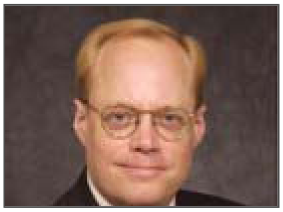
Forbes



Robert W. Wood

THE TAX LAWYER

TAXES | 7/13/2013

U.S. Inks FATCA Tax Deals With 9 Nations, Pursues 80 More During 6 Month Reprieve

Photo credit: Images_of_Money

The war on tax evasion is no secret. It started with the U.S., which is still the big driver. But the war extends outward like the spokes of a wheel. And the spokes seem to be multiplying. Soon the wheel will look like a porcupine. See U.S. Delays Rollout of Offshore Tax Dragnet Central Provisions of Law Will Now Take Effect in July 2014.

With a fist in a velvet glove, the IRS has announced a welcome six-month extension to the start of the comprehensive withholding and due diligence rules imposed by FATCA—the Foreign Account Tax Compliance Act. Whew! Still, FATCA is the law everyone loves to hate. The current carrot and stick is like a stay of execution. See Foreign Banks Win New Delay in Tax Evasion Rule.

Instead of January 1, 2014 being F Day (that stands for FATCA), now it's July 1, 2014. See IRS Notice 2013-43. FFIs still get F Day (FFIs are tax-speak for Foreign Financial Institutions), but deferred. The reason the IRS and Treasury are giving the extra time?

It's not because FFIs are overwhelmed. It's not because their clients and customers are closing accounts. It's not even because FFIs need software and hardware upgrades to handle F Day. Nope, the reason for the delay is "due to overwhelming interest" in FATCA abroad.

"Given the groundswell of international interest in FATCA, we are providing an additional six months to complete agreements with countries and jurisdictions across the globe, before withholding begins," said Treasury Deputy Assistant Secretary for International Tax Affairs Robert B. Stack. Of course, it also provides FFIs with additional time to comply with FATCA.

Enacted by Congress in 2010, FATCA targets non-compliance by U.S. taxpayers using foreign accounts. FATCA requires foreign institutions to tell the IRS about accounts held by U.S. taxpayers or foreign entities in which U.S. taxpayers hold substantial ownership. To avoid withholding, a participating institution must enter into an agreement with the IRS to:

- Identify U.S. accounts;
- Report certain information to the IRS regarding U.S. accounts; and
- Withhold a 30% tax on certain payments to non-participating FFIs and account holders unwilling to provide the required information.

Foreign institutions that don't sign an agreement with the IRS face withholding on payments, including U.S. source interest and dividends, gross proceeds from the disposition of U.S. securities, and pass-through payments. How important is FATCA? Hugely. It has its own FATCA home page, distinct from IRS.gov home page.

But reporting by the FFIs ***directly*** to the IRS is tough, even illegal some places. Thus, the U.S. developed intergovernmental agreements (**IGAs**). That way, the FFIs give all the tax dirt to their ***own*** governments, which in turn swap tax data with our IRS. See U.S. Is Doing FATCA Deals With 50 Countries!

This may be the most important recent development. IGAs are favored by the OECD, G-8, and other organizations as the more palatable choice. So far, the U.S. has signed nine IGAs, and is engaged in discussions with over 80 other jurisdictions. Despite the delay, the first report of information under FATCA is due in 2015, covering 2014 accounts.

The FATCA registration website should be open by August 19, 2013. That allows financial institutions time to begin testing the process and entering information. Other key FATCA deadlines, including for the implementation of withholding on gross proceeds from sales of U.S. securities and pass-through payment withholding, remain unchanged.

For many in banking and financial services, the world will never be the same.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.