The Foreign Account Tax Compliance Act: Overview, operational impact and role of compliance.
Full day workshop

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Singapore

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Agenda

Part 1: FATCA: An Overview
- Why does FATCA exist and what are the main goals?
- Who is affected by FATCA?
- The Intergovernmental Agreements (IGAs); Model 1 and Model 2
- Impact on the banking and insurance industry
- Implications for tax evasion units and enforcement

Part 2: The operational impact of FATCA: The role of compliance
- The Final Regulations
- Obligations under FATCA: for the institution and for the client
- The regulatory and operational requirements of institutions – the challenges
- Implications for international wealth planning
- Registering with the IRS
- The bigger picture; a world of automatic information exchange
- Compliance in the drivers seat
# FATCA in a Nutshell

## Two easy pieces
1. Identify all U.S. Clients
2. Deliver names and all information about accounts and income received on accounts to the IRS

## The goal: A deeper dive than before
- Deliver all information on U.S. persons behind all legal entities and structures to the IRS

### Meaning:
- shareholders of companies
- beneficiaries of trusts, foundations, and similar
- policyholders of cash value life insurance policies
- etc.

**All U.S. beneficiaries of all financial assets, wherever in the world**

The United States sees FATCA as "The Blueprint" for an international system for the automatic exchange of information among all developed nations worldwide

- This means FATCA is coming soon to your country
Why does FATCA exist and what are the main goals?

Reporting, Information, Compliance

“Get people back into the system”

- The goal of FATCA is to improve income tax compliance by U.S. taxpayers by giving the Internal Revenue Service (“IRS”) access to more information about the income and assets in accounts held in foreign financial institutions (“FFIs”).
- To achieve that goal, the FATCA statute and Final Regulations impose a 30 percent withholding tax:
  - Starting in 2014 on “withholdable payments” → payments of U.S. source income, including dividends and interest;
    - To FFIs that do not meet conditions identified by the Treasury for “deemed compliant” status and;
    - Have not entered into a “participating FFI” (“PFFI”) agreement with the IRS
FATCA is intended to address gaps in Qualified Intermediary program. So how does it do it?

<table>
<thead>
<tr>
<th>Gaps or holes in QI</th>
<th>FATCA “Fix”</th>
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<tbody>
<tr>
<td>Does not address Non-Bank Products</td>
<td>▪ Addresses insurance products, pensions, other products with cash value</td>
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<td>Does not address investments made through personal investment companies (PICs)</td>
<td>▪ Qualifies non-financial entities as US persons or US ownership;</td>
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<td>– LLcs, Trusts, Investment Funds, etc</td>
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<td>Reaches only financial investments made in USA</td>
<td>▪ Gets at investments made abroad;</td>
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<td>– Global reach</td>
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<td>– All investments by US persons, globally</td>
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<td>– Regardless of where that investment is located</td>
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<td>Does not need proof that customer is not a US person</td>
<td>▪ Must document “absence of evidence” that client is US person</td>
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<td>▪ Requirement;</td>
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<td></td>
<td>– Demonstrate client is non-US person</td>
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<td>– Effective „absence of evidence“ test</td>
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FATCA Reporting – What's the point?
Cross checking what the client reports with the institution

- Cross Check
  - Enquiry
  - Request for information
  - Audit
  - Penalties

- Exception Report
  - Bob
    - Acc. 1
    - Acc. 2
  - PFFI
    - Acc. 1
  Bobs offshore holdings according to Bob and the PFFI

- Investigations

- IRS & Treasury

- Participating Foreign Financial Institution (PFI)

- FBAR
  - *xxxx
  - *xxxx

- 8938
  - *xxxx
  - *xxxx

- Form 8966
  - *xxxx
  - *xxxx

- FFI Agreement

- Requests for information
- Aiding and abetting liability?
Reporting begins; FFIs must report existing US account holders (for 2013 & 2014)

Report accounts identified as US accounts to IRS (with waiver)

FFIs implement procedures with respect to new accounts
30% withholding on payments to non-participating FFIs and recalcitrants begins
Responsible for identifying all new "US accounts" and recalcitrants

Withholding for gross proceeds to non-participating FFIs and recalcitrants begins

