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FEATURED Q&A

What Will New U.S. Regulations Mean for Banks in the Region?

Q The U.S. Internal Revenue Service and the Treasury Department recently released much-anticipated proposed regulations for implementing the Foreign Account Tax Compliance Act, a piece of legislation expected to have wide-ranging implications for banks operating in Latin America and the Caribbean. What do the proposed new regulations mean for banks in the region? Are there any surprises in the new regulations? Are concerns over sovereignty and privacy going to be sorted out by the time FATCA is scheduled to be implemented next year?

A Sumeet H. Chugani, associate attorney at Diaz, Reus & Targ, LLP: "Given its extremely broad scope, the proposed new FACTA regulations will apply to all non-U.S. businesses with U.S.-based investments, including banks and FFIs that serve only a very nominal amount of U.S. clientele. Expanding upon 'FATCA 2011,' the proposed regulations now require amplified due diligence— pegged to the value and risk profile of each FFI account. FATCA will also require FFIs to 'withhold' on 'pass-thru payments' from FFI account holders or other financial institutions that fail to comply with FATCA. In practice, this would require all FFIs to effectively act as a tentacle of the IRS, scrutinizing each transaction that flows through their accounts. Banks in Latin America and the Caribbean must then make a tough choice of whether to comply with the proposed rules, or risk noncompliance under their protectionist local laws, which may prohibit such dissemination of an account holder's private information. This could cause banks in the region to stop doing business with U.S. citizens or dual-status taxpayers who, if holding any form of U.S. residency status, will be treated as U.S. account holders for FATCA purposes. The proposed rules also require financial institutions to implement an enhanced due

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Powerful Earthquake Jolts Mexico, No Deaths Reported

A 7.4-magnitude earthquake shook Mexico just after noon on Tuesday, resulting in damaged buildings and crushed vehicles. However, as of Wednesday morning, there were no reports of fatalities. See story on page 2.

Photo: El Universal.

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NEWS BRIEFS

Rousseff Defends Spending on World Cup Preparations

In a weekly column published Tuesday, Brazilian President Dilma Rousseff defended the nearly $12.7 billion in spending on preparations for the 2014 World Cup, the Associated Press reported. The investment to improve infrastructure in the 12 cities that will host World Cup games will benefit the country, Rousseff said, adding that the private sector is financing the projects through loans from Brazil's National Development Bank.

Latin America Hits $10.3 Billion Fundraising Record in 2011

Private equity and venture capital investment in Latin America grew 27 percent to hit a record $10.3 billion in 2011, the *Financial Times* reported Tuesday, citing the Latin American Private Equity & Venture Capital Association (LAVCA). "You have by far the deepest pool of fund managers in Brazil and the longest track record of raising and investing multiple funds and returning money to investors," said Cate Ambrose, the president of LAVCA.

Chile's Piñera Welcomes Chinese Delegation

Chilean President Sebastián Piñera met with senior Chinese lawmaker Wang Zhaoguo on Monday to discuss bilateral cooperation, Chinese state-run news agency Xinhua reported. Wang is leading a delegation of the National People's Congress to Chile on an official three-day visit. Wang said that Chile's relations with China had progressed rapidly since establishing diplomatic ties, while Piñera highlighted the two countries' successes since signing a free trade agreement in 2005.

