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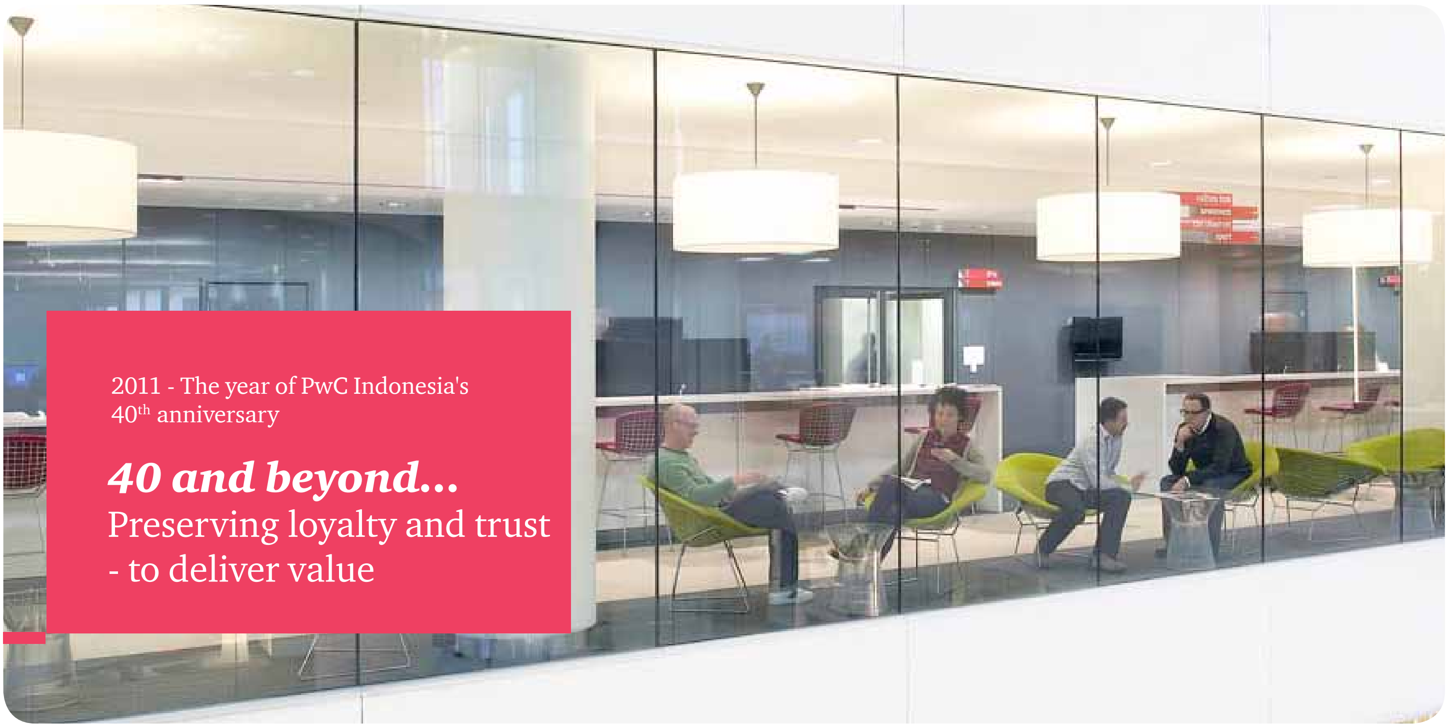

FATCA Compliance:

What every Indonesian financial institution should know

The Foreign Account Tax Compliance Act (FATCA) will impact many foreign (i.e., non-US) financial institutions (FFIs). FATCA is a response to the perception that US individuals are not reporting all US income earned outside the US either due to the lax standards or intentional actions of certain foreign entities.

Why is FATCA important?

FATCA carries important implications for FFIs by:

- significantly increasing the types of payments that could be subject to US withholding tax, such as direct and indirect payments of gross proceeds and payments;
- expanding the number of entities that could have liability for US tax on these payments, such as offshore funds and offshore distribution channel intermediaries that hold, or through which others hold, direct or indirect interests in US investments;
- imposing increased US tax documentation requirements with respect to direct and indirect US and non-US account-holders (new and existing), including the need to capture new customer information;
- requiring FFIs to obtain waivers of applicable Indonesian bank secrecy, confidentiality and data collection laws; and
- forcing companies to modify internal systems, control frameworks, processes and procedures in order to be FATCA compliant, costing FFIs significant time and money.

