

ADVISORY | Tax

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FATCA FOR MULTINATIONAL CORPORATIONS

As several significant pieces of the Foreign Account Tax Compliance Act (“FATCA”) come online in January 2015, it is important to consider FATCA’s potential application to all multinational groups with US source investment income. FATCA potentially can apply to non-financial multinational groups to the extent that group members engage in certain financial activities, including the following examples:

- A group treasury center that borrows and lends within the group;
- A captive venture capital fund that invests on behalf of the group in start-up companies with products or services complementary to those of the group; and
- A holding company, captive finance company, or captive treasury center in a jurisdiction that has not concluded an intergovernmental agreement (“IGA”) on FATCA with the US.

These types of group members may be subject to FATCA’s registration and reporting requirements, and the failure to register them can cause these and other similar group members to become subject to a 30 percent withholding tax on US-source investment income now, and potentially additional types of income in the future.

As other countries implement their own FATCA rules, inconsistencies also have emerged concerning compliance by members of a multinational group. For example, some exceptions from registration under FATCA that are found in the US Treasury regulations are not carried over automatically under non-US law, which generally governs the implementation of FATCA in IGA jurisdictions.

Covington has developed considerable experience with the issues relevant to both US and non-US multinationals implementing FATCA. Our experience ranges from reviewing the FATCA status of relevant group members to ensure compliance to recommending rule adjustments to local authorities.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our tax practice group:

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