Political News

Powerful Mexico Quake Causes Panic, No Reported Deaths

A strong earthquake rattled Mexico just after noon local time on Tuesday, damaging hundreds of homes and sending panicked people into the streets. However, as of Wednesday morning, there were no reports of deaths, the Associated Press reported. The 7.4-magnitude earthquake struck at 12:02 p.m. and was centered 100 miles west-southwest of the city of Oaxaca at a depth of 12.4 miles, according to the U.S. Geological Survey. The epicenter was near the border of Oaxaca and Guerrero states. It was the largest earthquake to shake Mexico since the 7.6-magnitude Colima earthquake in 2003. Mexican Interior secretary Alejandro Poire said Tuesday night that nine people sustained injuries in Oaxaca and two were hurt in Mexico City. The location of the epicenter in addition to improved construction following the country's catastrophic 1985 earthquake, which killed at least 10,000 people, mitigated the effect's of Tuesday's quake, said experts. "Many of the buildings that were damaged in 1985 were poorly constructed and from that came the new building regulations, so that now buildings are stronger," Victor Hugo Espindola Castro of Mexico's national seismological service told the AP. In Guerrero state, approximately 800 homes were damaged and 60 collapsed, said authorities. Also in Guerrero, little damage was reported in the resort city Acapulco. The quake's center was about 200 miles from Mexico City, but it was strongly felt in the capital, where people poured out of swaying buildings. Telephone service was also disrupted in the capital and some neighborhoods lost power, said Mayor Marcelo Ebrard. In Guerrero, Gov. Angel Aguirre surveyed the damage and ordered emergency crews to provide aid in affected areas.

The earthquake was the strongest one to strike Mexico since 2003.

Featured Q&A

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diligence policy, including a step-by-step process for obtaining U.S. accountholder identification and personal information. This new level of diligence will require banks and FFIs that continue to do business with U.S. clients to overhaul their current anti-money laundering and know-your-customer procedures to include the new, enhanced information. With the deadline of less than one year looming close, Latin American and Caribbean banks will need to rapidly undertake operational modifications, which may include austerity measures that reduce certain business prospects, for the sake of correctly applying FATCA. This may require terminating certain FFIs' 'tax haven' status, and the removal of certain attractive privacy features."

Earl Jarrett, general manager of the Jamaica National Building Society: "Foreign financial institutions (FFIs) in the region welcome the review and amendments of the FATCA regulations by the Internal Revenue Service and the Treasury Department. The decision to permit FFIs to rely on know-your-customer and anti-money laundering rules that already exist in respective countries, as well as the delay of full transactional reporting until 2016, is also welcomed. We are also pleased with the three-year extension of the 'expanded affiliated groups' requirement, as the previous position suggested that no FFI member of a group could participate in FATCA if one affiliate member did not satisfy the necessary requirements. We note with

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Company News

Brazil's Embraer Reports Net Loss for Fourth Quarter

Brazilian aircraft manufacturer **Embraer** reported a net loss in the fourth quarter of 2011, due to **AMR Corp.**'s possible return of planes after declaring Chapter 11 protection in November, Bloomberg News reported. Embraer's net loss for the quarter amounted to 171.6 million reais ($94.6 million), as compared to a net profit of 208 million reais in the same quarter a year earlier. In a recent survey, three Bloomberg analysts had expected a net profit of 223 million reais for the fourth quarter. In reporting earnings, Embraer announced that it had booked a provision of 662.6 million reais for losses related to the possible return of planes by Fort Worth, Tex.-based AMR Corp's American Eagle, the regional carrier of American Airlines, currently operates the jets. The provision also includes potential losses from the return of jets operated by Phoenix-based **Mesa Air Group**, which filed for bankruptcy in 2010. "We expect this non-recurring provision to negatively affect Embraer's results," **Banco Santander Brasil** analysts Alexandre Amson and Bruno Amorim wrote in a note to clients before Embraer's earnings release, Bloomberg News reported. Embraer's net sales increased 9 percent year-on-year to 3.67 billion reais. It delivered 82 commercial and business planes in the fourth quarter and had a $15.4 billion backlog at the end of 2011. Embraer's shares have risen 16 percent this year in São Paulo, short of the Bovespa index's 18.6 percent increase.

The provision also includes potential losses from the return of jets operated by Phoenix-based Mesa Air Group.

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Inter-American Dialogue Discussion on

Human Rights and Extractive Industries in Peru

with

Juan Jiménez Mayor
Minister of Justice and Human Rights

Jorge Merino
Minister of Energy and Mines

Manuel Pulgar Vidal
Minister of Environment

Friday, March 23
4:00 - 5:30 p.m.
Inter-American Dialogue
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Please include your name and affiliation.

