BNY MELLON
WEALTH MANAGEMENT

Reporting Challenges for Multinational Families in the Era of Financial Transparency

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Governments around the world are increasingly focused on combatting money laundering as a means of curbing terrorism. At the same time, they recognize that cracking down on tax evasion is a potentially effective and politically acceptable way to satisfy their urgent need for additional revenue. These dual motivations have led to the extension and enactment of heightened reporting requirements for individuals and families with assets and entities outside their home countries. As this trend toward global transparency continues, financial providers and global families alike face significant new financial filing obligations, and failure to fully understand and address these obligations may lead to unintended consequences.

In these papers, we explore the details of global reporting requirements and their impact on multinational families. The first two sections describe the specific rules under the United States Foreign Account Tax Compliance Act (FATCA) and the Common Reporting Standard (CRS), promulgated by the Organisation for Economic Cooperation and Development (OECD). The final section presents an overview of the effects of these and further reporting requirements, concluding with insights into future efforts to achieve financial transparency on a global scale.

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What Multinational Families Need to Know About FATCA

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As part of the ongoing fight against global tax evasion, reporting requirements for U.S. persons living in the U.S. and abroad are becoming more wide ranging and complex. Enacted in response to the surprising revelation of the extent that U.S. taxpayers had been using accounts at Swiss banks to hide assets from the IRS, the Foreign Account Tax Compliance Act (FATCA) was arguably the first serious effort to combat tax evasion by U.S. persons. Despite initial challenges and efforts to undermine and even repeal the legislation, FATCA survived and led to similar programs by other countries. It is essential that multinational families understand the details of these requirements to ensure their compliance and avoid what can be steep penalties.

What Is the Foreign Account Tax Compliance Act?

FATCA was enacted by the U.S. Congress in 2010 with an effective date of July 1, 2014. In response to growing awareness of the number of U.S. persons evading taxes on their accounts and investments outside the U.S., FATCA provides the U.S. government with the necessary tools to effectively determine the ownership of foreign financial holdings belonging to U.S. persons. In doing so, it significantly increases the reporting responsibilities for both financial institutions and individuals associated with non- U.S. assets.

By attacking tax evasion on the dual fronts of service providers and owners of financial assets, FATCA sparked resentment and pushback from foreign countries, financial institutions and individuals with cross-border connections. Non-U.S. financial providers and jurisdictions noted the high costs of compliance and the fact that this reporting was in direct conflict with their countries' privacy rules. Two U.S. states — Florida and Texas — pursued litigation against the U.S. government, claiming this legislation would destroy their large international financial business. In addition, individual American citizens living in other countries have launched their own challenges based on abrogation of their civil rights.

However, the global importance of U.S. dollar-denominated investments has provided the U.S. with bargaining power. Further, as FATCA demonstrated the potential for significantly increased tax revenue, other developed countries have not only signed intergovernmental agreements for the reciprocal exchange of tax information with the U.S., but are now crafting their own sets of bilateral and multilateral tax information exchange agreements under the Common Reporting Standard (CRS).

The Impact of FATCA on Multijurisdictional Families

The U.S. is proceeding swiftly with enforcement. What started as settlements with some of the large Swiss banks has grown to encompass a worldwide campaign to identify and prosecute U.S. tax evaders and the financial institutions and advisors who assist them. The Internal Revenue Service (IRS) and the U.S. Department of Justice (DOJ) now have access to thousands of records obtained under the nonprosecution agreements with Swiss banks, and are mining this data for evidence of non-compliant taxpayers.

It is now critical for multinational families to evaluate their possible reporting obligations. Penalties for FATCA non-compliance can be severe: up to $50,000 for failure to report, plus 40% on understated taxes, in addition to possible criminal or fraud penalties of up to 75% of the value of the undisclosed assets. On May 9, 2016, the DOJ concluded its first successful criminal prosecution of a U.S. person for violating FATCA reporting requirements. Gregg Mulholland, a dual U.S.-Canadian citizen, pleaded guilty to conspiring to violate FATCA reporting requirements through the use of offshore companies.[1] The era of hiding assets from the IRS by keeping them out of the U.S. is over.

Who Must Report?

