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More Time Is Needed to Ensure Effective FATCA Implementation

By Keith Lawson

On January 1, 2013, various rules implementing the [Foreign Account Tax Compliance Act \(FATCA\)](#) begin to take effect. Although transition relief, including that provided in [guidance issued October 24, 2012](#), limits the immediate impact of many of FATCA's onerous provisions, the timetable remains tight. In particular, funds cannot implement FATCA effectively without the following:

- final regulations,
- the agreement that foreign financial institutions (FFIs) must sign, and
- an expansive network of countries that have signed [intergovernmental agreements \(IGAs\)](#) with the United States.

Because FATCA cannot be implemented effectively without more time and additional guidance, in a [recent letter](#) ICI and ICI Global urged that FATCA's implementation date be postponed until January 1 of the first calendar year after the year in which the regulations are finalized.

Delays: A Side Effect of an Extremely Beneficial Consultation

Chairing the business advisory group during [recent meetings at the Organization for Economic Cooperation and Development](#) has provided me with a unique perspective on FATCA implementation. Among other things, I have become even more keenly aware of the substantial challenges that both the business community and regulators face in implementing FATCA in an administrable manner. These challenges arise, in somewhat different forms, whether FATCA is implemented directly or through IGAs.

ICI and ICI Global repeatedly have commended the Treasury Department and the Internal Revenue Service for their willingness to meet with others and with us as often as necessary to ensure a comprehensive understanding of our concerns. Indeed, the ongoing consultative process has been more interactive than any other in which I have been involved.

This ongoing dialogue, while extremely beneficial, has had one unfortunate side effect. More time spent meeting with business has meant less time available to write the guidance. Announced dates for guidance issuance, consequently, have been missed. When deadlines are missed, businesses incur substantial additional costs.

A Difficult Time Crunch

Two factors make the FATCA time crunch especially acute.

- **We are still awaiting guidance.** ICI and ICI Global previously have expressed our concern that substantial, unnecessary burdens will be placed on funds and their investors unless comprehensive guidance is issued sufficiently in advance of the relevant implementation dates. The necessary guidance, including final regulations and the participating FFI agreement, has not been issued.
- **More IGAs are needed.** The IGAs, which we support strongly, add an additional complication to the timing considerations. An expansive IGA network will resolve many of the industry's FATCA concerns—so long as the network is in place before FATCA becomes effective. To date, however, only one agreement has been signed.

Unless all of the necessary FATCA guidance is ready for imminent release and the number of signed IGAs increases quickly and

substantially, FATCA's implementation must be postponed—either explicitly or through substantial penalty relief.

This postponement, which we do not propose lightly, is critical. ICI and ICI Global believe that it is far more important to get FATCA right than to get it done quickly.

Learn more about FATCA at our [FATCA Resource Center](#).

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