifying the owners of record and the beneficial owners of the foreign bank; and the name and address of a person who resides in the United States; and is authorized to accept service of legal process for records.

6. LAW ENFORCEMENT REQUEST: Upon receipt of a written request from a Federal law enforcement officer for information required to be maintained under this paragraph, a covered financial institution shall provide the information to the requesting officer not later than 7 days after receipt of the request.

7. NONDISCLOSURE OF SUBPOENA: No officer, director, partner, employee, or shareholder of, or agent or attorney for, a foreign bank on which a subpoena is served shall, directly or indirectly, notify any account holder involved or any person named in the subpoena and served on the foreign bank about the existence or contents of the subpoena.

8. DAMAGES: Upon application by the Attorney General for a violation, a foreign bank on which a subpoena is served shall be liable to the United States Government for a civil penalty in an amount equal to double the amount of the suspected criminal proceeds sent through the correspondent account of the foreign bank in the related investigation; or not more than $250,000.

9. ENFORCEMENT: If a foreign bank fails to obey a subpoena issued, the Attorney General may invoke the aid of the district court of the United States for the judicial district in which the investigation or related proceeding is occurring to compel compliance with the subpoena.

10. COURT ORDERS AND CONTEMPT OF COURT: A court may issue an order requiring the foreign bank to appear before the Secretary of the Treasury or the Attorney General to produce certified records or testimony regarding the production of the certified records; and punish any failure to obey an order issued as contempt of court.

11. TERMINATION OF CORRESPONDENT RELATIONSHIP: A covered financial institution shall terminate any correspondent relationship with a foreign bank not later than 10 business days after the date on which the covered financial institution receives written notice from the Secretary of the Treasury or the Attorney General if, after consultation with the other, the Secretary of the Treasury or the Attorney General, as applicable, determines that the foreign bank has failed to comply with a subpoena issued or to prevail in proceedings before.

12. LIMITATION ON LIABILITY: A covered financial institution shall not be liable to any person in any court or arbitration proceeding for terminating a correspondent relationship or complying with a nondisclosure order.

13. FAILURE TO TERMINATE RELATIONSHIP: A covered financial institution that fails to terminate a correspondent relationship shall be liable for a civil penalty in an amount that is not more than $25,000 for each day that the covered financial institution fails to terminate the relationship.

14. FAILURE TO COMPLY WITH A SUBPOENA: Upon failure to comply with a subpoena, a foreign bank may be liable for a civil penalty assessed by the issuing agency in an amount that is not more than $50,000 for each day that the foreign bank fails to comply with the terms of a subpoena.

15. ADDITIONAL PENALTIES: Beginning after the date that is 60 days after a foreign bank fails to comply with a subpoena, the Secretary of the Treasury or the Attorney General may seek additional penalties and compel compliance with the subpoena in the appropriate district court of the United States.

Foreign Financial Institutions (FFIs) Need to Start Preparing

FFIs officers, board members, and employees ought to understand the AML ACT of 2020 and be able to determine if their financial institution is ready to comply domestically and internationally.

Is your Financial Institution ready to comply?

Who is your Corporate Governance Advisor? ©

After Ten Years, FATCA is NOT GOING AWAY!

FATCA was signed into law in March 2010 with the objective of combating international income tax reporting non-compliance by US citizens and U.S. taxpaying residents (US Taxpayers). It requires Foreign Financial Institutions (FFIs) to annually report the reportable balances and income in the accounts held by their US customers to the IRS. It requires US Taxpayers to report reportable foreign financial assets and income to the IRS on an annual basis.

FATCA imposes penalties on FFIs and US Taxpayers that do not comply with FATCA disclosure requirements. It imposes an automatic 30% withholding tax on U.S.-source payments such as interest and dividends. It imposes a $10,000 penalty on US Taxpayers who fail to report their reportable Foreign Financial Assets.

The FATCA disclosure of information by FFIs to the US Government (IRS) has generated revenue to help offset the US Tax Gap resulting from offshore tax non-compliance.

FATCA will not go away because:

- The US government would have to raise taxes its US taxpayers from other “sources” if it did not obtain the revenue that FATCA generates.
- FATCA implementation is in place and most FFIs have already invested in satisfying the complexity of the requirements.
- There is a global initiative towards transparency in financial reporting, including the OECD's Common Reporting Standard whereby over 100 jurisdictions are now participating.

FATCA has become a source of data analytics to the IRS

IRS Continues to Cross-Reference Foreign Financial Accounts and Assets. It electronically matches (cross-checks) information that is sourced from FATCA reports submitted by Foreign Financial Institutions (FFI) (on Form 8966 - FATCA Report) and by Individual US Taxpayers that have reporting obligations via Form 8938 (Statement of Specified Foreign Financial Assets) to identify US Taxpayers that are not making required disclosures to IRS through not filing or underreporting as well as FFIs that are not reporting their reportable US account holders.

Through its cross-check process, IRS may identify:

- US Taxpayers that are non-compliant because they have been reported to the IRS by the FFIs via a FORM 8966 report while the Taxpayer has not submitted FORM 8938 or filed an inaccurate Form 8938.
- FFIs that are non-compliant because a US account holder has reported its reportable foreign accounts through FORM 8938 and an FFI has not submitted FORM 8966 regarding that US account holder.

And then came the FATCA Filling Accuracy Campaign!

Launched in October 2018, the campaign is directed at US Persons that fail to file FBARS and Form 8938 and reporting non-compliant FFIs that may lose their status as compliant institutions through losing their Global Intermediary Identification Number (GIIN), be subjected to 30% withholding on US source income and lose their US correspondent accounts.

Participation in FATCA is not an option, it is here to stay, as part of a global “transparency” initiative

IRS Criminal Investigations reported in its December 2019 Annual Report that it is using information sourced from FATCA data analytics to open and refer criminal investigations. In addition, the IRS Advisory Council issued Public Reports in November 2019 and November 2020 addressing the need to assist FFIs with their FATCA and QI portals.

Do not wait to be FATCA compliant! IS YOUR FATCA STAFF FATCA CERTFIED? Get started on assuring that your Financial Institution has mitigated non-compliance FATCA related risks! ©

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