Deadline for FFIs to complete second stage of due diligence reviews

Reporting information on income on US and recalcitrant accounts begins

Full implementation
Information on income & gross proceeds
30% withholding on all other payments, gross proceeds, pass-through payments, etc
I.e., withholding on "Pass-Thru" payments begins including foreign payments

"Demarcation" line; new and pre-existing accounts
IRS opens the registration portal
IRS starts accepting applications
Deadline for registration to be on initial FFI list

"Transition" period

January 2013
IRS opens the registration portal
IRS starts accepting applications

January 2015
Reporting information on income on US and recalcitrant accounts begins

January 2016
Deadline for FFIs to complete second stage of due diligence reviews

January 2017
Reporting begins; FFIs must report existing US account holders (for 2013 & 2014)
Report accounts identified as US accounts to IRS (with waiver)
# FATCA Timeline - Detailed

<table>
<thead>
<tr>
<th>Milestones</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
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<tbody>
<tr>
<td><strong>1. Registration (FFI Agreement)</strong></td>
<td>IRS registration portal</td>
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<tr>
<td>Registration with IRS (FFI Agreement)</td>
<td>15.07.2013 - 25.10.2013</td>
<td>Effective Date - 01.01.2014</td>
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<td>01.01.2016</td>
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<tr>
<td>Registration of all members of Extended Affiliate Group (EAG)</td>
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<td><strong>2. Client Identification</strong></td>
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<td>New accounts</td>
<td>01.01.2014</td>
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<td>Pre-existing individual high-value accounts. &gt; 1 Mio. USD</td>
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<td>30.12.2014</td>
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<td>31.12.2015</td>
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<td>Pre-existing other accounts. Individuals &amp; Entities</td>
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<td>30.06.2014</td>
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<td>&quot;Prima Facie&quot; FFIs</td>
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<td><strong>3. Withholding</strong></td>
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<td>FDAP payments to undocumented new accounts</td>
<td>01.01.2014</td>
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<td>&quot;Prima Facie&quot; FFIs without confirmation = Non-Part. FFI</td>
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<td>01.07.2014</td>
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<td>FDAP payments to high value accs &amp; non-disclosing passive NFFEes</td>
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<td>01.01.2015</td>
<td>01.01.2016</td>
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<td>FDAP payments, other accounts</td>
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<td>Gross proceeds and passthru</td>
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<td>01.01.2017</td>
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<td><strong>4. Reporting/Information Exchange</strong></td>
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<td>Reporting of U.S. Accounts Identification &amp; acc. balances</td>
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<td>31.03.2015 (for 2013 &amp; 2014)</td>
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<td>+ Income streams (ie., dividends, interest, etc.)</td>
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<td>31.03.2016 (for 2015)</td>
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<td>31.03.2017 (for 2016)</td>
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<td>+ Sales proceeds (gross proceeds)</td>
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<td>Aggregated disclosure of &quot;Recalcitrants&quot;</td>
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<td><strong>5. Certification by Responsible Officer (RO)</strong></td>
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<tr>
<td>Due diligence and FATCA avoidance certification</td>
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<td></td>
<td>06.05.2011 - Start of FATCA anti-avoidance certification</td>
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<td>Effective internal controls certification (every 3rd year)</td>
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<td>29.02.2016</td>
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<td>30.06.2017</td>
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Who is affected by FATCA?
FFIs – types and definitions

**FFI types conformed with the IGAs, i.e.**
- Depository and Custodial institutions
- Investment Entities (replaces Category 3 FFI definition in the HIRE Act)
- Holding companies and treasury centers
- Deemed compliant FFIs
- Local FFIs
- Owner documented FFIs
- Insurance Companies

**Note:**
- Depository institutions – “banking and similar business” now defined
- Investment Entity – (very) expansive definition
- Definition of custodial and insurance companies unchanged
- Special rules for holding companies and treasury centers

**Result**
- I.e., Practically everyone is affected
- The net FATCA casts is deep and wide
- Theoretically, if you are receiving and making payments in any currency, you will be affected in one way or another
Legal entities in scope, ie., who needs to register, report, be withheld on...