Under FATCA, the term "U.S. persons" refers to a very broad class. It encompasses all American citizens and permanent residents of the U.S. (green card holders), including those who have lived abroad for many years, even if they have no intention of returning to live in the U.S. In addition, people who have had a "substantial presence" in the U.S. and those who have elected to be classified as U.S. taxpayers are also subject to FATCA reporting requirements. Further, U.S. entities such as trusts, partnerships and corporations must also report their offshore financial holdings.

What Must Be Reported?

Under FATCA, U.S. persons must report foreign financial assets totaling $50,000 or more at year-end ($100,000 if married and filing jointly) or at least $75,000 at any time during the past year ($150,000 if married and filing jointly). The thresholds are higher for U.S. persons living outside the U.S.: foreign financial assets totaling $200,000 or more at year-end ($400,000 if married and filing jointly) or at least $300,000 at any time during the past year ($600,000 if married and filing jointly).

For FATCA purposes, the classification of foreign financial assets is also wide-ranging. In general, a U.S. person must report all non-U.S. assets for which the income, credits, distributions or deductions would be included on his or her U.S. income tax return. This extends far beyond foreign bank and investment accounts, to include less obvious assets such as the cash value of foreign life insurance contracts and interests in some foreign trusts. Tangible property, foreign currency, precious metals and real estate are not reportable under FATCA. However, if these are held in a foreign entity, such as a foreign corporation, the interests in that entity are reportable assets.

Much of the information on the "FATCA Form" (IRS Form 8938) is duplicative of that required on other forms. This causes confusion, particularly with the other well-known "foreign asset" report, FinCEN Form 114, more commonly known as the FBAR. With a foreign asset threshold of just $10,000, the FBAR requires disclosure of many of the same items as the Form 8938, but with some important differences, including which assets to report, the filing deadline and classes of required filers. For some of the several overlapping forms, reference to another form is sufficient. In other cases, the actual accounts and assets must be specifically listed on more than one form.

Regularizing Reporting Obligations

For a number of years, the U.S. Treasury has offered a series of amnesty programs designed to incentivize U.S. persons with unreported foreign accounts and income to voluntarily resolve their delinquencies. Early Offshore Voluntary Disclosure Programs (OVDP) featured maximum penalties ranging from 5% to 20% of unreported assets. Subsequent versions of the OVDP featured increasing penalties, currently rising to more than 50% if the institution or advisor who the taxpayer worked with is already involved in an investigation by the U.S. government.

Following sharp attacks by the Taxpayer Advocate in 2012 for harsh treatment of innocent persons, the IRS offers a streamlined procedure aimed at taxpayers who certify that their non-compliance was "non-willful." Designed for people who were not intentionally hiding assets offshore, this process provides for maximum penalties of 5% for U.S. residents and no penalty for non-residents. However, it provides no guarantee that the IRS or the DOJ won't later launch an investigation, particularly if the government receives new information indicating the person was deliberately concealing offshore assets.

By mid-2016, the IRS reported that it had collected over $10 billion from more than 100,000 taxpayers coming into compliance. Clearly the U.S. government considers these amnesty programs successful. Despite the penalties and paperwork, the OVDP and streamlined procedure provide straightforward ways for taxpayers to regularize their affairs. In light of comments, such as the following announcement by IRS Commissioner John Koskinen, U.S. persons with undeclared foreign income or assets would be well advised to take advantage of these programs now:

"As we continue to receive more information on foreign accounts, people's ability to avoid detection becomes harder and harder... The IRS continues to urge those people with international tax issues to come forward to meet their tax obligations."[2]

1 Matthew D. Lee, "Justice Department's First FATCA Prosecution Yields Guilty Plea," Tax Controversy Watch, May 13, 2016, https://taxcontroversywatch.com/2016/05/13/justice-departments-first-fatca-prosecutionyields-guilty-plea/
2 IR 2016-137, United States Tax Reporter, ¶72,014.15; TG ¶71869

FATCA, CRS and Global Transparency

What started as a U.S. initiative to combat tax evasion by U.S. persons has grown to a global assault — not only on tax avoidance, but also on money laundering and, according to some, privacy. FATCA predates the CRS, but FATCA enforcement has been gradual, allowing financial institutions and jurisdictions grace periods to come into compliance. Implementation of the CRS may be faster, with early adopter countries starting their reporting in 2017. However, the process of signing reciprocal agreements between countries will likely play out over time, resulting in even further confusion for providers and clients.

