BNY MELLON
WEALTH MANAGEMENT

The Impact of Global Reporting Requirements on Multinational Families

By Joan K. Crain, CFP®, CTFA, TEP
Senior Director
Global Wealth Strategist

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 is over for countries whose progress has been slow. On January 1, 2017, the IRS announced that the U.S. Treasury would update the list of countries that had not brought their IGAs into force. These countries are no longer treated as if they have an IGA in effect, resulting 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 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 has been 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 were directed to 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 page 4).

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. The U.K. continues to push for public access.

France

In late 2013, the French parliament created a new public registry of trusts, which was implemented in 2016. This registry contained the identity of each settlor, beneficiary, trustee and the trust’s enactment date. There was immediate 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 June 2017, France issued a revised decree, effective April, 2018. Access is limited to tax and judicial authorities, investment service providers and others with "legitimate interest and authorization by the court”.

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 is a criminal offense. The proposed amendments became effective on March 2, 2018. Likewise, under a new Companies Act, Singapore instituted a beneficial owner registry effective March 31, 2017.

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 were 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 the IRS 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. Similarly, U.S. taxpayers who enter the latest amnesty program must complete a narrative describing the reason for their delinquency and the advisors with whom they worked with on tax related matters. In the U.K., lawyers working in some areas of the law are already held criminally liable for not reporting tax evaders, and legislation

requires "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.

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.

---

[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.
[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.

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.

ABOUT THE AUTHOR

Joan K. Crain, CFP®, CTFA, TEP
Senior Director, Global Wealth Strategist

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.

5 Offshore Perceptions, STEP Research Report, STEP 2016.

@BNYMellonWealth | bnymellonwealth.com

This white paper is the property of BNY Mellon and the information contained herein is confidential. This white paper, either in whole or in part, must not be reproduced or disclosed to others or used for purposes other than that for which it has been supplied without the prior written permission of BNY Mellon. This material is provided for illustrative/educational purposes only. This material is not intended to constitute legal, tax, investment or financial advice. Effort has been made to ensure that the material presented herein is accurate at the time of publication. However, this material is not intended to be a full and exhaustive explanation of the law in any area or of all of the tax, investment or financial options available. The information discussed herein may not be applicable to or appropriate for every investor and should be used only after consultation with professionals who have reviewed your specific situation.

The Bank of New York Mellon, Hong Kong branch is an authorized institution within the meaning of the Banking Ordinance (Cap.155 of the Laws of Hong Kong) and a registered institution (CE No. AIG365) under the Securities and Futures Ordinance (Cap.571 of the Laws of Hong Kong) carrying on Type 1 (dealing in securities), Type 4 (advising on securities) and Type 9 (asset management) regulated activities. The services and products it provides are available only to "professional investors" as defined in the Securities and Futures ordinance of Hong Kong. The Bank of New York Mellon, DIFC Branch (the "Authorised Firm") is communicating these materials on behalf of The Bank of New York Mellon. The Bank of New York Mellon is a wholly owned subsidiary of The Bank of New York Mellon Corporation. This material is intended for Professional Clients only and no other person should act upon it. The Authorised Firm is regulated by the Dubai Financial Services Authority and is located at Dubai International Financial Centre, The Exchange Building 5 North, Level 6, Room 601, P.O. Box 506723, Dubai, UAE. The Bank of New York Mellon is supervised and regulated by the New York State Department of Financial Services and the Federal Reserve and authorised by the Prudential Regulation Authority. The Bank of New York Mellon London Branch is subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. Details about the extent of our regulation by the Prudential Regulation Authority are available from us on request. The Bank of New York Mellon is incorporated with limited liability in the State of New York, USA. Head Office: 240 Greenwich Street, New York, NY, 10286, USA. In the U.K. a number of the services associated with BNY Mellon Wealth Management's Family Office Services– International are provided through The Bank of New York Mellon, London Branch, One Canada Square, London, E14 5AL. The London Branch is registered in England and Wales with FC No. 005522 and BR000818. Investment management services are offered through BNY Mellon Investment Management EMEA Limited, BNY Mellon Centre, One Canada Square, London E14 5AL, which is registered in England No. 1118580 and is authorised and regulated by the Financial Conduct Authority. Offshore trust and administration services are through BNY Mellon Trust Company (Cayman) Ltd. This document is issued in the U.K. by The Bank of New York Mellon. In the United States the information provided within this document is for use by professional investors. This material is a financial promotion in the UK and EMEA. This material, and the statements contained herein, are not an offer or solicitation to buy or sell any products (including financial products) or services or to participate in any particular strategy mentioned and should not be construed as such. BNY Mellon Fund Services (Ireland) Limited is regulated by the Central Bank of Ireland BNY Mellon Investment Servicing (International) Limited is regulated by the Central Bank of Ireland. BNY Mellon Wealth Management, Advisory Services, Inc. is registered as a portfolio manager and exempt market dealer in each province of Canada, and is registered as an investment fund manager in Ontario, Quebec, and New Foundland & Labrador. Its principal regulator is the Ontario Securities Commission and is subject to Canadian and provincial laws. BNY Mellon, National Association is not licensed to conduct investment business by the Bermuda Monetary Authority (the "BMA") and the BMA does not accept responsibility for the accuracy or correctness of any of the statements made or advice expressed herein. BNY Mellon is not licensed to conduct investment business by the Bermuda Monetary Authority (the "BMA") and the BMA does not accept any responsibility for the accuracy or correctness of any of the statements made or advice expressed herein.

Trademarks and logos belong to their respective owners.

BNY Mellon Wealth Management conducts business through various operating subsidiaries of The Bank of New York Mellon Corporation.

© 2019 The Bank of New York Mellon Corporation. All rights reserved. | 110706

BNY MELLON | WEALTH MANAGEMENT