Implications for CRS if FATCA were to be repealed

There is no doubt transparency is here to stay, and FATCA and CRS are the tools regulators have to achieve this. But their size and all-pervasive nature means some initial hiccups are inevitable, says Angelo Venardos of Heritage Trust Group, explaining why FATCA faces the risk of being repealed – and the implications for CRS if this happens.

The Foreign Account Tax Compliance Act (FATCA), which is enforced by the US Internal Revenue System, and the Common Reporting Standards (CRS), created by the OECD, are the cornerstones of the drive for global transparency in financial services.

But how they work is very different.

FATCA is an act of law and is enforced by the US in various jurisdictions around the world that have entered into standardised agreements – Intergovernmental Agreements (IGAs). Either this

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ANGELO VENARDOS
Heritage Trust Group

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These tools have also created an environment for the Automatic Exchange of Information (AEOI) that forms the foundation of this transparency. And the common objectives include combating cross-border tax evasion and money laundering, for instance.

follows a model where the local government compiles information to send to the US (Model 1 IGA) or the different financial institutions in the country must send their own financial reports to the US (Model 2 IGA). The CRS, meanwhile, is not an act of law; it is a set of standards. They require the different members which sign up to co-operate and exchange financial information.

Notable is the fact that since the US is only interested in the information of its own citizens residing abroad, it is not a signatory to FATCA. However, given the intrusive nature of the law, it faces the risk of being repealed, says Angelo Venardos, chief executive officer of Heritage Trust Group.

"The CRS, though often deemed to be the 'son of FATCA', may face increased difficulties in the future if FATCA is repealed."

CASE FOR REPEALING FATCA

It is believed that the implementation of FATCA has led to a frenzy of Americans renouncing their citizenship.

Compared with the 231 Americans who did this in 2008, the number in 2014 was 3,415; estimated figures for 2015 are 5,300.

"US Presidential candidate Senator Rand Paul is seeking to introduce a Bill to repeal FATCA as part of an overall tax reform package," says Venardos.

He points out that the cost of implementing FATCA over the next 10 years will be much higher than the revenues it generates.

The premise for the repeal, however, is based on the fact that the law treats the roughly 8.9 million US citizens living abroad differently from those living at home – which is deemed unconstitutional as per prevailing laws. "For citizens living in the US, the IRS must demonstrate reasonable cause and obtain a subpoena to retrieve bank account information that FATCA seeks to demand from financial institutions dealing with citizens living abroad," explains Venardos.

FATCA has also been challenged in Canada, where Lawyers of two women with dual US/Canada citizenships maintain that the signed Model 1 IGA contravenes the US-Canada treaty prohibiting information from being shared under FATCA.

CRS CONSEQUENCES

The CRS, though often deemed to be the 'son of FATCA', may face increased difficulties in the future if FATCA is repealed, adds Venardos.

The US is not a signatory and isn't expected to contribute to the AEOI under those standards.

And the UK, having proposed a referendum to decide whether or not to be part of the EU, has incremental challenges to implement the CRS at this point in time.

The EU itself, meanwhile, given the current situation with massive inflows of Syrian refugees, is facing difficult times with border controls and sharing responsibilities.

Under such circumstances, Venardos says it is expected there will be pushback from early adopters seeking AEOI.

This is especially the case because there is significant scope for variations in the implementation of the CRS in the first place – which can be bilateral, residency based and can lead to the creation of individual regional reporting standards that are difficult to manage.

The US also recently stated it has extended the deadline for implementation of FATCA by one year, since most of the signatories are not yet prepared to report on the required parameters.

Most of them, in fact, have not even been able to create and pass the required local legislations to be able to deliver on that reporting, says Venardos.

At the same time, Venardos explains that wealth managers must take the prudent approach by preparing for the most challenging of regulations. ■

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