While FATCA and the CRS share similar objectives, there are significant differences in the scope and processes. This has led to uncertainty at many levels of the financial system, which in turn, has translated into confusion and difficulties for families with cross-border connections.

Comparing a few of the provisions in the two major approaches provides insight regarding the dilemmas facing financial institutions and the global families they serve. While both programs require similar reporting of clients' personal and financial data, the CRS requires several additional pieces of information. Further, and even more importantly, unlike FATCA the CRS has no minimum threshold and requires much more extensive reporting on beneficiaries and other deemed "controlling persons" of certain kinds of trusts. So a family with financial assets in both the U.S. and in other member countries of the Organisation for Economic Cooperation and Development (OECD) may experience repeated requests from their financial providers, seeking more pieces of information. Some of these inquiries may seem unnecessary and even intrusive.

In addition, burdened by the regulations necessary to serve cross-border clients, some financial institutions have refused to provide new financial services and have even closed accounts of "foreigners" in their country. This appears to affect U.S. persons in particular, because FATCA imposes withholding duties and potential penalties on financial institutions. Since the announcement of FATCA, Americans living abroad have reported that they are experiencing difficulties accessing financial services in some jurisdictions.

As the trend for global transparency continues, governments, financial providers and global families alike are experiencing the unintended consequences as well as the benefits.

What Multinational Families Need to Know About the Common Reporting Standard

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As adoption of the Common Reporting Standard (CRS) continues around the world, financial institutions and their clients must prepare for its obligations. For families with assets and entities outside the countries in which they live, there is much to do to ensure that they are compliant. Although not all jurisdictions currently participate in the CRS, it is advisable for multinational families to stay ahead of these tax and reporting issues to avoid additional costs or penalties.

What Is the Common Reporting Standard?

The CRS was developed and passed on July 15, 2014, by the Organisation for Economic Cooperation and Development (OECD) at the request of the G20 countries. To aid in the fight against global tax evasion and improve tax compliance by tax residents of the member countries, it calls on member jurisdictions to obtain information from their financial institutions and automatically exchange that information with other member jurisdictions on an annual basis. It also sets out the type of information to be exchanged, which institutions are required to report and on whom they must report.

Previously, under a patchwork of treaties and tax information exchange agreements (TIEAs), countries shared tax information only on request.

The legal framework behind the CRS is based on a combination of the Multilateral Convention on Mutual Administrative Assistance of Tax Matters (hereafter, the Multilateral Convention), the OECD model Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (MCAA) and, alternatively to the MCAA, various bilateral agreements, double tax treaties, tax information exchange agreements and EU directives that countries may rely on.

The MCAA, which is based on Article 6 of the Multilateral Convention, specifies what information will be exchanged and the timing of that exchange. Under Article 7 of the MCAA, in order for any bilateral exchanges to occur or enter into effect, countries must file a notice confirming the following:

- That domestic CRS legislation is in place and whether it is reciprocal or non-reciprocal
- Specifications of the transmission and encryption method for data
- Specifications of data protection requirements to be met regarding the information exchanged by the jurisdiction
- That the jurisdiction has the appropriate confidentiality and data safeguards in place
- A list of its intended exchange partner jurisdictions under the MCAA

Only those countries who have signed the MCAA, have filed the above notifications and have listed each other may engage in bilateral exchanges.

The OECD maintains a regularly updated list of activated relationships on its website.[1]

As of July 26, 2016, 101 countries have committed to exchange information. This represents most developed and many developing nations, including China, Hong Kong and, more recently, Panama. In addition, 54 early adopters have agreed to begin exchanging in 2017, and 47 more in 2018, although only 87 had actually signed the MCAA as of November 2, 2016.

It is interesting to note that the CRS was enacted on the heels of the U.S. Foreign Account Tax Compliance Act (FATCA), which specifically requests information on U.S. taxpayers. The CRS is informally referred to as "GATCA," the global equivalent of FATCA. However, the CRS is broader in scope, requiring each of the member countries to exchange information with one another; FATCA only requires that countries report back to the U.S. In addition, the categories of reportable persons[2] under the CRS are much more extensive, including trust protectors and some classes of beneficiaries who are not considered reportable under FATCA.

