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Achieving the Proper Balance on FATCA

By Keith Lawson

ICI and ICI Global have engaged actively with Treasury and the Internal Revenue Service (IRS) as they have crafted the proposed [Foreign Account Tax Compliance Act \(FATCA\)](#) regulations, which were issued today. Our message has been simple: ensure that the tax compliance benefits anticipated by FATCA, which we support strongly, justify the costs that will be imposed.

Congress [enacted FATCA](#) in 2010 in response to efforts by certain U.S. taxpayers to hide assets and income subject to U.S. tax. To enhance tax compliance by U.S. taxpayers, FATCA imposes significant new customer identification, reporting, and withholding obligations on both U.S. and foreign financial institutions. Any foreign financial institution that does not enter into an agreement with the IRS to carry out these obligations will suffer 30 percent withholding tax on all payments from U.S. sources, including income receipts and sales proceeds.

In our [detailed comments](#) and subsequent discussions, we have urged administrable rules that will ensure robust foreign investment in the U.S. capital markets. For example, we have urged that FATCA guidance:

- be effective no sooner than two full calendar years after the regulations are finalized;
- ease the extraordinary burden of identifying U.S. accounts among a firm's entire client base by increasing the de minimis threshold and narrowing the private banking department rule;
- address the relative cost-benefit imbalance affecting foreign distributors that do not target U.S. investors through workable exceptions for deemed-compliant funds and local distributors;
- exempt retirement accounts and charities, which are not tax-evasion vehicles; and
- resolve significant concerns regarding the legality, under foreign law, of complying with many of FATCA's requirements before FATCA regulations are finalized.

We will examine these regulations closely, submit detailed comments addressing any remaining concerns, and work with the regulators and others so that the final regulations achieve the proper balance.

- Read ICI's June 6, 2011, [letter on FATCA](#).
- Learn more about ICI's work on [tax policy](#).
- Browse more [recent ICI comment letters](#).

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