Letter from the President

Moving Forward into the Post-FATCA Era: A More Sensible Canadian Approach

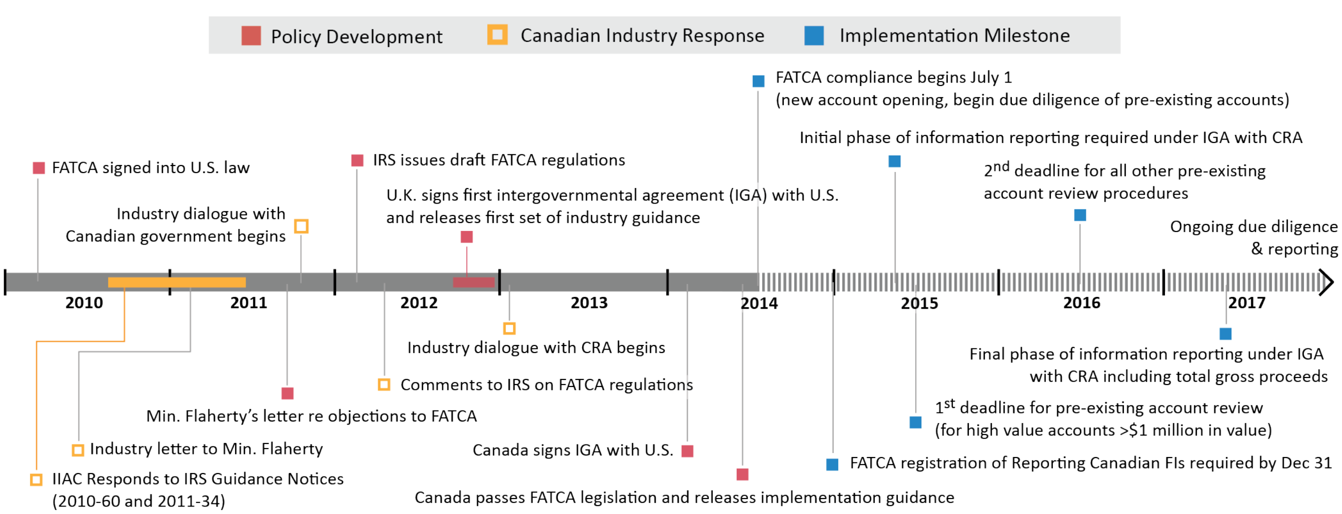
Vol. 74

When the Foreign Account Tax Compliance Act (FATCA) was first proposed by the U.S. government in 2009, the IIAC was among the first industry associations internationally to understand the extent of the impact it would have on clients of financial institutions worldwide. FATCA was extraterritorial in its reach, essentially forcing all financial institutions in other countries to identify and report on their U.S. accountholders or face punitive 30% withholding on all U.S. income paid to the financial institutions and all of its clients, regardless of their U.S. citizenship.

Additionally, the U.S. FATCA legislation potentially violated local privacy laws by forcing non-U.S. financial institutions to sign agreements with the IRS and report client information directly to the IRS. In countries such as Canada, there were concerns that FATCA might also violate local laws ensuring access to basic banking services by forcing Canadian financial institutions to close accounts of individuals unwilling to certify their tax residency status. It was clear that FATCA would cost millions for financial institutions to implement, perhaps tens or hundreds of millions, depending on the size of the financial institution. Even more troubling, FATCA served no beneficial purpose for investor protection, market oversight or anti-tax evasion in Canada or elsewhere; it was not even clear whether the U.S. laws proposed could achieve the stated anti-tax evasion agenda in the U.S for which it was intended.

Despite arguments to stop the legislation, it was passed very quickly in March of 2010, with bi-partisan support in the U.S. Congress. In the four years since its enactment, there has not been a credible initiative in the U.S. from either Democrats or Republicans to repeal or amend the U.S. legislation. In response to this hardline position, the IIAC's efforts during that time shifted to focus primarily on how to minimize the collateral damage caused by the U.S. legislation, both to our member firms, their clients, and the functioning of the capital markets generally.