- **Entity**
  - **US Specified Person**
    - Registered Deemed Compliant FFI
      - Certified deemed compliant FFI
        - Owner documented FFI
          - PFFI
          - NPFFI
    - FI Local client base
      - Investment Advisers
      - ???
  - **Exempt Beneficial Owner**
    - Non Financial Foreign Entity (NFFE)
      - Active NFFE
      - Passive NFFE
      - Establish beneficial ownership
Expands definition of FFI to include Investment Entities

- Includes an entity with gross income attributable to investing in financial assets if that entity also is managed by another entity
  - Either directly or indirectly through a third-party service provider
  - Example; Family trust that is professionally managed will be an FFI otherwise;
  - Is a passive NFFE

- Includes collective investment vehicles - investment funds (e.g., mutual funds, hedge funds, and private equity funds)
- Includes entities that invest, administer or manage funds, money or financial assets on behalf of customers (e.g., investment managers, investment advisors, and transfer agents)
- Final Regulations add rule to eliminate duplication of FATCA due diligence, reporting, and withholding with respect to investors in funds when both the fund and the administrator or transfer agent would otherwise have the responsibility.
The intergovernmental approach seeks to:
- Overcome the conflicts between FATCA requirements and local laws.
- Allow for alignment and coordination with local law reporting practices

Reduce the burden of compliance, through:
- Permit greater reliance on existing AML/KYC practices for FATCA due diligence
- Identify the types of products that are exempt from FATCA
- Identify the types of entities that are exempt from FATCA

The Singapore Government will conclude a Model 1 IGA with the US
- Financial institutions in Singapore achieve compliance with FATCA
- Under the Model 1 IGA, Singapore FIs will have to provide FATCA related information to IRAS on a regular basis
- IRAS will forward that information to the IRS
Intergovernmental Agreements (IGAs) – the beginning

Under the framework, subject to terms negotiated in each agreement, the applicable country would agree to:
1. Pursue the necessary implementing legislation to require FFIs in its jurisdiction to collect and report to the authorities of the foreign country the information required under FATCA
2. permit such FFIs that are not otherwise exempt under FATCA to apply necessary diligence to identify their US account holders
3. Automatically transfer the information reported by such FFIs to the United States

The framework would allow the IRS to identify each FFI in the foreign country as a:
- Deemed compliant FFI
- Participating FFI

✓ Removing the need for such FFI to enter into agreement/contract with the IRS to avoid FATCA withholding

But, each FFI still required to register with the IRS, which:
- Requires FFI to receive FATCA identification number

The Carrot; joint statement provides:
“The US will commit to reciprocity with respect to collecting and automatically reporting to tax authorities of FATCA partner countries on the US accounts of that countries residents”
### The Intergovernmental Agreements (IGAs); Model 1 and Model 2

<table>
<thead>
<tr>
<th>Model 1</th>
<th>&quot;Government to Government&quot;</th>
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<tbody>
<tr>
<td>- Local institutions report information to local tax authorities</td>
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<tr>
<td>- Local tax authorities collate and report information on to IRS</td>
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<tr>
<td>- IRS reciprocates and sends information back on countries own residents</td>
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<tr>
<td>- Country required to enact local laws to withhold on payments to non-cooperative entities</td>
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<tr>
<td>- Financial institutions of cooperative countries will not be subject to withholding</td>
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<table>
<thead>
<tr>
<th>Model 2</th>
<th>&quot;Financial Institution to IRS&quot;</th>
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<tbody>
<tr>
<td>- Local institutions report information to the IRS</td>
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<tr>
<td>- No reciprocity</td>
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<tr>
<td>- Exchange of information upon request between countries on recalcitrant account holders (group requests)</td>
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<tr>
<td>- Country required to enact local laws to comply with FATCA</td>
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<tr>
<td>- No forced disclosure</td>
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</table>

Singapore will conclude a Model 1 IGA
The requirements - Model 1

- FFIs do not need to enter into an FFI agreement with the IRS
- FFIs must however:
  1. Register on the FATCA Portal
  2. Obtain a Global Intermediary Identifying Number ("GIIN")

- FFIs report to the local authority (ie., IRAS), who then delivers the information to the IRS
- Local authority responsible for enforcing compliance

