

# Jail time looms for FATCA Responsible Officer

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## What's next for FATCA?

After witnessing the first ever successful US prosecution for Foreign Account Tax Compliance Act (FATCA) non-compliance, banks and Financial Institutions (FIs) will be thinking 'What next?' and considering their own FATCA programmes. This outcome could well be the 'new normal' – despite well-documented promises of a 'soft-landing' by US tax and legal authorities. In any event it will validate the efforts of so many people who have worked tirelessly to implement FATCA requirements across the industry.

Events last week only serve to confirm that FIs are under the microscope. Organisations and individuals will be taken to task for non-compliance or deliberate avoidance. This prosecution shows only too clearly how tax authorities will utilise the International Information Exchange Regulations to both detect and prevent tax evasion.

The high level of international collaboration between a large number of cross-border agencies (including the City of London police and the FCA) is of particular note.

International cooperation and effort will seamlessly result in successful prosecutions. Current media reports suggest that FATCA avoidance by one employee of Loyal Bank is but one aspect of a much wider investigation. This identified stock manipulation, money laundering and other 'illicit operations' to the tune of \$50M (and involving various other corporate entities).

Enforcement agencies will not only scrutinise adherence to due processes and procedures in the course of their investigations – but will focus firmly on corporate and individual behaviours. FIs may well have already completed risk assessments for other financial crime initiatives (such as Corporate Criminal Offence). However they may now be strongly advised to review their training, communication and financial crime 'red flags'. This will be particularly salient when products and services are provided through relationship managed businesses.

FIs are now required to comply with a myriad of financial crime initiatives – and there are yet more on the horizon (the OECD Mandatory Disclosure Rules to name but one). Whilst separate teams may have been responsible for implementing each of these throughout an organisation – communication and cohesion are vital to ensure that policies and procedures are robust, commercial, seamless and, above all, customer-friendly.

All FIs should now focus their attentions on:

1. **Reviewing any assurance that has been undertaken to date** (especially on initial reporting submissions). Will it stand up to regulatory scrutiny?
2. **Gaps and areas of concern.** Has a robust plan been formulated? Does this have appropriate budgetary support?
3. **Current regulatory obligations to financial crime.** Is satisfactory evidence held to demonstrate that these are being met?

EFI's recent Whitepaper discusses how to achieve effective management and mitigation of the reputational and financial risks associated with non-compliance. It showcases the proactive steps that must be taken to address any emerging risks. Please [contact us](#) for a copy.

We will welcome a preliminary discussion should there be any areas of concern to you and your organisation – and can clearly demonstrate the benefits of an independent assessment and review.

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