The current stance of the U.S. is that because of FATCA and the U.S. Intergovernmental Agreement (IGA) regime, the U.S. does not find it necessary to sign up to the CRS. This has been the subject of much controversy and accusations that its failure to join has ironically made the U.S. the largest tax haven in existence.

The Impact of the CRS on Multijurisdictional Families

Much has been written to help financial institutions prepare for their obligations under CRS. Conversely, there has been minimal guidance for the multinational clients of these financial institutions. The due diligence required by banks, investment firms and trust companies as they work toward full CRS compliance is causing considerable angst among their clients. Long-time customers are often shocked at what are perceived as invasive and unnecessary questions about their background. This increased scrutiny stems from the CRS mandate for the annual exchange of all of the following pieces of information related to each reportable account:

- Name, address, taxpayer identification number, and date and place of birth of the reportable persons associated with the accounts
- Account number
- Name and identifying number of the reporting financial institution
- Account value as of the end of the year, or if closed prior to year-end, the value on the date of closure

So customers with accounts or other financial interests outside their home countries must be prepared to furnish this information or face the likelihood that their "foreign" accounts will be closed.

Privacy is a major concern for clients as well as for their financial providers. As noted earlier, the CRS requires financial institutions and participating governments to invest in and monitor robust systems for data collection and transmission. Further, before sending confidential client data, countries want to ensure this information will be secure in the hands of the receiving jurisdiction. Diverging degrees of system security have caused delays in finalizing bilateral exchanges, particularly those involving less developed countries. However, recognizing the importance of participating in the CRS, many of these countries are investing in more robust data security. Clients moving to a smaller or less developed jurisdiction to escape the reach of the CRS may soon find their reprieve to have been short-lived.

Participating countries have the option of expanding their minimum reporting requirements and definitions of residency. There are significant differences in these areas. For example, the Cayman Islands allow trusts to report all assets under a structure—including those for private investment companies (PICs)—under a trustee documented trust (TDT) exemption, while other jurisdictions may require reporting at both the PIC and trust level. Clients with accounts and entities outside their home country are advised to consult expert counsel to review the rules and forms for each jurisdiction, as well as their existing structures and the tax residences of beneficial owners, trust protectors and beneficiaries.

This being a dynamic situation, families with assets and entities outside their home countries also need to monitor ongoing guidance as it is released by various countries. If they discover they've been non-compliant, they may want to enter an amnesty program. These programs typically involve paying back taxes, interest and possibly penalties. However, these sums are typically much less than what clients would pay if their non-compliance were discovered by the local tax authorities. Countries often offer specific amnesty programs for limited time periods, close them for a while, then reopen new versions with steeper penalties. Waiting to consider participating in a later "offshore voluntary disclosure program" rarely pays off.

1 http://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/exchangerelationships/#d.en.345426

2 The OECD allows participating countries to determine what accounts and persons are "reportable." Typically, this refers to accounts owned by residents of the respective partner jurisdictions.

The Impact of Global Transparency on Multinational Planning

Transparency in tax matters across jurisdictions is a growing trend. With the strong encouragement of the OECD, most countries are falling in line with the CRS. While some jurisdictions may not be participating in CRS today, they will likely join in the next few years. Late adopters and nonconformists, including the U.S., will receive continued pressure to do so as soon as possible. Clients will find that moving assets to alternative locations and/or changing structures in an attempt to avoid the CRS will be expensive and potentially fruitless. They will be better served by selecting reputable jurisdictions and working with professionals well schooled in the tax and reporting issues related to the countries their family members are connected to.

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The Impact of Global Reporting Requirements on Multinational Families

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Global reporting requirements for financial affairs continue to evolve, impacting families with assets and family members in different countries. A quick scan of global economic news stories reveals an upsurge of new requirements and demonstrates the penalties for failing to comply with them. Headlines showcase the major fines and disciplinary actions for violations by financial institutions as well as taxpayers. The seven-month prison sentence and $100 million penalty assessed on retired New York professor Dan Horsky for failing to file, and filing false reports of his accounts outside the U.S., is only one of several recent high-profile examples. The impetus behind this dramatic escalation is the fight against money laundering and tax evasion.

