



RSM Chio Lim
Audit • Tax • Advisory

Tax Update

Foreign Account Tax Compliance Act ("FATCA")

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FOREIGN ACCOUNT TAX COMPLIANCE ACT (“FATCA”)

What is FATCA all about

FATCA was enacted on 18 March 2010 and the regulations finalised on 17 January 2013. A further set of regulations, Modifications to the final FATCA Regulations, was published on 20 February 2014. After several delays, these regulations are now scheduled to come into effect on 1 July 2014.

The aim of introducing FATCA is to compel non-US Foreign Financial Institutions (“FFIs”) to enforce curbs on US tax evasion by imposing a 30% withholding tax on “withholdable payments” made to them if the following main compliance requirements are not met:

- FFIs fail to implement due diligence and verification procedures to determine if their account holders are US persons or the financial accounts are held by foreign entities in which US taxpayers hold a substantial (greater than 10%) ownership interest, and
- FFIs fail to provide to US Internal Revenue Service (“IRS”) information on affected US persons’ accounts located outside of the US and substantial US-owned foreign entities.

“Withholdable payments” refer to US-source payments of interest, dividends and other passive fixed, determinable, annual or periodical (“FDAP”) income, gross proceeds from the disposition of assets (such as stocks, securities or derivatives) and foreign “passthru payments” unless the payee can document its owners or can prove entitlement to an exemption.

Apart from this withholding requirement, FATCA also imposes new documentation and reporting requirements on FFIs, non-financial foreign entities (“NFFEs”) and all US withholding agents.

As a result of the wide scope of FATCA, virtually every US company that transacts business with non-US customers will have to apply FATCA or justify why FATCA should not apply.

Singapore involvement in FATCA implementation

The US has developed two models of Intergovernmental Agreements (“IGAs”) to overcome legal issues and simplify the implementation of FATCA.

- Model 1- Establishes a framework of reporting account information of US persons by FFIs to the relevant domestic authority which in turn provides the information to IRS.

Countries which had concluded or in the process of concluding a Model 1 IGA include Singapore, Cayman Islands, BVI, Malaysia and Australia.

- Model 2 - Establishes a framework of direct reporting by FFIs to IRS supplemented by information exchange between both governments upon request.

Countries which are expected to conclude a Model 2 IGA include Hong Kong, Japan and Bermuda.

We understand that Singapore is in its advanced stages of discussion with the US Department of the Treasury with a view to conclude a Model 1 IGA. The IGA will assist Singapore FFIs in achieving compliance with FATCA requirements. Model 1 is perceived to offer stronger operational efficiencies and has a lower implementation cost.

The Singapore IGA with the US may contain additional requirements or exemptions. It will determine also whether a Singapore resident entity described in the IGA is a FFI. Annex I of the IGA is expected to set out detailed due diligence procedures to be followed and US indicia to be examined.

We expect the legislative framework and measures will be announced by the Singapore Government soon after the IGA is concluded and signed. It is expected that Inland Revenue Authority of Singapore (“IRAS”) will be the domestic authority that the affected FFIs will report to. IRAS in turn will provide the necessary information to IRS.

Who are impacted by FATCA

FATCA impacts non-US hedge funds and investment funds and fund managers, administrators and other fund service providers such as prime brokers and banks, especially in respect of offshore funds that invest into the US.

From 1 July, 2014, US withholding agents will apply 30% tax withholding on “withholdable payments” (i.e. US-source FDAP income and gross proceeds income) to new account holders identified as non-participating FFIs, recalcitrants and passive NFFEs with undisclosed substantial US owners. A NFFE is any foreign entity that is not an FFI.

Obligations which are in existence on 1 July 2014 are grandfathered and are exempted. The grandfathered status will terminate if the parties modify the obligation in a way that constitutes a “significant modification” under US Federal income tax principles. FFIs therefore must continually monitor the obligations to ensure that they retain the grandfathered status.

Even if the FFIs do not have US investors or US assets, compliance with FATCA is mandatory as Singapore will soon legislate in order to facilitate the compliance of our FFIs with FATCA.

By virtue of the IGA (yet to be concluded), most FFIs should be exempt from FATCA withholding tax from 1 July 2014 until 31 December 2014. No withholding tax will be suffered from 1 January 2015 onwards if GIIN is provided to US payors.

FFIs and NFFEs have significantly different burdens to bear in order to become FATCA compliant. A FFI must generally identify itself as an FFI and provide information regarding its US account holders or produce documentation supporting an exemption from doing so (e.g. proof that it has entered directly into an IRS FFI Agreement or is able to claim benefits of an IGA). In contrast, a NFFE must disclose information relating to its “substantial US owners” or provide evidence of an exemption from doing so.

What preparation is required to be FATCA compliant

FFIs should get ready to implement policies and procedures to comply with FATCA identification and reporting requirements. The internal control and systems must be robust enough to carry out the following FATCA requirements.

