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A Growing Urgency: FATCA Agreements in the Asia-Pacific Region

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Questions are swirling as the 1 July 2014 effective date for the US Foreign Account Tax Compliance Act (FATCA) draws closer. US officials remain adamant that another implementation extension, similar to earlier extensions, will not be given. Against this backdrop, many funds in the Asia-Pacific (APAC) region remain uncertain whether their governments will soon strike an arrangement with the United States that streamlines reporting requirements, or if they should prepare to comply with FATCA's very lengthy and exacting implementation guidelines.

Why FATCA Matters

FATCA is the United States' attempt to gather more information about the financial assets that its taxpayers hold in other countries. FATCA's goal—to ensure better tax compliance by US citizens and residents—is laudable. The burdens imposed on financial institutions, however, are substantial. FATCA requires US institutions and foreign financial institutions that hold any US assets to adhere to new customer identification, reporting, and withholding obligations.

The global implications of FATCA are significant. Many global financial institutions have spent years and millions of dollars preparing for FATCA's implementation. The detailed requirements contained in the extensive US regulations present unique challenges for many firms. Because of the regulations' complexities and the need to address certain country-specific issues (such as data privacy), many governments have negotiated intergovernmental agreements (IGAs) with the United States. These IGAs simplify greatly FATCA compliance for financial institutions located in any country that has signed one. So far, more than 20 IGAs have been signed.

Notwithstanding the many benefits of an IGA, only one APAC-region country—Japan—has signed one. Unless a country in which a global fund is organized or distributed has an IGA, the fund and its local distributors are in the extraordinarily difficult position of not knowing what rules will apply. This uncertainty complicates greatly the task of meeting looming compliance deadlines.

FATCA Impact Often Underestimated

FATCA affects APAC funds with any US investments, *whether or not they have any US investors*. Unless a fund with US investments is FATCA-compliant, it will suffer 30 percent withholding on all amounts—including dividends, interest, and sales proceeds—attributable to its US investments. FATCA also might affect an APAC fund without US investments if such a fund does not reside in a country with an IGA and if the fund's service providers (such as custodians) decide to limit their risk by doing business only with FATCA-compliant firms.

Effect on APAC Funds and Investors

An APAC fund can become FATCA-compliant in one of two ways. First, the fund can register on the IRS FATCA registration portal (which, among other things, involves signing an individual FATCA agreement). Second, the fund automatically will be FATCA-compliant once its country has signed an IGA (which also entails a requirement that the fund comply with local law).

The most significant issue for many Asian funds is *not knowing* whether they will be covered by an IGA or whether they need to sign a FATCA agreement on the IRS website. A fund cannot know which steps it must take to become FATCA-compliant until it knows whether its country will sign an IGA.

What Needs to Be Done

Because of this uncertainty, financial institutions located in countries without a signed IGA as of 1 July must be prepared to comply by entering into an individual FATCA agreement.

But it would be best if more countries in the APAC region could quickly finalize their agreements with the United States and thus remove this uncertainty. Broad and uniform adoption of IGAs is necessary for FATCA to be implemented in a workable manner that justifies the costs that accompany implementation. Funds and their investors should encourage governments to complete IGAs and provide this certainty.

Negotiating an IGA with greater urgency is important if resolution is to come before 1 July. Funds and their investors should engage with their governments to determine the status of IGA negotiations, and urge a resolution. FATCA compliance is simpler if it done in accordance with an IGA and the implementation procedures under local law, rather than with individual FATCA registration and its detailed regulations.

There is no time to waste. IGAs are needed urgently. Because an applicable IGA cannot be guaranteed, however, funds must be prepared to register under FATCA and meet the many resulting obligations.

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