There is a growing desire to combat money laundering as part of the ongoing worldwide efforts against terrorism, and a crackdown on tax evasion has been recognized as one way to satisfy the urgent need for more government revenue. These dual motivations have led to the extension and enactment of new reporting standards regarding foreign financial assets. Here, we present an overview of these initiatives, as well as their consequences, to help multinational families maintain safe and flexible access to their international assets and avoid increased costs. Our companion pieces, "What Multinational Families Need to Know About the Foreign Account Tax Compliance Act," and "What Multinational Families Need to Know About the Common Reporting Standard," provide more details about specific provisions in these initiatives.

Previous Efforts to Combat Money Laundering & Tax Evasion

Efforts to thwart terrorism by cracking down on money laundering began decades ago. One of the earliest was the Foreign Bank & Financial Accounts Report (FBAR), put into effect in the U.S. under the mandate of the Bank Secrecy Act of 1970. The Financial Crimes Enforcement Center (FINCEN), a law enforcement agency of the U.S. Treasury, designed this report with the primary goal of identifying possible money laundering. Any U.S. person or entity with interests in, or signing authority over, foreign financial accounts must file this form every year in which the market value of their non-U.S. assets totals $10,000 or more.

In 1989, the Financial Action Task Force on Money Laundering (FATF) was established as a global body to combat the growing problem of money laundering. Its mandate has since been expanded to include terrorist financing following the 9/11 attacks. With 35 member jurisdictions and two regional organizations, FATF leads the charge, issuing far-reaching recommendations and monitoring countries' progress in implementation.

Historically, bilateral tax-information exchange agreements (TIEAs) provided for the intergovernmental exchange of tax information on individuals and companies suspected of tax evasion. However, this information was typically only available upon request and the process proved ineffective. To improve on these efforts, new requirements have been enacted around the globe.

U.S. Implementation of the Foreign Account Tax Compliance Act

The U.S. was the first country to enact legislation specifically targeting serious cross-border tax avoidance by its own citizens, passing the Foreign Account Tax Compliance Act (FATCA) in 2010. Under FATCA, the U.S. Treasury has negotiated intergovernmental agreements (IGAs) with more than 100 countries, which require banks to disclose information to the Internal Revenue Service (IRS) about their account holders who are U.S. citizens and permanent residents of the U.S. Many of these agreements are reciprocal, meaning that U.S. financial institutions must provide some — albeit often more limited — information back to the foreign tax authorities in return.

The implementation of the extensive provisions of FATCA has been gradual, with relatively generous compliance deadlines. However, the grace period may soon be over for countries whose progress has been slow. On January 1, 2017, the IRS announced that the U.S. Treasury will begin updating the list of countries that have not brought their IGAs into force. These countries will no longer be treated as if they have an IGA in effect, which will result in major issues for their financial institutions.

U.S. tax authorities are also ramping up enforcement of FATCA-related reporting obligations for U.S. citizens and permanent residents. There have been several recent and well-publicized plea deals involving millions of dollars in penalties and fines, which further support these efforts. For example, on August 1, 2016, Masud Sarshar, a California businessman, agreed to plead guilty, pay over $8.3 million and serve 24 months in prison for undisclosed foreign bank accounts that facilitated tax evasion. Despite pushback by the media, legislators, state banking associations, foreign tax authorities and American citizens living abroad, FATCA is moving forward.

Global Adoption of the Common Reporting Standard

Over 100 countries outside the U.S. have adopted the Common Reporting Standard (CRS), a similar but even more extensive program to automatically exchange taxpayer information. The CRS was developed and passed in 2014 by the Organisation for Economic Cooperation and Development (OECD) at the request of the G20 countries. The CRS is informally referred to as "GATCA," the global equivalent of FATCA, although its reporting requirements are broader in scope.

Unlike FATCA, the CRS does not seem to have provoked widespread resistance. This may be due to the fact that by 2017, when actual reporting started, the global trend for this kind of information exchange was already too far along to stop. However, the U.S. has not signed up to adopt the CRS, which has been the subject of much controversy. It is expected that late adopters and nonconformists, including the U.S., will continue to receive pressure to adopt this standard as soon as possible.

Establishment of Beneficial Ownership Registries

As part of its ongoing efforts toward global transparency and information exchange, FATF has been a longstanding supporter of maintaining central databases of information about the "true owners" of entities.

