

AML Webinars



FATCA & AML/CTF
29 September 2011

Hosted by



AML Webinars
Short, sharp and sweet!

Important notice

Before we proceed, it's important that we all understand the following:

- The information provided in this webinar is of a general nature, and it is not intended to address the circumstances of any particular individual or entity. No one should act on this information without appropriate professional advice after a thorough examination of their particular situation.
- Confidentiality is critical in this webinar. Please adhere to the confidentiality requirements of your organisation, and respect the confidentiality of your fellow participants' discussions in this session.



Your moderator and panellists

- Moderator - Joy Geary has been Editor of the AML Magazine since May 2008. She is the primary author of the course materials for the International Compliance Association AML Diploma for Australia to be released October 2011 in conjunction with AFMA
- Eileen Vuong is a senior manager Macquarie Group Compliance
- Anthony Quinn has been the Program Manager for the Foreign Account Tax and Compliance Act (FATCA) Program for one of the Macquarie Group's business divisions during 2011.
- Neil Jeans – Director, PWC, former GM Group AML, ex-UBS and ABN Amro London, former law enforcement officer (London)

Audience questions and comments

- Please use the question facility to send your questions to us.
- Only the moderator can see the identity of the questioner.
- Your questions bring the webinar alive so don't be reticent.

Setting the stage

- FATCA was passed as legislation in the United States in March 2010 and is aimed at addressing evasion by US taxpayers holding investments in offshore accounts. Since enacting FATCA, the US government has issued two Notices with guidance on how some aspects will operate, but full draft regulations are not expected until December 2011 and the final regulations in the northern summer of 2012.
- A third Notice was issued on 14 July 2011 to provide for phased implementation. This notice describes the timeline for the implementation of Chapter 4 and discusses certain substantive and procedural matters that will be addressed in regulations by Treasury and the IRS.

Opt-in regime

- FATCA is actually an “opt-in” regime, in that organisations only have to comply with FATCA if they choose to participate by signing an agreement with the US Internal Revenue Service (IRS). In reality, most organisations are likely to “opt-in” given the 30 % withholding tax on certain payments to foreign financial institutions (FFIs) and non-financial foreign entities that choose not to participate in FATCA.
- Organisations which do not participate will have 30 % tax withheld on US-sourced income under FATCA (this includes US-sourced interest and dividends, gross proceeds from the disposition of US securities and pass-thru payments).

Who falls within the scope of FATCA?

- Foreign financial institutions who enter into FATCA agreement must report U.S. accounts to the IRS.
- All accounts to be reviewed for the US indica below, then confirm if US account or not:
 - In the name of a U.S. resident or citizen or incorporated entity
 - Have a U.S. address for the account holder
 - Record a U.S. place of birth for the account holder
 - Have a “in care of”, “hold mail” or PO box address in the U.S. as sole address for the account holder
 - Are operated under a power of attorney or signatory authority by a person with a U.S. address
 - Have standing instructions to transfer funds to an account maintained in the U.S. or directions are received from a U.S. address



Know Your Customer & FATCA

- FATCA KYC is like AML CIP on steroids – potentially 50+ fields for client data capture, segmentation, tracking and reporting
- Will require updates to KYC data attributes in CRM system(s) [many of which are external vendor solutions]
- Where on-boarding is done online will need to change online application forms and interfaces to downstream CRM systems (and likely product systems that use data for reporting)
- Alignment of AML KYC requirements to FATCA – particularly around beneficial ownership (AML 25% and FATCA 10%)
- Alignment of “US persons” follow up with existing Enhanced CDD controls
- KYC data verification – some practicalities about how (and whether) we will be required to verify things like Green Card, TIN, NPFFI ID #



Expected impact on customers

- If customers are US persons they might not even be able to get access to products post FATCA as cost of servicing them may be too high
- Additional KYC will be required from clients
- Increased client and adviser communications on what is FATCA, what it means and what FFI's are required to do etc.
- Non-US clients with US indica (and some of it is not very strong – i.e. sole address on a/c that is care of etc.) would be inconvenienced
- Challenge of streamlining remediation approach if multiple CRM sources across products/divisions etc. (i.e. contacting same client multiple times)
- Different scenarios, client holds multiple a/c's across divisions, one a/c with US indica the other with no US indica – how to resolve etc.?

Technology impacts for FIs

- On-boarding systems (online account opening forms, interfaces to CRMs, imaging and workflow configuration)
- Significant overhaul of current withholding tax and reporting systems if the AIRR process is not able to be used (i.e. new reporting requirements, multi-currency)
- Electronic searches in CRM(s) and updating records that FFI has met reqts – could be problematic if FFI does not have “single customer view”
- IRS to provide a list of PFFI's to be used as a lookup in payment systems (i.e. SWIFT, CHIPS) to determine whether counterparty is a NPFFI & should withhold
- Interfaces between CRM systems and product/tax systems to identify which clients are withholdable and reportable

Operational impacts for FIs

- PDS docs/application forms will need to change to capture FATCA KYC
- Remediation effort – electronic searches (less so), paper based reviews (big deal); particularly for certain client categories (i.e. WM a/c holders)
- Dual client tax reporting – to IRS (FATCA) and ATO (AIIR) increases burden on Operations Staff
- Train staff on FATCA changes (i.e. new forms, system changes, new WHT reports etc.)
- New procedures and changes to existing procedures
- General awareness training – ensuring staff are not ‘tipping off’ clients how to setup accounts so searches don’t pick them up as US persons

Other impacts for FIs

- Definition of Private Banking is currently very broad and will require significant remediation of potentially low value Wealth Mgmt. clients
- Interesting funding discussions internally – if one division has most clients and compliance costs but has least to lose if non-compliant
- Weak indicators of US Search indica (i.e. hold mail or c/o address is sole address for an account) – could increase amount of manual remediation
- Legal issues associated with terminating client relationships (i.e. if fail to provide remediation information or fail to provide permission to disclose)
- Termination of FFI agreement if # of clients requiring remediation remains too high as determined by the IRS

Expected costs of FATCA for Australian FIs

- Will definitely be disproportionate to the amount of revenue IRS will raise from US tax evaders operating in Australia (estimated at \$20m p.a. only!)
- Most significant costs expected to be in KYC systems and WHT / Reporting – in the millions for each company (if can't leverage AIIR)
- Costs of non-participation in terms of WHT retained by IRS is significant
- Non-participation likely to mean most PFFI's will not deal with NPFFI's so competitive issues that could cost businesses
- Depends on final legislation as to remediation costs (i.e. PvB definition)
- Hard to predict, particularly where FFIs have reliance on 3rd party software providers as FATCA is not front of mind and on development road-maps
- Increased costs for external legal and tax advice

Privacy & Disclosure

- Reporting customers to IRS may be problematic as this is typically not covered in existing terms and conditions
- In some jurisdictions, privacy laws do not allow for cross-border transfer of customer data as required under FATCA
- To what extent can FFIs rely on information provided by customers? I.e. will FFIs need to verify information provided by customers?

Questions?



Thanks to Eileen, Anthony and Neil
for their time and contribution today

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