

The Insurance Industry and FATCA

Moving from assessment to implementation: Top 13 in '13

March 2013



Introduction



The Foreign Account Tax Compliance Act (FATCA) was enacted as part of the Hiring Incentives to Restore Employment (HIRE) Act in March 2010 to serve as an administrative tool to prevent and detect US tax evasion and improve taxpayer compliance. Following a series of Internal Revenue Service (IRS) notices on a number of issues and comment letters from industry, the US Department of the Treasury (Treasury) and the IRS released proposed FATCA regulations in February 2012. Final FATCA regulations, released in January 2013, provide significant clarity on a number of open items the insurance industry had identified in the proposed regulations. While some of the provisions in the final regulations attempt to simplify the impact on the insurance industry, other provisions have ultimately complicated FATCA's impact. As the insurance industry works to be FATCA compliant by January 1, 2014, we have attempted to highlight 13 key areas to concentrate on through the remainder of 2013 as you move your FATCA Program from impact assessment into implementation.

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Time is of the essence



1 *Get started*

Initial guidance on FATCA released in 2010 and 2011 provided little and unclear insight into whom, how, and when insurance companies would be affected by FATCA. Final FATCA regulations issued in January 2013 leave less than a year for companies to become compliant

before the initial regulatory deadline of January 1, 2014, and even less time before the registration period for foreign financial institutions (FFIs) begins on July 15, 2013. Accordingly, it is imperative that companies understand their specific exposure to the new regulatory

guidance and the impact it will have on business operations. Getting started now is essential to determining the magnitude of the impact, responding in a practical and conscientious manner, and meeting the regulatory deadlines.

Building on what is already in place



FATCA compliance and related controls and processes should not be created from the ground up. Many of the requirements of FATCA expand on controls or processes already in place, such as Anti-Money Laundering/Know Your Customer (AML/KYC) policies and current US information reporting and withholding requirements. In order to achieve an efficient and reasonable FATCA solution, it is important to identify where leverageable processes already exist within your organization. Ensuring identified controls and processes are sound, enables them to serve as the foundation for FATCA compliant processes and controls.

2

Build Chapter 4 on top of Chapter 3

As a result of FATCA, Chapter 4 was added to the Internal Revenue Code (IRC). This new Chapter builds upon existing provisions of the IRC that require US withholding agents to report and withhold 30% on payments of US source fixed, determinable, annual, periodic (FDAP) income made to a “foreign person.” FATCA extends the US information reporting regime to require FFIs to comply with the IRS’ request of withholding and reporting on US and unidentified account holders.

Many insurance companies are using this opportunity to re-visit their current procedures and controls to ensure they are operating effectively, due to additional scrutiny from the IRS, as well as the intended use of these controls to apply to FATCA. Once comfortable with the effectiveness of current processes, insurance

companies that have a presence in the United States can leverage their existing withholding and reporting processes to develop their FATCA withholding and reporting capabilities.

Insurance companies should look to their US withholding agent offices and mirror or consolidate their existing documentation, policies and procedures, and internal controls as appropriate. This will allow for a consistent approach and provide some efficiency gain. Companies that utilize and rely on third party providers to perform their existing requirements should leverage these relationships to enhance their due diligence for FATCA compliance. In the end, the processes around existing and FATCA compliant processes should operate in tandem.

3

Understand points of leverage

There are likely many other opportunities to leverage existing processes, documentation and/or systems that will present themselves as part of FATCA implementation. Being aware of them will enable support to the FATCA Program. For instance, when performing due diligence on pre-existing accounts, the final regulations permit withholding agents to rely on documentation collected for AML/KYC due diligence purposes or information previously recorded in the withholding agent's files in determining the FATCA status of the payee. In addition, the final regulations further expand the type of documentary evidence that can be leveraged to establish the FATCA status of the payee without

obtaining additional information from individual or entity investors. This reduces the burden associated with identifying US accounts by permitting FFIs in many cases to rely on information they already collected.

