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'FATCA' aftershock following first SA reporting deadline

The Foreign Account Tax Compliance Act (FATCA), was inspired by United States legislation and initially aimed solely at US taxpayers.

Exchange of information agreements allow authorities to access taxpayer information across borders, to assist compliance and enforcement. Sharing of

taxpayer information between governments typically happens in one of three ways. First, governments share information on request, when one government approaches another, justifying its demand. Secondly, a spontaneous sharing of information could occur where tax authorities transmit information of interest to another, perhaps

information unearthed in the process of an investigation. The third method of information sharing occurs when information of a certain type is shared automatically.

The intergovernmental agreement between SA and the US provides for automatic sharing of tax and account holder information relating to US persons. It requires financial institutions to submit relevant financial reporting information relating to US citizen account holders to the SA tax authority, for onward transmission to the US Inland Revenue Service (IRS).

Local financial institutions submitted their first FATCA report at the end of June 2015. SARS will transmit the information in bulk to the IRS before the end of September 2015. While financial institutions are recovering from the aftershock of the first reporting deadline, the emphasis for tax gurus and lawyers must now shift to the impact on taxpayers and the entities operated for

them, including trusts.

The task is challenging, as FATCA was just the first step. Automatic exchange of taxpayer information has since gone global. Following an initiative from the OECD, more than 90 countries have now committed to a similar inter-governmental reporting system known as the Common Reporting Standard (CRS). The next big wave of client information sharing will be between the so-called early adopters. The early adopters are approximately 60 countries (including SA). The first intergovernmental reporting deadline will be on 30 September 2017, which deals with pre-existing accounts as at 31 December 2015.

The new international transparency has obvious consequences for those who are not compliant, but even compliant taxpayers should pay attention. Any sharing of financial data could lead to enquiries regarding unreported or mismatched taxpayer information. Data sharing could potentially result in piecing together offshore structures. Practices thought to be compliant which have not been subject to review will now be subject to scrutiny. The extent of reporting will also be a surprise to some. A taxpayer who settled a trust many years ago and who has never needed to file a report might find mention of the transaction in the reports filed.

Exchange of information agreements do not only empower governments in the fight against tax evasion. They also inform tax administrations worldwide regarding the practices and procedures of wealthy taxpayers and the wealth management industry. The sharing of taxpayer

information held by SA financial institutions presents a unique challenge for the industry and a new opportunity for the tax authorities. The advantage for the tax authority is that they will find out about a taxpayers' undeclared overseas financial account detail.

During February 2015, various media articles referred to the release of information pertaining to SA residents who are or were HSBC account holders. SARS issued a media statement on 9 July 2015, the purpose of which was to provide an update on the progress it has made regarding foreign bank accounts held by these residents. It appears that SARS has completed the initial phase of matching information obtained through international exchange of information procedures with the taxpayer database. The result was that those specific individuals had an opportunity until 12 August 2015 to approach SARS via its VDP unit to regularise their tax affairs. For others, no deadline for voluntary disclosure has been set and so we advise individuals to take account of the general reporting deadlines under CRS and note that certain transactions made in 2015 may already be subject to disclosure in the future.

Financial Institutions and their clients must prepare for CRS and consider their options. If they are not ready to ride the wave they will face the consequences of being out in the tax ocean, faced by dangerous and potentially deadly, challenges. The impact and aftershock of the FATCA reporting deadline just passed will be minor by comparison.

This article was written by Anne Klein, Head of Fiduciary Advice, Maitland, & FATCA representative for FISA

'FATCA' is just the first step

