Canada
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Reporting requirements for cross-border transactions

Your opportunity to build a tax governance framework to help now and in the future

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Tax authorities are increasing the compliance and reporting requirements for organizations both domestically and internationally. These changes are adding to the burden of evidence that must be maintained and retained by Canadian taxpayers, putting increased pressure on the already stretched resources within internal tax functions. Consequently, tax risk management is an increasing challenge and it is more important than ever for organizations to ensure that their tax governance framework is able to meet this challenge.

Responding to the immediate requirements

Effective January 1, 2013, the Canada Revenue Agency (CRA) has introduced new administrative requirements regarding the level of documentation required to support the application of treaty reduced withholding tax rates.

Historically, there had been limited guidance surrounding the documentation required to support the eligibility of a non-resident payee for treaty reduced withholding tax rates. Therefore, to support the application of the reduced rates, Canadian taxpayers followed a generally accepted “address rule”, relying on a recipient’s mailing address as evidence of residency.

New guidance requires the Canadian taxpayer to undertake appropriate due diligence and obtain “recent and sufficient” documentation and declarations from a non-resident recipient to establish the identity and country of residence of the beneficial owner of the income and to confirm eligibility for treaty benefits.

Forms NR301, NR302 and NR303 have been issued by the CRA to assist taxpayers in obtaining the required information and declarations. These forms are not prescribed, but are rather administrative in nature; their use is, therefore, not mandatory.

Penalties and interest may be assessed on Canadian taxpayers where treaty reduced withholding tax rates are incorrectly applied to payments. Where appropriate due diligence is undertaken, this documentation may support a claim under the CRA Taxpayer Relief provisions.

The chart below outlines the tax governance issues that should be considered to ensure compliance with the CRA's new requirements.

Requirements	Solution
Legislative assessment – analyze tax laws and administrative guidance to determine approach to meeting obligations	Review current withholding tax processes to determine operational procedures, tax process and governance redesign to facilitate compliance
Documentation requirements – appropriate, adequate, complete account documentation, processes and policies	Develop policies; review processes to identify improvements to meet requirements; determine policy regarding use of CRA's administrative forms
Controls design – sufficient and appropriate preventative and detective internal controls over data collection, tax calculation and remittances	Review design of existing controls to identify required enhancements, to effectively respond to tax risks
Level of assurance – appropriate due diligence procedures prior to applying reduced withholding tax rate	Establish due diligence activities to facilitate impact-analysis on non-routine payments and capture changes to legislative requirements and communicate to stakeholders
Post-implementation assessment – monitor ongoing compliance with legislative requirements	Establish post-implementation procedures to monitor and report on the operational effectiveness of continual activities and internal controls
Documentation retention – maintenance of account information and administrative forms	Establish processes and policies to retain and renew client documentation as required

These Canadian documentation requirements are the most recent in a series of new compliance and reporting obligations. Other key compliance obligations which would benefit from a strong tax governance framework include:

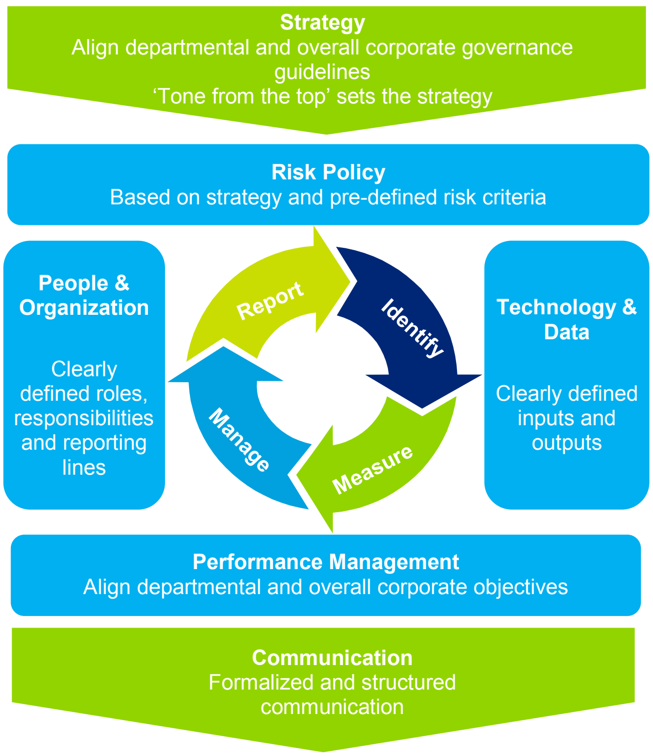
- **FATCA (Foreign Account Tax Compliance Act)** is an initiative to ensure that U.S. taxpayers with financial assets in foreign jurisdictions are paying the appropriate amount of U.S. tax by requiring financial institutions to report certain information associated with identified accounts. Financial Institutions which do not comply with these requirements may be subject to withholding, penalties and/or reputational risk.

- **CRA's risk-based audit approach** applies a risk assessment to categorize each taxpayer as low, medium or high risk, based on certain factors. The results of this risk assessment can impact the frequency, intensity and formality of interactions with the CRA.

Complying with these obligations requires an organization to undertake a business-wide project to design and implement a compliance blueprint, incorporating new processes and enhanced internal controls. Design and configuration of these processes must include input at the outset from the tax function to effectively identify and mitigate tax risks.

Capitalizing on this opportunity

Establishing an effective tax governance policy enhances the tax function's ability to proactively identify new requirements and efficiently implement new processes and controls to address these obligations as they arise. A framework for establishing a tax governance strategy, as illustrated below, requires attention to an organization's talent, technology, risk policy and performance incentive programs.



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