- Under the reciprocal model, U.S. Financial Institutions must report information to the IRS which will be exchanged with FATCA Partner local authority (IRAS)
- Under the non-reciprocal model, there is no information exchange from the U.S. to the FATCA Partner local authority
Impact on the banking and insurance industry

Some implications

- Increased KYC, AML information gathering requirements
- Reporting and compliance infrastructure increases
- Many Asian clients qualify as U.S. persons under IRS definition

- Many Asian clients affected:
  - US passport, greencard holders,
  - Clients/Entities with US owners/beneficiaries
  - Trusts with US beneficiaries
"Ordinary Course of Business" Payments

- The Proposed Regs excluded from the definition of “withholdable payment”:
  - “nonfinancial payments” made in the ordinary course of the withholding agent’s ordinary business
  - But, specifically included financial payments such as bank or broker fees
- Final Regs provide greater certainty by listing specific types of payments as either included or excluded from FATCA
- Final Regs expand scope of withholdable payments to payments made outside a financial account:
  - Exclude payments for compensation for services, use of property, office and equipment leases, software licenses, transportation, freight, prizes, awards, and interest on accounts payable
  - Include payments made in connection with a lending transaction (including securities borrowing and lending), forwards, futures, options or notional principal contracts, premiums for insurance contracts, investment advisory fees, custodial fees, and bank or brokerage fees
  
  Unless;
  - the payment relates to a grandfathered obligation
Scope Changes in the final regulations

Credit card accounts treated as financial accounts

- Final regulations clarify that a credit balance on a credit card issued by a credit card company is a depository account and therefore is a type of financial account under FATCA.
  - Qualified credit card issuers are a new category of registered deemed compliant FFIs
    - If the issuer accepts deposits when a customer makes a payment in excess of a balance due and the overpayment is not immediately returned to the card holder, and
    - Implements policies and procedures to prevent customers from having a deposit that exceeds $50,000 or refund the excess within 60 days
For a US person, failing to disclose a foreign account on a tax return is a criminal offence
- It is classified as tax evasion
- Tax evasion is a felony
  - Punishable with (heavy) fines and/or prison sentences

There is a six year Statute of Limitations for filing criminal charges based on failing to file a tax return
but;
There is NO Statute of Limitations on how long the IRS can seek taxpayers and demand payment or taxes owed on non-filed returns

Note
- Helping or aiding US persons in Non-disclosure may be treated as aiding and abetting or conspiracy for tax evasion → a criminal offense
- Countries are moving toward tax evasion as predicate offense to money laundering at the same time as moving toward automatic information exchange
Part 2

The operational impact of FATCA: The role of compliance

▪ The Final Regulations
▪ Obligations under FATCA: for the institution and for the client
▪ The regulatory and operational requirements of institutions – the challenges
▪ Implications for international wealth planning
▪ Registering with the IRS
▪ The bigger picture; a world of automatic information exchange
▪ Compliance in the drivers seat
On Thursday, January 17, 2013, the U.S. Department of Treasury and the Internal Revenue Service (“IRS”) published their final regulations on the implementation of the FATCA provisions in Chapter 4 of the Internal Revenue Code (the “Final Regs”).

**Tax Policy Considerations**

- Essential to the integrity of the U.S. voluntary tax compliance system;
  - Reporting must be available with respect to both onshore and offshore accounts of US taxpayers

- Chapter 4 extends U.S. information reporting regime to include FFIs that maintain U.S. accounts
- Approach is to achieve an appropriate balance between fulfilling policy objectives and minimizing burdens imposed on institutions
- Treasury/IRS have considered hundreds of comments on the burdens, legal impediments and technical implementation of Chapter 4 and addressed them in three main ways:
  1. Adopt a risk-based approach and building on existing practices and obligations
  2. Collaborate with foreign governments to develop an alternative intergovernmental approach to FATCA implementation that removes legal impediments, allows for alignment and coordination with local law reporting practices, and achieves further burden reductions
  3. Simplify the process for registering and entering into an FFI agreement and minimizing operational costs associated with reporting FATCA information
The Final Regulations