In May 2015, FATF issued a mandate under the Fourth Anti-Money Laundering Directive, instructing countries to establish beneficial ownership registries. Beneficial owners are broadly defined as individuals who own or control the entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights in that entity. In 2016, FATF advanced the effective date for implementation and proposed public access to the registries. Although public access met with significant pushback and was retracted, the EU officially adopted the balance of this directive in November 2016, and all EU countries must have these central registries in place by June 2017. Controversy continues over whether such databases should be available to the public, and whether trusts should be included in these registries (explained in further detail on page13).

The concept of standardizing central databases of this type of information is not new. Regions around the globe have taken action toward this goal, with varying levels of enforcement and success.

U.K.

The U.K. has led the charge in calling for the automatic exchange of taxpayer information, and more recently, registries of beneficial owners. In June 2016, the U.K. government started publishing its registry. At the behest of the U.K., the 17 British Overseas Territories and Crown Dependencies must also maintain such registries. Although currently they are not required to make these available to the public, they must allow U.K. authorities access.

France

In late 2013, the French parliament created a new public registry of trusts, which was implemented in 2016. This registry contains the identity of each settlor, beneficiary, trustee and the trust's enactment date. There has been ongoing controversy over whether the registry should be made available for public viewing. Initially, any French taxpayer could view it, but in mid-2016, the French Constitutional Court banned public viewing based on insufficient boundaries to guard against infringement of privacy. In May 2016, France committed to establishing a registry of beneficial owners of all entities, to which the public would have access. However, it appears likely that the French parliament will revisit the rules and create a registry more consistent with those of other countries, where access is limited to tax and judicial authorities.

Hong Kong

In January 2017, Hong Kong's Financial Services and Treasury Bureau released a proposal for enhanced transparency of corporate beneficial ownership. The government has proposed a new, mandatory registry of beneficial owners or people with significant control. It revised the government's previous definition of beneficial interests to include those with greater than 25% of shares or voting rights, those holding significant control and those with the right to appoint or remove a majority of directors. Non-compliance with these mandates would be a criminal offense. The proposed amendments are expected to become effective sometime around May 2017, although they could be modified in the interim.

Canada

The Canadian division of Transparency International, a global anti-corruption organization, is currently calling for a federal registry of all companies and trusts in Canada identifying beneficial owners. The organization recommends publishing this information in a central registry that is open to the public. Part of the reasoning behind this call to action is linked to the real estate market in Canada, which according to the group, is vulnerable to money laundering.

U.S.

Ironically, FATCA may have had the unforeseen effect of calling attention to America's own transgressions in helping global investors avoid paying taxes in their home countries. The U.S. currently has no central registry of the individuals who ultimately have significant ownership in U.S. entities — the result of strong resistance by privacy advocates.

The Tax Justice Network, a non-profit, U.K.-based organization that campaigns for transparency and disclosure by international financial services, has called the U.S. "the world's biggest offshore banking destination." The group estimates that non-resident aliens in the U.S. have more than $3 trillion in U.S. accounts.

There have been signs that the U.S. was moving in the direction of transparency, albeit slowly. In late 2016, the U.S. Treasury issued final regulations requiring foreign owners of single member U.S. LLCs to report their interests to the IRS starting in January 2017. Foreign-owned, single-member LLCs must now obtain an IRS Employer Identification number (EIN) and report certain transactions related to funding and disbursements. While these new regulations only create a reporting obligation, and no additional tax, they are widely perceived as one more step toward the goal of obtaining ownership information on entities that could be used to evade taxes. Further, in 2016, FINCEN started a pilot program requiring title companies to collect information on beneficial owners of entities making cash purchases of high-end properties in certain popular locations, such as Manhattan and Miami.

Although the Trump administration has vowed to slash regulation, external and even internal pressures suggest that in the long term even the U.S. will succumb to the global trend for transparency.

Enforcement of the Laws

Governments around the globe are refining their efforts to enact and enforce these laws to combat tax evasion and money laundering. Tax and law enforcement authorities are increasing their level of cooperation regarding this automatic exchange of information.

In the U.S., the trend has moved from requesting information on a specific individual, backed by evidence, to allow for a "John Doe summons" for classes of likely violators. This allows theIRS to issue a summons even when the name of the taxpayer under investigation is unknown, and has been a large part of the intensified enforcement of U.S. tax laws.