Separately, implementing the FATCA Program is akin to implementing any other regulatory compliance initiative. Engaging the individuals who support and perform the project management, interpretation, implementation, monitoring, and support of other compliance initiatives will provide benefit. Understanding these various points of leverage throughout your organization can serve as a catalyst and help support the FATCA compliance efforts.

So what does all of this mean?

Viewing FATCA in a silo or creating FATCA compliant controls and processes from scratch could prove detrimental to an organization – both from a cost and an effectiveness perspective. Organizations should recognize the likeness, directly or indirectly, of the FATCA requirements to other processes, controls, and requirements already embedded in their business. Leveraging this should be a true catalyst and provide efficiency gain throughout the FATCA process. However it is important to note that leveraging a broken process will result in insufficient FATCA processes. Ensuring the platform upon which you leverage and build your FATCA Program is sound is critical to successful implementation.

Program governance structure



For companies at all stages of assessments and/or implementation, an effective program governance structure is essential to achieve FATCA compliance. Throughout the FATCA implementation process, various parties will be required to communicate the project structure framework, set the proper tone at the executive committee, and act as intermediary when consolidating and executing key business decisions. As a leading practice, organizations should have a governance structure that provides for a steering committee to drive the process and make key business decisions, identifying the critical stakeholders to ensure the right people are involved, and rolling out an effective communication strategy.

4

Steering committee design

Establishing and engaging a steering committee of executives who have a broad outlook, reach, and authority is essential to making timely decisions, aligning with overall business strategy, and getting buy-in to implement FATCA effectively with minimal business disruptions. Once a current state assessment has been completed and implementation of the identified corrective actions begins, a significant amount of organization-wide business decisions will be required. Forming

an appropriate steering committee, including the appropriate senior executives, should ensure that the organization is viewing compliance with the FATCA regulations as a global enterprise-wide initiative and maximizing the synergies that can be achieved across various business units. This group of executives should provide input and guide the implementation of all strategic business decisions.

5

Engage core team and stakeholders

After establishing a steering committee, engaging people at an operating level is vital. Effective FATCA Programs have achieved success through the identification and engagement of the key stakeholders from the Program's inception. These stakeholders are spread throughout the organization and across disciplines, so identifying and mobilizing this group is no small task. Successful FATCA Programs typically contain sponsorship, support, guidance, and participation from the following functional areas:

- Tax
- Operations
- Information technology
- Legal entity controllers
- Corporate secretary
- Human resources

- Chief financial officer (group and/or business unit)
- Legal
- Compliance
- Internal audit
- Reporting and withholding agents
- Customer service/claims

Each stakeholder group has a defined role beginning with providing information to assist in the development of a current state assessment, through to making critical decisions during the implementation phase. A select sub-group of stakeholders may be utilized in driving the organization through the FATCA compliance process with defined responsibilities to inform and support the steering committee and other stakeholders on progress.

6

Communication strategy

FATCA will likely require communication with both internal and external parties. Internal stakeholders will need to be kept apprised of impacts to the organization, and more specifically, to their business unit or functional area. As the implementation progresses and January 1, 2014 approaches, external communications will be just as critical. Companies should consider when and how they communicate with:

- Third party administrators
- Vendors
- Payors
- Policyholders
- Other parties who will be impacted by FATCA, and ultimately impact you

An organization should develop a communication strategy framework to identify both the timing and the most effective mode to communicate FATCA specific messages across regions, business segments, individual or entity investors, and third party service providers while understanding certain cultural differences may be present.

So what does all of this mean?

A successful FATCA Program clearly requires engagement from all levels of the organization. This effort includes an active and engaged steering committee that is responsible for the oversight and implementation of the FATCA Program. In addition, there must be representatives from various business units throughout the organization engaged as key stakeholders to opine on and execute those strategic business decisions, as well as communicate them to the organization and key third parties.