- The final regulations cover most key aspects of the FATCA regime except passthru payments
- Also preview what may be required in the FFI Agreement

- Several pieces of the FATCA puzzle still missing, principally:
  - FFI Agreement
  - FATCA Portal
  - FATCA Report (Form 8966)
  - Updated IRS Forms 1042 and 1042
  - Coordination with the existing US withholding tax regime (Chapters 3 & 61)
  - QI, Withholding Partnership (WP) and Withholding Trust (WT) agreements need to be updated
  - Over 50 countries negotiating IGAs with the US
  - However only six have signed or initialed the IGA (Denmark, Ireland, Italy, Mexico, Switzerland and the U.K)
  - IGA implementation guidance and local law changes
    - But…
    - Major open issues remain for multinational groups
    - To be continued…
The Final Regs confirm the start dates for withholding

- **1/1/2014**: U.S. source FDAP income for new accounts and documented NPFFIs
- **1/1/2015**: U.S. source FDAP income paid by a PFFI to undocumented preexisting high-value accounts for individuals
- **1/1/2016**: U.S. source FDAP income paid to remaining undocumented preexisting accounts
- **1/1/2017**: Gross proceeds from sale or disposition of property that produce US source dividends or interest

For preexisting entity accounts documented as NPFFIs, withholding must begin even if the due diligence period has not ended

**Gross Proceeds**

- The Final Regs “reserve” on performing withholding on payments of gross proceeds
- Means that the February 2013 Proposed Regs on gross proceeds will not be finalized
- Issues arose concerning the coverage of delivery vs. payments transactions
- IRS will propose new regulations on payments of gross proceeds, the ability of an FFI to elect to be withheld upon, document sharing, and payments made to an account held with clearing organization that has a FATCA-compliant membership

**Coordination with Model 1 IGAs**

- For payments of US source FDAP income made offshore on a offshore obligation, withholding by a person that is not acting as an intermediary is delayed until 1/1/2017
  - Applies to payments made by a securities lender that is the principal on a securities loan, but not a qualified securities lender (“QSL”) or an agent lender
  - Does not apply to a flow-thru entity that has a residual withholding requirement with respect to its partners, owners or beneficiaries
Impact on Withholding

Treatment of foreign branches of USFIs as a withholding agent

- Final Regs state that a foreign branch must withhold in accordance with the FATCA regulations;
  - Even if it is a QI branch that is a PFFI or a registered deemed-compliant FFI,
  - Or is a reporting FFI located in an Model 1 IGA country.
- A foreign branch that is not a QI is not permitted to make an election to be withheld upon

- Foreign branches of USFIs (other than non-withholding QIs) that pay interest on bank deposits after 2016 must withhold even if they are located in a Model 1 IGA country.

When source or character of payment is unknown, a withholding agent:

- Must treat the payment as a withholdable payment from U.S. sources, and
- Either withhold 30 percent or place it in escrow until:
  - the earlier of the date the character and source of the payment is determined or
  - 1 year from the date of the escrow
Impact on Preexisting Account Procedures

Preexisting Account Due Diligence
- Consistent with the October notice, the deadlines for documentation are:
  - **30.06.2014**: Prima facie FFIs
  - **31.12.2014**: High value individual accounts
  - **31.12.2015**: All other accounts
- May rely on a valid pre-FATCA Form W-8 until January 1, 2017, unless expires at an earlier date.
  - This means that preexisting accounts need not be re-documented for FATCA until the existing Form W-8 expires

- The Final Regs allow the identity of pre-existing accounts to be determined by standard industrial codes whether public or private and whether US or not, for example, to determine if an NFFE is “active.”
- The Final Regs include a specific list of U.S. indicia for entity accounts. A withholding agent may not rely upon a SIC code to classify an entity if U.S. indicia are present, unless specified cures for such indicia are in place
- A new account opened by a preexisting client can be treated as a preexisting obligation provided that the new obligation and the prior obligation are treated as one obligation for AML due diligence, aggregating account balances, and applying the standards of knowledge (i.e., U.S. indicia)
- Challenge will be to aggregate balances and knowledge relating to both the new and the old account of the same person
- A withholding agent may treat a payee as a U.S. person if it has previously reviewed a Form W-9 that established that the payee is a U.S. person and has retained the payee’s TIN
Impact on New Account Opening Procedures

