FATCA Realities: Foreign Companies Respond, Americans Barred

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[This post is the second in a series discussing the Foreign Account Tax Compliance Act (FATCA) and its impact upon foreign investment and development in South Florida and the United States as well as efforts both locally and in other countries to stop FATCA.]

FATCA (the Foreign Account Tax Compliance Act) will become effective in 2013 unless action is taken, and as discussed earlier in this series, there are a tremendous number of critics of FATCA that believe it is harmful to a wide range of interests, not the least of which is economic stability and recovery in South Florida and elsewhere.

Why Was FATCA Passed in the First Place? Money.

The purported reason for Congress to pass FATCA was to enhance the ability of the federal government to gather taxes due on assets that are sitting in foreign accounts. Congress passed the legislation as part of the HIRE Act (Hiring Incentives to Restore Employment Act), all for the reason of collecting revenue for the federal coffers. It's an international tax collection effort aimed at perceived tax evasion through overseas accounts.

What Does FATCA Do?

One basic thing that FATCA does is require that financial institutions, American or foreign, anywhere in the world, provide the Internal Revenue Service with account information for any U.S. clientele with **$50,000+** in their account. Which means that the U.S Government is trying to make its tax collections more effective by having banks file information with the IRS and not just the taxpayer.

However, FATCA isn't a simple tax collection procedure. FATCA will require major alterations to the way business is done by both foreign and domestic enterprises - and that's the problem.

FATCA, for example, will force every foreign bank to report all of its U.S. account holders to the Internal Revenue Service (regardless of account balance); afterwards, FATCA mandates that these foreign banks impose a 30% tax on all payments or transfers to these U.S. account holders who refuse to identify themselves. Any foreign bank that doesn't want to do this will be penalized by the federal government through withholding of interest and dividends for U.S. sources as well as withholding of gross proceeds from the disposition of U.S. securities, etc.

If FATCA does become effective in 2013 (that's one year, one month, and a few days from now), then a huge number of corporations are going to have to make lots of internal changes in order to comply with this new law. Huge numbers of changes.

Change is expensive. While this type of imposed change is never welcomed with open arms by companies, FATCA requirements are hitting businesses at an especially bad time: internal changes in frameworks, procedures, operations, etc. are expensive in time and money.

That's not all. Accounting firms like Delotte and Ernst and Young are already offering their services to provide "compliance risk assessment" and evaluations of systems and how these internal systems will need to be changed in order to meet FATCA's requirements for withholding and reporting. Which means not only the expense of the changes themselves, but the additional expense of hiring a firm to evaluate and recommend what those changes need to be.

Given today's economic climate, forcing additional expenditures in already tight corporate budgets in order for the federal government to collect more tax dollars is not setting well with lots and lots of businesspeople. Companies in all kinds of industries and in all parts of the world are against FATCA and what it means to their bottom line.

Growing Concern for FATCA's Impact on Investment and Trade

Several months ago, Forbes published an interesting take on FATCA in its June 21, 2011 online edition, written by Forbes contributor Daniel J. Mitchell and entitled "*Why Obama's FATCA Law Is A Threat To Business Growth*."

There, it's first pointed out that FATCA was passed alongside draconian legislation requiring 1099s to be filed by every U.S. business (from solo proprietorships to the largest corporations) for any vendor with whom they did $600 of business (or more). That was egregious, and this law was nixed. No one is going to have to jump through that 1099 for $600+ hoop after all.

However, FATCA - which Forbes describes as a mere "international version of Obamacare's 1099 scheme" - remains alive and well and since it's impacting foreign business operations much more than those here at home, Congress hasn't heard the outcry against its unfairness as easily as it heard the 1099 - $600 protests.

Foreign Companies May Respond By Cutting Off American Investment Rather Than Comply With FATCA

Forbes warns that FATCA is so much trouble that it may mean that foreign financial institutions could decide that the easiest change for them will be to ignore all those offers for help from Ernst and Deloitte and instead, just stop doing business in America. No U.S. investment, no FATCA worries.

Seems like an option that any sensible foreign business would be pondering, doesn't it?

Add to this, an article (referenced by Forbes) from Great Britain's *Financial Times* published in June 2011 entitled "US demains tax tolerance of foreign financial groups," where country after country after country is identified as being at the minimum *upset* and all the more often *outraged* at this American legislation.

The outrage against FATCA continues to grow. For some, it's cost. For others, it's putting them between a rock and a hard place, since FATCA requirements fly in the face of their own jurisdictions' privacy laws. There are other bases for foreign criticism, too. Things like a feeling of being disrespected, as they ask why should other countries be required to act as indirect tax collection agents for America?

Meanwhile, we're starting to see what FATCA will mean if it's not repealed. This week, Ascentric announced its decision: it's not going to be doing business with Americans because FATCA is not worth the effort.

Next in the series, more details on FATCA and what it means to Americans including businesses in South Florida.