Impact assessment



Every organization in the insurance industry will likely have some level of impact imposed by FATCA regardless of whether you are a global life insurer with cash value insurance sales all over the world or a US property and casualty insurer. Before implementing any type of FATCA solution, it is important to assess the magnitude of impact your organization faces, especially in light of any changes the final regulations bring. Spending the time to carefully and methodically assess your organization’s impact will ultimately save time and money, ensuring that proposed solutions are appropriate to their associated business impact. Conducting an assessment of the impact includes considering the type of legal entities in your structure, products you offer, terms in your contracts, and the payments you make, and then applying the associated rules from the final FATCA regulations and related guidance, while documenting the approach.

7

Legal entity analysis/assessment

FATCA requires organizations to analyze their respective entities' activities to determine their appropriate FATCA classification as the registration, documentation, withholding, and reporting responsibilities that FATCA requires are determined by the classification of the legal entity. In order to identify these requirements, insurance companies should develop a legal entity management process that utilizes a repository to record the FATCA classification of each corporation, partnership, and trust in the group structure. This

process should identify each entity's specific responsibilities so that those foreign entities impacted by FATCA will avoid the 30% withholding tax by complying with the necessary requirements based on its FATCA status.

The insurance industry faces a unique challenge regarding legal entity analysis for FATCA because the identification of products and financial accounts within each legal entity is not always readily available. Through the use of a careful narrowing process, an organization can begin with the entire population of legal entities,

narrow the in-scope entities (i.e., the potential FFIs) via the products and services that they provide, and identify where this analysis should be verified and accepted within the FATCA Program. The goal of the legal entity analysis is both to scope out (i.e., classify as nonfinancial foreign entities) as many entities as possible, enabling you to focus solutions on entities impacted by FATCA and identify where other parties may have a responsibility for your compliance such as special purpose vehicles or joint ventures.

8

Product and contract scope assessment

In addition to assessing legal entities, FATCA introduces the need to assess insurance products and contracts to identify if they are in scope for FATCA. FATCA defines insurance products as "in scope" if they are cash value insurance contracts over \$50,000 or annuity contracts. Since there are not broad exclusions for categories of insurance (such as property and casualty), this process can be quite difficult and operationally burdensome. While

the proposed FATCA regulations left the insurance industry with many open issues relating to the products and contracts that were in scope, the final regulations have provided some clarity on many key concepts, from local law definition to defining obligations and characteristics of in-scope products and contracts.

Many insurers struggle with the ability to inventory products on a legal entity by legal entity basis

– there is often no clear listing or identification of products by legal entity. Therefore such an analysis presents a significant challenge, due to the IRS' legal entity view of FATCA compliance. Understanding the characteristics of each product, build up strategy, valuation, terms, etc., will be the basis upon which the regulations are applied to determine applicability and ultimately aid in the classification of legal entities.

9

Identify the impact of intergovernmental agreements

The Treasury published two model intergovernmental agreements (IGAs) to address non-US laws that prohibited foreign entities from complying with the reporting and withholding provisions of FATCA and to foster the sharing of information across jurisdictions. Currently, only a handful of countries have signed an IGA, but Treasury has announced that it is working with more than 50 countries to negotiate and execute IGAs. As negotiations are still ongoing with many countries, it is important to continue

monitoring the progress of IGA negotiations and agreements in the jurisdictions you operate.

As a practical matter, global insurance companies should classify and designate which entities or branches operate in a country that presents a legal impediment to compliance. At the same time, an inventory should be kept of countries that have executed or plan to execute an IGA (e.g., based on your legal entity analysis, does your organization have any FFIs in

IGA countries?). When entities or branches are located or resident within a country that has executed an IGA, insurance companies should incorporate the IGA's specific requirements into project plans and solution designs. In order to help ease the process of differentiating between the IGAs and the final regulations, insurance companies should document and define an approach for identifying requirements and operational differences between the two.

10

Documentation

Accurate documentation and record keeping is essential in seamlessly achieving and maintaining FATCA compliance. A significant amount of time and analysis, underlying assumptions, and internal decisions will be part of the ultimate classification of legal entities, determination of in-scope products and impacted areas, and the relevancy of IGAs. Documenting throughout the assessment process will

be important in building out the overall sustainable FATCA Program. As roles and individuals change, it will be important that the analysis performed today is clearly documented for future FATCA Program owners, and ultimately under a potential examination.