The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (known as MONEYVAL) has long been pressuring traditional "tax havens" to change their laws and share financial information. This group is also responsible for supervising the implementation of these international reporting standards. For instance, in December 2016 MONEYVAL declared the Isle of Man in "enhanced follow-up status" and requested a comprehensive report on the territory's progress in implementing anti-money laundering measures.

Various organizations and governments are following up with related initiatives. In 1998 the OECD published a report identifying "tax havens." Since then, most offshore jurisdictions have entered into TIEAs and committed to adopting the CRS in 2017 or 2018. The EU is also cooperating with lists of "non-cooperative jurisdictions."

Enforcement is now focusing on the advisors and financial institutions that facilitate global tax evasion and money laundering, the so-called "enablers." The U.S. has been particularly aggressive with foreign financial institutions. In 2009, UBS paid $780 million and turned over client account details in a landmark deal that marked the first of a wave of settlements between the U.S. and foreign banks. In late 2016, the U.S. announced that the voluntary program between the U.S. Department of Justice and a number of Swiss banks was nearing completion, with many of the banks paying significant fines to resolve potential criminal charges. All parties are now in the "legacy phase," whereby they will continue to cooperate in related civil and criminal investigations.

The attorney-client privilege precludes attorneys in the U.S. and Canada from an obligation to report clients who are evading taxes or laundering funds. However, the Canadian Offshore Compliance Advisory Committee has recommended requiring Canadians who go through the government's tax amnesty program to disclose the identity of any advisor who has assisted in setting up their offshore structure. In the U.K., lawyers working in some areas of the law may already be held criminally liable for not reporting tax evaders, and proposed legislation will require "service providers" to report offshore structures. The Finance Act of 2016 states that any entity or individual who provides advice or encourages others to evade income, capital gains or inheritance taxes may be fined up to 100% of the evaded tax, and publicly named. U.K. Prime Minister Theresa May recently warned: "If you're a tax dodger, we're coming after you. If you're an accountant, a financial advisor or a middleman who helps people to avoid what they owe to society, we're coming after you, too."[1]

Unintended Consequences

The measures that are designed to tackle the criminal actions of a few are also affecting vast numbers of multinational families, both financially and personally. There are greater obstacles for those who are innocent of any wrongdoing, but who wish to hold assets outside their home countries. In addition, the extensive nature of some of these reporting requirements has heightened the privacy concerns for many wealthy global families. Balancing the concerns — and practical needs — of multinational families with the ongoing fight against global tax evasion and money laundering is proving to be a challenge for regions around the world.

Difficulties for "Innocents"

Banks must go to great lengths to identify and verify the sources of wealth and proof of identity for any individuals looking to open accounts. These compliance burdens are driving up costs, deterring some financial institutions from serving smaller clients. Due to the continued pressure on these institutions to ensure that they are not exposed to financial crime, many are outright avoiding clients who have characteristics that may raise questions from compliance departments or auditors, a strategy known as "de-risking." These practices may make it difficult—if not impossible — for certain individuals to open accounts or have access to financial services in certain areas.

In particular, U.S. citizens living abroad have faced difficulties and added expenses due to this increased regulation. Some foreign banks have shunned U.S. clients, making it difficult for expatriates to open or even maintain existing accounts. The U.S. ambassador to Switzerland reported instances in which Swiss citizens with American relatives have had their accounts closed, simply due to their association with U.S. citizens. In addition, those U.S. citizens living abroad are required to file additional forms, which are often duplicative, causing them to incur significant legal and accounting fees. With the adoption of the CRS by many countries, this issue of increased regulation will no longer only affect U.S. citizens living abroad (as with FATCA). Families around the world with assets and entities outside the countries in which they live will likely face similar issues.

The Erosion of Privacy

The implementation of FATCA, the CRS and registries of beneficial ownership provide information that governments need in order to reduce money laundering and tax evasion. But for many families, this comes at a cost—their privacy. Data security is a major concern for those affected, particularly given the widely publicized data hacks. These worries have only increased since the exposure of the infamous "Panama Papers," a leak of 11.5 million files that revealed the personal financial information of many wealthy individuals and public officials.

