

Hefty penalties for non-compliance, US FATCA law looms closer to home

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In a scramble to prepare for international tax compliance, Denmark has become the latest country to seal a deal with the US that would implement new global information reporting obligations under the highly divisive US Foreign Account Tax Compliance Act (FATCA).

Similar bilateral agreement, between the UK and the US Treasury Department in conjunction with the Internal Revenue Service (IRS), was already signed in September this year with Australia now tipped to be next on the list.

FATCA, quietly enacted by the US Congress in March 2010 to aid US tax laws' compliance efforts, imposes certain due diligence and reporting obligations on Foreign (non-US) Financial Institutions (FFI) that would not only add a hefty price tag, whether you comply or not, but may also cause legal conflict.

Under FATCA FFIs (including hedge funds) are required to disclose US taxpayers' assets to the IRS. The Association of Superannuation Funds of Australia (ASFA) has already warned however that financial institutions could easily breach Australia's Privacy Act, which thwarts the discharge of personal information to foreign tax bodies, when complying with the new reporting obligations.

Others have highlighted that even the Racial Discrimination Act could be breached, as US account holders alone are being targeted, calling for urgent intervention from the Government. In early November, Treasurer Wayne Swan reported Australia and the US began discussions for an intergovernmental agreement which will "...minimise the impact for Australians...".

"A key objective of the intergovernmental agreement the Australian Government is negotiating with the US Administration is to facilitate Australian compliance with FATCA in a way that reduces its overall burden on Australian business," Mr Swan said after meeting with US Treasury Secretary Tim Geithner in Washington DC.

"[This] would also improve existing reciprocal tax information sharing arrangements between the Australian Taxation Office and the United States Internal Revenue Service," Mr Swan added and "...help ensure Australian tax laws are effectively enforced so that Australian businesses and individuals who pay their fair share of tax are not disadvantaged by those who seek to evade their tax obligations."

Yet the legislation is expected to unleash a profound compliance, administrative and costly burden on financial institutions that have no choice but abiding if they want to remain competitive.

A multitude of new legal, data management and reporting requirements, will be just some of the things institutions will have to address internally, experts forecast.

In Australia and worldwide, law firms, especially those advising multinational organisations on cross-border tax issues, have already begun preparing for certain aspects their clients will need counsel and guidance on. Planning to engage in talks with more than 50 countries and jurisdictions worldwide, the US has so far discussed model agreements with five other countries—the UK, France, Germany, Italy and Spain, signing up with the UK and Denmark.

Initially required to sign agreements from January 1, 2013, FFIs now have until January 1, 2014 to comply with new regulations after tax authorities in the US recently announced a delay in key dates of start of FATCA.