Who will be affected by FATCA?

FATCA presents a number of substantial challenges to FFIs and the definition of an FFI is expansive. It includes any foreign entity that (1) accepts deposits in the ordinary course of a banking or similar business, (2) is engaged in the business of holding financial assets for the account of others, or (3) is engaged (or holds itself out as being engaged) primarily in the business of investing, reinvesting, or trading securities, interests in partnerships, or commodities or any interest (including a futures or forward contract or option) in such securities, partnership interests, or commodities. Indonesian FFIs likely to be impacted by FATCA include, but are not limited to: custodian banks, brokers, wealth management firms, private banks, consumer banks, insurance companies and mutual funds.

How will FATCA work?

FATCA will impose a 30 percent US withholding tax on certain US-sourced income, and the gross proceeds from the sale or other disposition of investments that can produce US sourced interest or dividends, received by any offshore fund or other FFI. This withholding tax is avoided if the FFI enters into an agreement with the US Government ("FFI Agreement") and agrees to comply with new documentation requirements, due diligence procedures, and reporting obligations.

How is FATCA impacted by the Indonesia-US income tax treaty?

In limited circumstances, the beneficial owner of a payment may be eligible for a credit or refund of the excess of the amount withheld under FATCA over the amount permitted under the treaty.

When will FATCA become effective?

FATCA was enacted on 18 March 2010. Its provisions will be effective for payments made on or after 1 January 2013, with completed documentation requests for pre-existing private banking accounts required by 1 January 2014 and completion of remaining documentation requests by 1 January 2015.

What will be required under a FFI Agreement?

Under a FFI Agreement, FFIs will be obligated to perform the following tasks:

- obtain information on each account-holder to determine which accounts are US accounts;
- perform required due diligence and verification procedures, including searching files for indicators of US status of the account holders;
- seek waivers from US account holders for any applicable bank secrecy, confidentiality, data privacy or other information disclosure restrictions;
- withhold a 30 percent tax on any 'passthru payment' to recalcitrant account holders (i.e., account holders that do not provide adequate information) or noncompliant FFIs; and
- report information (e.g., account holder name, address, tax identification number, account number, account balance,) on US accounts to the US tax authorities.

When should companies begin preparing for FATCA?

FATCA compliance will present substantial business and operational challenges, from the identification and documentation of customers, to the FFI's on-boarding and IT systems, which may affect multiple functions (tax, legal, back-office administration, operations, IT, etc.) and take substantial time and resources to address. FFIs who complete a timely assessment of the critical business, tax, and operational impacts to their business lines and operational functions arising from FATCA increase their opportunity to address the issues through a complete, effective, timely, and cost-efficient FATCA implementation programme. Thus, FFIs should begin to prepare for FATCA as soon as possible.

What steps should companies be taking?

FATCA compliance generally should start with a comprehensive impact assessment, which identifies and assesses the following:

- impacted entities and products;
- tax issues affecting relevant business lines and management company affiliates;
- business issues affecting internal and outsourced business functions and key business relationships (e.g., adequacy of current subscription documentation, tax indemnity provisions and service agreement provisions); and
- data and operational gaps across people, process, and technology categories.

Steps should also be taken to prepare staff and stakeholders for the impact FATCA will have on daily operations. An effective FATCA preparation program should be designed to:

- educate internal stakeholders (e.g., internal council, compliance, IT and customer relations) about FATCA requirements;
- select, train and mobilize an global, multidisciplinary, intercompany FATCA response team;
- develop and execute an implementation roadmap; and
- estimate the amount of funding required for FATCA implementation and remediation.

PwC comments:

FATCA is not only a tax issue. The principal impact is on technology, operations and the customer; it is a business issue. Substantial implementation costs are anticipated as increased due diligence, verification and reporting are required for a larger base of customers.

FFIs should begin to identify and assess the operational, technological and business impacts now. Doing so will increase a FFI's ability to address issues that arise and implement programs that will allow for full FATCA compliance by the effective date, 1 January 2013.

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If you wish to have more insight on FATCA, please register yourself to Maria Purwaningsih at maria.purwaningsih@id.pwc.com to attend our breakfast session on 28 July 2011.

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