Effective Date
- Consistent with the October notice (Announcement 2012-42);
  - 1 January 2014, is the effective date for implementing new account due diligence procedures

Liberalisation of Documentation Requirements
- Regulations liberalize documentation requirements;
  - However, the liberalisations carry caveats and conditions - reduces their usefulness
- Regulations expand the ability to rely on AML/KYC information;
  - However, any criminal or civil penalty or sanction imposed on a PFFI by its regulators for failure to properly identify account holders will be considered a material failure of the FFI Agreement
- FFI EIN is replaced by Global Intermediary Identification Number (GIIN).
  - It is still subject to an annual verification requirement
  - The GIIN replaces the existing QI EIN for QIs
- Documentary evidence validity rules are liberalized
  - Documents are valid longer of three years or until expiration date
  - Additional documents allowed to validate FATCA statuses, particularly for offshore obligations
  - Some types of documentary evidence for certain account holders will have indefinite validity;
    - However, these rules are subject to monitoring for changes in circumstance, having no U.S. indicia and potentially annual verification requirements, e.g., validation of GIIN
- Withholding agent may apply the “eyeball test” to treat a payee as other than a specified U.S. person
  - However, the withholding agent must also possess documentary evidence to support the U.S. status of the account, otherwise the account will be presumed an NPFFI
Impact on Reporting

PFFI Reporting on U.S. Accounts
- Reporting to be done on Form 8966, the “FATCA Report”
- Initial reporting to be done by 31.03.2015 for calendar years 2013 and 2014
  - For calendar year 2013 report on accounts identified and documented as of 31.12.2014
- Reporting on accounts directly owned by:
  1. Specified U.S. persons
  2. Specified U.S. owners of accounts held by owner-documented FFIs
  3. Substantial U.S. owners of accounts held by passive NFFEs
- CFCs may perform enhanced Form 1099 reporting to satisfy U.S. account reporting obligations.
- Still no coordination between FATCA reporting rules and chapter 61 or Model 1 IGA reporting rules
  - Pending guidance before 31.03.2015 when first FATCA reports due

PFFI Reporting on Recalcitrant Accounts
- Reportable on Form 8966; first reporting due on 31.03.2015 (for calendar year 2014)
  - Now includes reporting on recalcitrant passive NFFEs

USFI and FFI Reporting on Form 1042-S
- Reporting of deposit interest paid by foreign branches
  - Reporting required only when deposit interest is subject to FATCA withholding
- Reporting of foreign source payments to NPFFIs
  - Still required for calendar years 2015 and 2016
Obligations under FATCA: for the institution and for the client
→ The Basic Requirements. A reiteration.

**Due Diligence**
FATCA requires financial institutions to perform specified due diligence and identification procedures to establish:
- The identity of individual U.S. persons
- The “substantial” U.S. owners of certain non-financial foreign entities (NFFEs)
- The FATCA status of NFFEs and foreign financial institutions (FFIs)

**Withholding**
30% FATCA withholding can apply to any:
- Nonparticipating FFI (NPFFI)
- Non-excepted NFFE that fails to identify its “substantial U.S. owners”
- “Recalcitrant” account holder
- Any person refusing to supply identifying information regarding their FATCA status
- Any identified U.S. person refusing to waive any local legal restrictions on providing relevant information to the IRS
Obligations under FATCA: for the institution and for the client

The Basic Requirements

**Reporting**
FATCA reporting can apply to the following:

- U.S. account information
- Payments that have been subject to FATCA withholding (through modified Forms 1042-S)
- Information about recalcitrants and non-participating FFIs

**Close Accounts**
- An FFI that is not in an IGA country must close the accounts of any U.S. person who refuses to supply a waiver of a local law that prohibits the reporting of FATCA information to the IRS

**Full FFI Group Compliance**
- All branches and affiliates of an expanded FFI affiliated group must be “participating” (i.e., compliant with FATCA)
- Each affiliate must enter into a separate FFI agreement with the IRS
Obligations under FATCA: for the institution and for the client