In addition, the analysis and the resulting documentation will be utilized to develop procedures

for ongoing sustainability and compliance with FATCA as new entities are created, new products are developed, or new jurisdictions are entered. Whether FATCA impacts an organization in a minimal or significant manner, documenting the assessment techniques and assumptions that lead to the impact determination will allow an organization to maintain FATCA compliance into the future.

So what does all of this mean?

For those organizations that have completed an initial impact or current state assessment, the focus should be on engaging the steering committee, the core team, and all key stakeholders in the key business decision making process. In order to accurately identify those legal entities, products, and contacts that will be impacted by FATCA, involvement from multiple areas within the organization is required. In addition, the key stakeholders should assess the ability to apply the practical solutions that will impact the global group.

For those organizations that are starting the implementation phase (after conducting the analysis of legal entities and products/contracts), it is beneficial to revisit the analysis to ensure that the appropriate steps, process, and procedures are in place to maintain compliance and to adjust for any changes due to the differences between the proposed and final regulations.

Change management and implementation



Once an impact analysis is complete, organizations should think about immediate actions. Implementation will require the input and engagement of multiple parties. Identification of the responsible officer (RO), a governance structure, and an implementation plan are all critical to successful change.

11 *Identify a responsible officer*

FATCA requires that many FFIs select an RO. The RO will need to, at a minimum, register the FFI with the IRS, but also make certain certifications to the IRS at periodic intervals regarding:

- The FFI's compliance with its FFI Agreement
- The controls established within the firm to prevent any event of default or material failure of the FFI Agreement from occurring

Insurance companies should begin by identifying an RO for each FFI as required or, alternatively, a responsible office framework. The RO or the responsible office model framework will provide a management oversight structure over the various legal entities to determine whether they have entered into an FFI Agreement and have obtained Global Intermediary Identification Numbers (GIINs). Also, the required certifications and verifications will affect different business areas and

demonstrate the need for a firm to develop an underlying controls and certification framework. The identification of an RO or a responsible office framework in the near term is important because the RO must gain comfort with and buy-in to the registration and certification process to ensure project stability. In other words, each RO will ultimately be responsible for signing on the dotted line, certifying the FFI's compliance.

12 *Governance, controls, and framework*

As operations continue to evolve, entities and products will be created, acquired, dissolved, or liquidated. In order to balance future legal entities' changes with FATCA compliance and classification, insurance companies should develop a tracking, categorization, and communication process that all impacted entities or business units will follow when legal entities undergo a change in status.

Insurance companies should appoint specific individuals to ensure ongoing FATCA compliance regarding entity creation or liquidation and development of new products. This internal team will establish communication with other key stakeholders, including tax and operational leads, to enable FATCA classification of all legal entities to be accurate on a current, real-time basis. As new entities are created, acquired,

dissolved, or liquidated, this internal team can record relevant changes within a spreadsheet, database, or other platform. The enhanced communication and management procedure to track and document newly formed or modified legal entities will ensure that FATCA compliance is sustainable over the long term.

Developing a project implementation plan/roadmap is necessary to ensure the success of complying with the FATCA regulations. The roadmap should include a sequenced collection of projects/tasks based on FATCA deadlines while incorporating the results of the organization's current state assessment and gap analysis. In addition, organizations should create a FATCA implementation plan to incorporate all aspects of project implementation including a project timeline, detailed strategies for achieving the project results, and approaches for working with various stakeholders. Laying out the plan, overlaid