Areas of compliance	FATCA requirements
On-boarding and identification	<p>Separate identification for:</p> <ul style="list-style-type: none"> ▪ <i>New financial accounts opened on or after 1 July 2014</i> <ul style="list-style-type: none"> ▶ Collection of US and FATCA indicia (e.g. address in US, place of birth in US, standing instructions for US payees, US power of attorney, US telephone number and hold-mail address). ▶ Obtain relevant documentation to confirm the indication of US status. ▶ Classification of entity accounts according to FATCA entity classifications. ▶ Classification of individual accounts as US accounts, non-US accounts or recalcitrant accounts. ▶ FFIs must validate documentation to confirm FATCA status. Documentation used for validation must not contradict existing or those records obtained for anti-money laundering or know-your-client procedures. ▪ <i>Pre-existing accounts or obligations in existence prior to 1 July 2014</i> <ul style="list-style-type: none"> ▶ Classification of individual and entity accounts. ▶ Perform electronic search (for low value individual accounts) for indicators of US status. For high value individual accounts, additional requirements such as the review of non-electronic documents and the provision of information on relationship manager assigned to the accounts. ▶ Obtain relevant additional documents to confirm US status. ▶ For entity accounts, documents used for validation may include Form W-8 and Form W-9 and other general documentary evidence.
Monitoring for changes in circumstances	<ul style="list-style-type: none"> ▪ A system to be put in place to facilitate the continuance of monitoring for changes in circumstances that would impact FATCA status for all financial accounts. ▪ Secure additional information and documentation as required.
FATCA withholding	<ul style="list-style-type: none"> ▪ Withhold 30% on “withholdable payments” made on or after 1 July 2014, if relevant, and account for the tax withheld to IRS. ▪ FATCA withholding is not applicable in respect of payments made under grandfathered obligations i.e. those obligations which are in existence as at 1 July 2014 and the terms of which have not been substantially modified.

FATCA reporting	<ul style="list-style-type: none"> ▪ We expect IRAS to issue guidelines on FATCA compliance and reporting requirements soon. The first reporting by IRAS to IRS covering 2014 transactions is by 30 September 2015. ▪ The reporting will be in respect of US accounts, recalcitrant accounts and non-participating FFI accounts. ▪ Minimally the information to be reported will include name, address, Global Intermediary Identification Number (“GIIN”), account balance/value and payments received with respect to the account.
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Some key timelines

Timeline	Events
Immediate	<ul style="list-style-type: none"> ▪ Identify a team and a responsible officer who will be tasked with ensuring FATCA compliance for the FFI. ▪ Conduct entity classification exercise which will determine which grouping the FFI comes under and the FATCA obligations involved. ▪ Assess the adequacy of current systems and processes (i.e. Gap Analysis). ▪ Enhance existing systems and controls to ensure their capability in handling FATCA compliance and identifying US indicia.
5 May 2014	<ul style="list-style-type: none"> ▪ Latest date to register with IRS in order to be included in IRS first list of registered FFIs to be published on 2 June 2014. ▪ FFIs reporting under a Model 1 IGA should register as RDCFFIs (Registered Deemed Compliant FFIs). Such registration is for the purposes of obtaining a GIIN. ▪ A FFI is not required to provide GIIN to US withholding agents prior to 1 January 2015. Therefore it has time beyond 1 July 2014 to register and obtain GIIN if it is not expected to receive US-source income in the near term. ▪ The recommendation for most FFIs is therefore to await the announcement by IRAS on FATCA compliance requirements under the IGA (to be concluded between Singapore and the US) before registering for GIIN unless there are other compelling reasons to do so prior to 1 July 2014; for instance it has a branch operation in a jurisdiction that is not covered by a Model 1 IGA.

1 July 2014	<ul style="list-style-type: none"> ▪ New account on-boarding procedures are effective and pre-existing accounts due diligence commences. ▪ 30% FATCA withholding applies on US-source “withholdable payments” made to new account holders identified to be non-participating FFIs, recalcitrants and passive NFFEs with undisclosed substantial US owners. ▪ Exemption from FATCA withholding applies to grandfathered obligations in existence as at 1 July 2014 if these obligations are not substantially modified subsequently.
31 December 2014	<ul style="list-style-type: none"> ▪ FFIs to complete remediation on pre-existing entity accounts held by “Prima Facie FFIs”.
1 January 2015	<ul style="list-style-type: none"> ▪ By 1 January 2015, FFIs must register with IRS and obtain a GIIN to provide to US withholding agents.
30 June 2015	<ul style="list-style-type: none"> ▪ Pre-existing individual account documentation for high value clients (accounts over US\$1 million).
30 September 2015	<ul style="list-style-type: none"> ▪ First reporting by IRAS to IRS in respect of calendar year 2014 transactions. The reporting by FFIs to IRAS therefore is expected to be well before 30 September 2015; the date is yet to be announced by IRAS.
30 June 2016	<ul style="list-style-type: none"> ▪ Pre-existing individual account documentation for non-high value clients.