The Basic Requirements

A participating FFI must enter into an agreement with the IRS to do all of the following:

- Identify its “U.S. Accounts” including all its worldwide affiliates
- Comply with due diligence criteria to ensure that it has really identified its U.S. Accounts
- Provide the IRS with an annual report with details about the U.S. Accounts that it has found
- Deduct and withhold 30% on withholdable payments made to “recalcitrant account holders” or non-participating (or “bad”) FFIs
- Provide any follow-up information requested by the IRS with respect to the U.S. Accounts
- Request a waiver from any U.S. account holder if disclosure would otherwise be prohibited on the basis of non-U.S. law (e.g., privacy or bank secrecy laws), and close the account if the account holder refuses to cooperate

- The IRS can terminate the agreement if any of the above is not done.
Policyholder US person indicia and reporting requirements - a summary

**Indicia**

**Notice 2010-60 lists six indicia of U.S. status:**

1. Indication that the account holder is a U.S. Citizen or resident
2. A U.S. place of birth
3. A U.S. mailing or permanent address
4. An account where the only address is a P.O. Box, in care of address or hold mail address
5. A power of attorney (POA) or signing authority granted to a person with a U.S. address
6. Instructions to send payments to an account in the U.S. or any instructions received from the U.S.

Having one of these indicia does not mean that the account is owned by a U.S. person, only that it must be given closer scrutiny

<table>
<thead>
<tr>
<th>Obvious; guidance didn’t bother to mention:</th>
</tr>
</thead>
<tbody>
<tr>
<td>- US passport, green card, substantial US presence, regular payments to or from a USFI</td>
</tr>
<tr>
<td>➢ Will trigger US person status</td>
</tr>
</tbody>
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Alternatively, an FFI may make an election to provide full IRS Form 1099 reporting on each account holder that is a specified United States person or United States owned foreign entity as if the holder of the account were a natural person and citizen of the United States.

**Reporting Requirements**

- Name, address, and Taxpayer Identification Number (TIN) of each account holder which is a specified United States person and;
- In the case of any account holder which is a United States owned foreign entity, the name, address, and TIN of each substantial United States owner of such entity
- The account number
- The account balance or value (timing to be clarified by Regulations)
- Gross receipts and gross withdrawals or payments from the account (timing and manner to be clarified by Regulations).
Pre-Existing accounts - as at 31. Dec. 2013
Checks; Electronic and Manual

Check, Identify, Report

- Electronic check
- Manual Check

Who to do?

- Responsible:
  - FFI

- Necessary:
  - Trust Companies
  - Asset Manager
  - Other Banks
  - Other intermediaries

Comments

- May have to partner with other financial intermediaries financial structures
- Electronic and manual checks to be done by partner institutions?
- May be dependent on the intermediaries to get the information
- Some institutions may not be permitted to directly contact account holders (US resident)
- How detailed is the electronic check?
- Partnering necessary?
- Electronic checks to be done by partner brokers, asset managers, banks, etc?

- PFFIs will need to report number and aggregate value of accounts held by recalcitrant account holders plus;
- Number and aggregate value of accounts held by related or non-related PFFIs
New accounts - as of 1. Jan 2014
Checks; Due diligence, existing KYC and AML

If US owner of account;
- Obtain secrecy waiver from client
- Report to IRS

Proposed regulations do not exempt low value accounts!
Straightforward;
- For all new accounts;
  - PFFI required to review information provided at opening of account,
  - identification and other documentation collected under local AML/KYC* rules
  - Establish Chapter 4 status

If US indicia are identified;
- PFFI must obtain additional documentation
  or
- Treat account as „recalcitrant“
  or
- Don’t open the account

*AML: Anti Money Laundering
KYC: Know Your Customer
Conflicts of Law - dealing with Limited Branches and Affiliates