Therefore, the key issue for many is maintaining confidentiality through the reporting and the transmission of the data. Commentary drawn from the 2016 survey by STEP, a global association of professional advisors specializing in cross-border wealth planning, sums up the concern over the Fourth Anti-Money Laundering Directive: "Whilst beneficial ownership should be recorded in accordance with data protection rules, it remains to be seen how well the exception will be applied in reality and how effectively it will protect a family's private data."[2]

Concerns relate both to the amount of information and the people who have access to it. Due to the far reach of FATCA and the CRS, people and entities throughout the world are impacted. For instance, although the U.S. has not adopted the CRS, if a U.S. trust owns investments or has financial accounts in a CRS participating country, the U.S. trust will need to provide a significant amount of personal information on controlling persons on a CRS self-certification form. This will be shared with countries where the trust's controlling persons are resident. The amount of information could be a big concern for those worried about privacy.

1 Alan Winston Granwell, STEP Trust Quarterly Review, December 2016.

2 STEP Response to HM Treasury's Consultation on the Transposition of the Fourth Money Laundering Directive dated 15 September 2016, STEP EU Committee, November 2016.

Central registries of beneficial owners, even if not technically open to the public, are potentially accessible by a wide range of people, often under the categories of governments, financial institutions and "persons with legitimate interests."[3] As noted in the STEP survey, "under the potential EU regime large numbers of ordinary families will see their affairs opened up to the merely curious, the intrusive and the potential criminal alike."[4]

Concerns Regarding Trusts

Another wave of criticism centers more narrowly on the perceived attacks on basic tenets of trusts, which are not widely used in many of the countries that do not follow common law. Personal trusts have neither corporate shares nor voting rights and the roles of the many potential parties to a trust are not understood outside the U.K., its former and current colonies, and the U.S. This can lead to misclassification of trust protectors, grantors, trustees and even beneficiaries as beneficial owners and controlling persons.

Trusts fare particularly poorly in civil law EU countries that are implementing registries of beneficial owners. Some trust practitioners, particularly those in the U.K., are adopting an activist approach and raising their concerns, especially over the proliferation of registries of beneficial owners among many EU countries where the full implications are not understood.

What Does the Future of Global Transparency Look Like?

Although the debate continues, the trend toward increased global transparency regarding financial assets seems secured. Despite the obvious threat to their trust and investment business, reputable jurisdictions and institutions are adapting quickly to the new regulatory environment by adopting the CRS and other initiatives. They appear generally optimistic, the consensus being that regardless of the inconveniences posed, these reporting requirements offer global families centralized, safe and flexible international access to their assets.[5]

This positive outlook by these worldwide institutions does not diminish the complexity of these various requirements, or some of the difficulties that have arisen. Depending on their countries of residence and where their financial assets are held, multinational families must be diligent to ensure they comply with these reporting standards in order to avoid steep penalties or other obstacles. Families will be best served by selecting reputable jurisdictions and working with skilled professionals who have expertise handling the myriad requirements for all countries connected to the family and their assets.

3 Deloitte, ***AML Update: Statutory Instrument 560 of 2016***, November 2016.

4 STEP Response to HM Treasury's Consultation on the Transposition of the Fourth Money Laundering Directive dated 15 September 2016, STEP EU Committee, November 2016.

5 Offshore Perceptions, STEP Research Report, STEP 2016.

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As a senior director and global wealth strategist, Joan works closely with families and their advisors to provide comprehensive wealth planning. She specializes in multinational planning, business succession, family governance and philanthropy. With more than 25 years of experience working with large, multi-generational families, she is frequently invited to speak to client and professional groups such as the American Bar Association, the American Institute of CPAs, STEP and numerous estate planning councils. Her unique style is highly interactive, emphasizing real- life examples and practical tools. Joan is a frequently quoted fiduciary and family governance expert and author of articles in business publications, including The Wall Street Journal, the New York Times, Trust and Estates magazine and Barrons. In addition, she is past Chair of the Board of Directors of the Community Foundation of Broward and she serves on the Executive Committee of the Florida Bankers Trust Division. Joan earned a master of business administration from Rollins College, a bachelor of education from Queens University and a bachelor of music from McGill University. She is a Certified Financial Planner™ professional and has earned the designation of Certified Trust and Financial Advisor from the American Bankers Association and Trust and Estate Practitioner from the Society of Trust and Estate Practitioners (STEP), the premier international wealth planning organization.

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