



FATCA: Deadlines approach, Details remain elusive

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As 2013 comes to a close, we continue to wait for definitive word about compliance requirements for FATCA – the much disliked U.S. legislation that will require financial institutions around the world to report account information about U.S. persons.

Canadian Central continues to attend periodic briefings from Finance Canada and Canada Revenue Agency (CRA) at which we are told that an Inter-Governmental Agreement (IGA) is still under negotiation between U.S. Treasury and Finance Canada officials. We do not expect any announcement until 2014.

Meanwhile, the Organization for Economic Co-operation & Development (OECD) is leading discussions among its 32 member countries, including Canada, about a new international protocol for sharing financial account information in a standardized format – a less burdensome and more sensible approach to combating international tax evasion than FATCA. It does not appear likely, however, that the OECD initiative will convince the U.S. to abandon FATCA.

What are some of the key considerations for credit unions planning their approach to FATCA? The following details are based on “well-informed predictions” by Canadian officials during our briefings.

Reporting to CRA: Assuming an IGA is completed, Canadian financial institutions will report data to the CRA, not the IRS. All obligations will be prescribed by Canadian law, not U.S. law. Audits will be by CRA, as part of its normal audit routines. Penalties or fines for non-compliance will be those of the Income Tax Act.

Dates - New accounts: Account opening procedures to screen for U.S. persons begin July 1, 2014.

Dates - Existing accounts: First reporting on March 15, 2015, but only with respect to December 31, 2014 balances of accounts over \$1 million on June 30, 2014, and new member accounts opened during the last six months of 2014. Subsequent reporting on other accounts remains March 31, 2016.

Exempt accounts: No reporting will be required for “registered accounts” including RRSP, RRIF, TFSA, and Agri-Invest. For individuals, accounts less than \$50,000 are exempt. For entities, this threshold is \$250,000.

Deemed compliant credit unions: Credit unions with less than \$175 million assets (approximately 60 per cent of Canadian credit unions) will be exempt from FATCA reporting.

Credit unions with at least 98 per cent of member deposits from residents of Canada will have reduced reporting requirements, focussing primarily on accounts of U.S. persons who are non-residents of Canada.

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December 17, 2013

In calculating the 98 per cent threshold, exempt accounts are included in both the numerator and denominator. We expect many credit unions larger than \$175 million asset size will qualify for this reduced compliance burden and not have to become fully participating FIs under FATCA.

Self-certification vs. Indicia: Canadian financial institutions will have a choice when opening new accounts to either request confirmation of U.S. person status (self-certification), or merely look for indicia of a U.S. person, such as address, passport, telephone number, etc. A question about place of birth will not be required.

Entity accounts: Entities such as businesses, corporations, and trusts will be reportable if there is at least 25 per cent control by a U.S. person and the entity is not engaged in an active business. There will be no prescribed form produced by CRA for entity accounts certification.

Snowbirds and students: Special rules are being created for accounts of persons who are not U.S. persons but show U.S. addresses because they spend winters in the U.S. (snowbirds) or are studying there.

Responsible officer: Credit unions have expressed concerns about the FATCA concept of a Responsible Officer – a designated and registered employee who would be personally responsible for full FATCA compliance at a financial institution. We have been assured this will not apply under an IGA. Canadian financial institutions will not have to designate a Responsible Officer.

CRA guidance: CRA will publish guidance for Canadian financial institutions that details their FATCA obligations. This Guidance will be available within weeks of an IGA completion.

Credit unions are understandably nervous about the prospect of FATCA obligations without sufficient time to operationalize them after release of an IGA. In light of the tight timelines to July 1, 2014, credit unions may choose to focus on two areas: Expected changes to account-opening procedures for new members; and whether they qualify as deemed compliant FIs with reduced obligations.