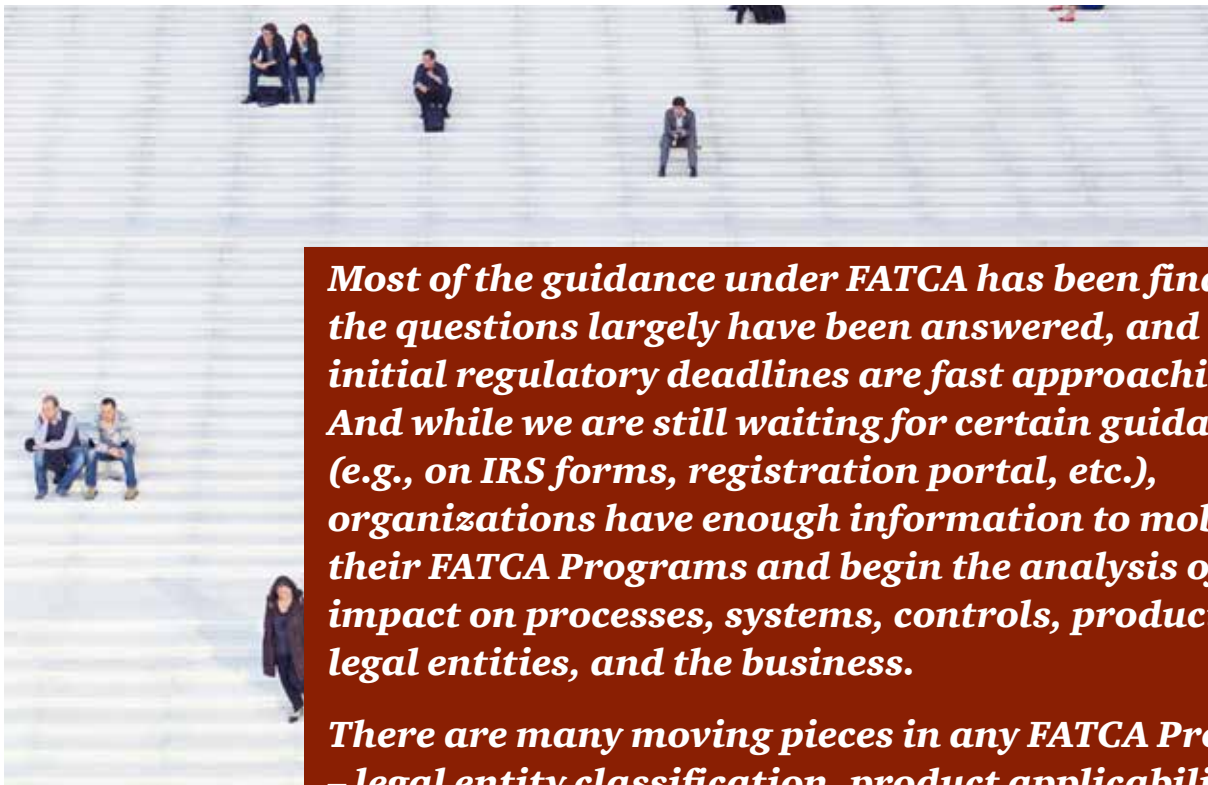
with the regulatory deadlines, should enable early determination of areas that will require a lead time (e.g., technology changes, business/strategic decision making) and have operational dependencies.

While the implementation plan will span the next several years, without appropriate planning that considers interim and final regulatory deadlines, there could be significant cost overrun and delay to "go live" which may ultimately have a significant financial implication. Developing a roadmap and a clear plan on the path forward also allows for identification of organizational dependency and opportunity.

So what does all of this mean?

Don't underestimate the need for appropriate planning and engaging the right people in preparing for the change that FATCA will bring. FATCA compliance means different things to different organizations – but at the heart of it, all organizations should benefit from taking practical steps to ready itself for FATCA, setting itself up for FATCA compliance, and ultimately "go live."

In closing



Most of the guidance under FATCA has been finalized, the questions largely have been answered, and the initial regulatory deadlines are fast approaching. And while we are still waiting for certain guidance (e.g., on IRS forms, registration portal, etc.), organizations have enough information to mobilize their FATCA Programs and begin the analysis of the impact on processes, systems, controls, products, legal entities, and the business.

There are many moving pieces in any FATCA Program – legal entity classification, product applicability, system limitations, stakeholder participation and engagement, to name a few. However, breaking down the components as you move from impact assessment to implementation allows for a smoother, less disruptive transition. While there is not a uniform, clear path for every insurer to achieve FATCA compliance, the processes, practices, and approaches described above illustrate areas of common ground for many insurers.

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