Asset management industry focus

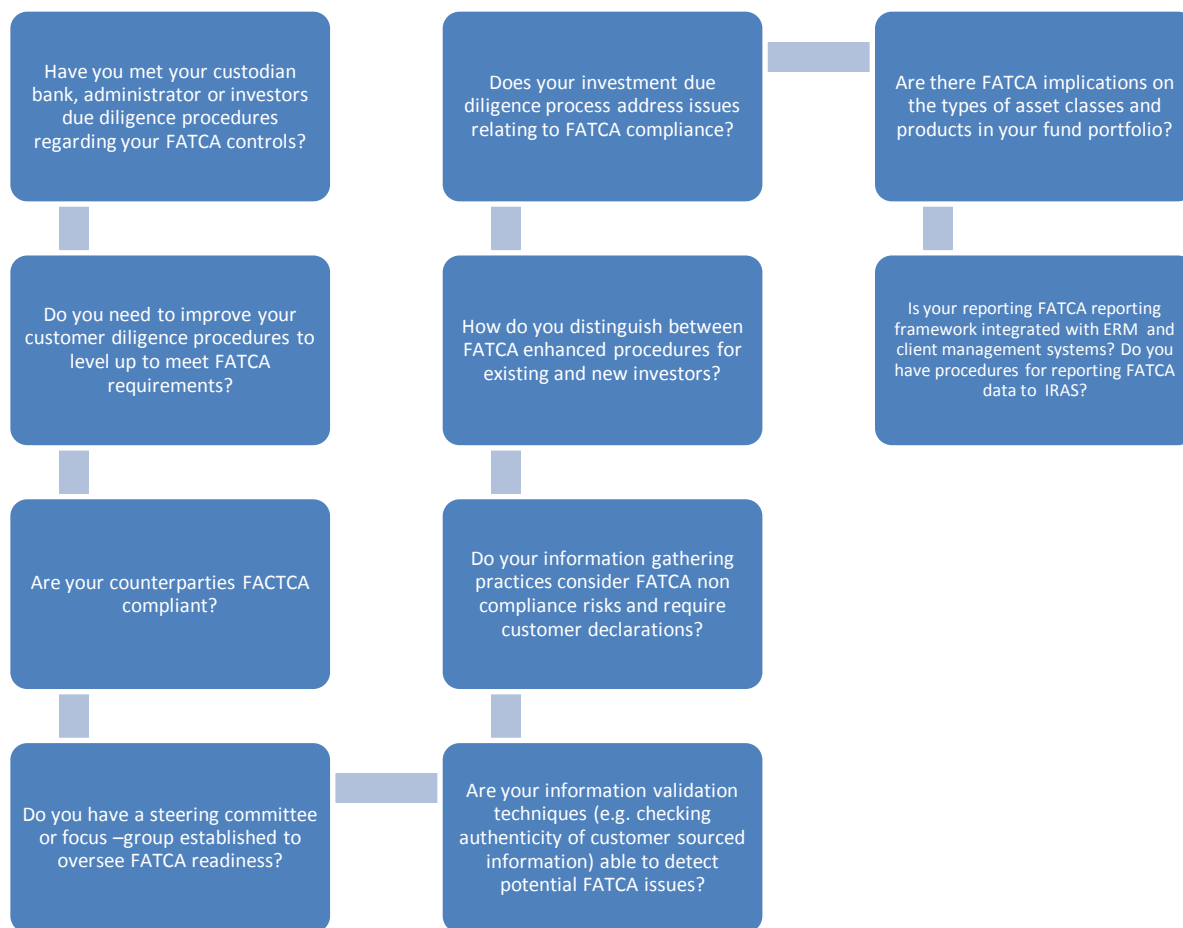
Whilst current FATCA requirements are squared largely on the banking sector, fund managers need to be prepared to deal with queries and heightened compliance requirements stemming from institutional investors (especially banks), high net worth investors as well as family offices on the topic of FATCA.

The traction FATCA has achieved within the financial services community can only mean that it is a matter of time before the bar is raised for Fund Managers. Fund managers needs to level up, to overcome potential limitations in attracting investment opportunities and foreign investors as well as anticipate the increasing complexity that FATCA regimes in other countries will create. This is over and above the tax withholding implications for entities or persons at risk.

We are beginning to see banks seeking confirmation or assurance from fund management entities on their on-boarding and client due diligence processes. This is especially so when the institution in question is a significant investor in the fund. The same can be expected from notable and credible investee which comprise of enterprises, corporations and business/family trusts.

10 questions to ask about your FATCA controls

At RSM Chio Lim, we believe that a proactive approach towards seeking stronger compliance or assurance over FATCA controls begins now. Internal control adequacy and effectiveness over FACTA means that the control activities should be effective, balance cost against benefit and be applied in a reasonably consistent manner. There is no silver bullet to address this. However the following 10 simple questions you should ask yourself or reflect on your organization.



Note: In the absence of specific announcements by either the Singapore Government or IRAS at this point in time, the above are broad guidelines on the expected compliance requirements of FATCA for the affected FFIs. The FATCA requirements will be modified by reference to what are provided in the signed IGA between Singapore and the US.

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