FATCA: Past, present and future



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Non-compliance with FATCA was never a realistic option for Canadian financial institutions and their clients who have built a significant presence in U.S. capital markets. This offshore business is increasingly important to the overall growth of these institutions, and to underlying profitability and shareholder returns. Acknowledging the need for FATCA compliance to maintain Canada's competitiveness, the IIAC began seeking relief from both the U.S. and Canadian governments from the most onerous requirements of FATCA to minimize the cost and impact of compliance on as many of our members and their clients as possible.

These efforts included writing a joint industry letter to Minister Flaherty in February 2011, urging him and Department of Finance officials to place pressure on the U.S. government to find a process by which countries like Canada could leverage existing tax information sharing agreements and allow local Canadian financial institutions to report to CRA, who could then exchange any relevant information on accounts at high risk of U.S. tax evasion with the IRS. We believe that inter-governmental agreements for FATCA compliance balance the need for information sharing with the right to consumer privacy, by allowing financial institutions to provide information to local tax authorities who will set and maintain standards for security of transmission and ensure that any other countries with which they share information also have high standards. We expect any sensitive taxpayer information exchanged should be on a secure basis, and subject to approriate oversight by tax authorities.

The Canadian industry was among the first to argue for a local approach to implementing FATCA, and we were highly successful in achieving this. In February 2014, Canada signed its intergovernmental agreement with the U.S., and in June 2014, the implementing legislation was passed as part of federal Bill C-31. The agreement that has been struck between Canada and the U.S. ensures the exclusion from the scope of FATCA registered investment accounts that are at an extremely low risk for use as tax evasion vehicles: RRSPs, RRIFs, RESPs, TFSAs and RDSPs. This means that millions of account holders saving for retirement, education, or other important life events would be outside the scope of FATCA's reach. Perhaps just as importantly, Canada's unique definition of "financial institution" in the implementing legislation means that thousands of Canadian accountholders that are small family trusts will be relieved of expensive and time consuming registrations and filings.

Canada is unique in its situation and relationship with the United States. FATCA was designed to combat tax evasion in countries with a small number of high-risk account holders; Canada instead has a large number of low-risk account holders, but which includes large numbers of individuals who are not American, but travel frequently to the U.S. in their retirement years or to attend school. Under the Canadian guidance, snowbirds and students who temporarily have U.S. addresses are given relief from having to prove on an annual basis they are not U.S. persons. We have always argued a Canadian account holder at a Canadian financial institution should be minimally impacted by FATCA if at all possible.

We commend the efforts of the staff at the Canadian Department of Finance and CRA who listened to the concerns of the industry and worked diligently to create a more sensible and pragmatic approach for implementing FATCA in Canada.

Our opening statement in front of the House of Commons Standing Committee on Finance during its hearings on Bill C-31 emphasized the urgency and importance of passing the Canadian legislation to implement FATCA, and in effect ratifying the Canada-U.S. agreement. This action was not because we are pro-FATCA; but it is because we believe the Canadian legislation was the best possible mechanism to comply with the FATCA reporting framework for Canadian investors and their financial institutions. It is the product of almost five years of extensive consultation between the Canadian securities industry, and other institutions in the Canadian financial sector, and the Canadian and U.S. tax authorities.

With the initial July 1, 2014 compliance deadline looming, deferral of the Canadian legislation would have placed a more costly and difficult compliance burden on Canadian financial institutions. Moreover, without an agreement with the U.S. authorities, the reporting obligations could have become even more onerous over time. Deferral would have re-triggered the requirements for direct dealings between Canadian financial institutions and U.S. tax authorities, requiring disclosure of individual client information to the U.S. authorities and mandating closure of client accounts for non-compliance. Further, many small investors, who might have been exempt from reporting requirements under the Canadian IGA (such as the exemptions for registered accounts mentioned above), could become subject once again to full FATCA reporting obligations.

The Canadian securities industry, and other Canadian financial institutions, have faced the FATCA reporting challenge head-on, and over the last five years have invested thousands of hours and substantial resources, funded by large and small investment dealers, to consult closely with the U.S. and Canadian tax authorities. The IIAC will continue to work with our member firms, Canadian and international tax authorities and financial services industry counterparts to ensure the Canadian approach to tax information-sharing is developed in the most pragmatic and sensible way possible.

Yours sincerely,

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June 2014