Glencore to Operate Under New Bolivian Mining Rules

Switzerland-based **Glencore** will be the first company that will operate in Bolivia under new mining contracts that give the government 55 percent of profits and would classify the company as a "service provider," Reuters reported Tuesday. President Evo Morales is planning to overhaul mining regulations to give the government more control over nonrenewable natural resources. Even though those regulations are still being formulated, Glencore's contracts will take effect within days. "Glencore's contract will be the model to be incorporated in the new mining law for all operations currently in the hands of private companies," said Héctor Cordova, the head of state-run mining company **Comibol**, Reuters reported. Glencore operates three mines, extracting silver, zinc, lead and tin, in the South American country. U.S.-based **Coeur d'Alene** and Japan's **Sumitomo** also will need to renegotiate their contracts in Bolivia due to the changing regulations. Sumitomo's San Cristobal mine, which produces silver, zinc and lead, accounts for at least half of Bolivia's mineral exports. Morales' government made similar changes to the country's energy sector contracts after nationalizing the industry in 2006.

Morales

File Photo: ABI.

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Featured Q&A

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interest, too, the move by the U.S. government to exempt financial institutions such as building societies and credit unions that are deemed to be primarily involved in domestic rather than international financial services. While this will be beneficial to European institutions, the reality is that a large portion of the Latin American and Caribbean (LAC) diaspora saves regularly with such indigenous financial institutions. As a result, this exemption, which dictates that building societies and credit unions not solicit business overseas or advertise U.S. denominated accounts or investments, does not provide any reprieve for those in the region. In addition, we encourage the Treasury Department to review the reporting balance on accounts with a view to increasing the minimum limit, to enable members of the LAC and other diaspora communities to remit savings to their home countries and facilitate local development. It is also noted that a statement about the establishment of FATCA partners was released by the Treasury Department simultaneously with the amendments to the regulations. While we applaud this move to establish a reciprocal framework to exchange information between government regulatory agencies, we encourage an extension of this FATCA partnership concept to Caribbean governments as well."

A Denise Hintzke, global leader of foreign account tax compliance at Deloitte Tax LLP and Oscar A. Ortiz Molina, regional tax leader of financial industry, Latin America, at Galaz Yamazaki Ruiz Urquiza, S.C.: "On Feb. 8, we saw the release of proposed regulations intended to provide guidance to FFIs that are attempting implement the requirements imposed by FATCA. The essential purpose of FATCA is to leverage non-U.S. financial institutions with one primary goal—finding and reporting U.S. persons holding financial assets abroad. In reading the proposed regulations, it is clear that Treasury and the IRS carefully considered comments received from industry and that they were serious when stating that they wanted to make the rules workable. Two particular changes, including a broader spectrum of entities that will qualify for deemed compliant status and modifications to the requirements for identifying U.S. persons that place more reliance on electronic searches and current anti-money laundering and know-your-customer procedures, should make the rules more palatable for many institutions. However, one problem that has continued to vex financial institutions is the inherent conflict of the FATCA requirements with local privacy laws. In many countries, privacy laws prevent the disclosure of some or all information relating to U.S. accounts that is required to be reported under FATCA. Even though the FATCA legislation sought to remedy this issue by requiring FFIs to obtain privacy waivers from U.S. account holders, in many countries this did not address the problem. The U.S. Treasury Department has made a further attempt to fix the issue by adding certain transition periods and engaging in discussions with foreign governments around alternative reporting solutions, however it is likely that many institutions will still be struggling with these this conflict of rules when the law goes into effect."

> "One problem that has continued to vex financial institutions is the inherent conflict of the FATCA requirements with local privacy laws."
>
> *— Denise Hintzke & Oscar A. Ortiz Molina*

The Advisor *welcomes reactions to the Q&A above. Readers can write editor Gene Kuleta at gkuleta@thedialogue.org with comments.*

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