- Limited branches and affiliates are those parts of an otherwise compliant PFFI group that are based in jurisdictions that prevent reporting, closing or transferring accounts, blocking account activity, or withholding.
- Without a special rule for the “limiteds,” the entire FFI group would be “non-participating” and subject to withholding (Model 1 IGAs within the expanded affiliated group will not change status)
- Limited Branches: An affected PFFI must:
  - Identify the “bad” jurisdictions for each of its limited branches
  - Agree to treat each such limited branch as an entity separate from its other branches for purposes of withholding
- Limited Affiliates: Limited affiliates must register as part of the affiliated FFI group’s application to obtain such “limited” status
Limitations of the “Limited” Relief
- “Limited” rule prevents the entire expanded affiliated PFFI group from being treated as non-participating and subject to 30% FATCA withholding worldwide

The Bad News
- FATCA withholding will apply on payments made to the “limiteds” including those located in jurisdictions with pending “FATCA Partnerships” that have not yet been finalized

  unless
  ➢ U.S. Treasury/IRS provides an exception

A potentially nasty New Year’s Eve present
- “Limited” status expires on 31st December 2015
- PFFI groups will lose their participating status and will be subject to 30% withholding worldwide

  unless:
  ▪ Their “limiteds” are in “FATCA Partnership” jurisdictions,
  ▪ The “bad” jurisdictions have passed laws to become “good,”
  or,
  ▪ Adversely affected parts of the FFI group have either transferred accounts or restructured to comply
Implications for international wealth planning

- FATCA final regulations not well suited to wealth management structures
- Preamble to final regulations state that passive entities not "professionally managed" are passive NFFEs and not FFIs
- However, no definition of professional management
Example: Trust with individual trustee

Trust A

Circumstances

- Mr. M settles Trust A, a foreign non-grantor trust for the benefit of his children, son and daughter
- Mr. M appoints Mrs. T, an individual, to act as trustee of Trust A
- Trust A’s trust instrument provides that Ms. T manages and administers Trust A’s assets
- Mrs. T does not hire any entity as a third-party service provider to perform trading, management, or investing
- Trust A’s only assets are financial assets and its income is entirely from financial assets

Trust A is NOT an investment entity FFI

- Because it is not professionally managed by an FFI
  - Trust A need not enter a PFFI agreement
  - based on Treas. Reg. 1.1471-5(e)(4)(v)
Example: Trust with Trust company trustee or professional asset manager

Trust B IS an investment entity FFI

- Because the trust is managed by an FFI trust is an investment entity
  - Trust B needs to enter a PFFI agreement or qualify as deemed compliant FFI e.g., owner documented FFI
  - Based on Treasury Reg. 1.1471-5(e)(4)(v)

Circumstances

- Same facts as previous slide, except:
  - Mr. M hires Trustee Co., a trust company (and FFI) to act as trustee for Trust B
  - Trust A’s trust instrument provides that Trustee Co. manages and administers Trust A’s assets
More on Trusts: Trust Interests as “Financial Accounts"

- If a private trust is an investment entity FFI, interests in the trust will be treated as equity interest financial accounts
- An equity interest in a trust that is an FFI means:
  - An interest held by the grantor (settlor) of a grantor trust
  - An interest held by a beneficiary who is entitled to a mandatory distribution
  - A beneficiary who may receive a discretionary distribution only if the person receives a distribution during the calendar year
Determining Trust Ownership

- If a trust is an NFFE, the trust must identify its substantial US owners and pass information on such owners to withholding agents.
- In the case of a trust, a substantial US owner is:
  - Any specified US person grantor of a grantor trust
  - Any specified US person that holds more than 10% of the beneficial interests in the trust
- Discretionary beneficiary who receives discretionary distributions in excess of 10% of the value of all distributions
- During the prior year;
  - Beneficiary is entitled to receive mandatory distributions from the trust and the value of the beneficiary’s interest exceeds 10% of the value of the trust’s assets; or
  - Value of combination of discretionary and mandatory interests exceeds 10% of the trust’s assets
Key Issues for Wealth Managers

Client relationships and communication management
- Educate clients early:
  - Issues
  - Consequences of non-compliance
- Termination of account in event of non-compliance
  - Issues for trustees and insurance companies

Group compliance
- Aggregation of accounts where accounts are linked
- Expanded affiliated group requires group-wide FATCA compliance (unless IGA applies)

Confidentiality
- Review contractual confidentiality provisions in account terms and conditions
- Bank secrecy protections
- Data privacy protections
- Obtain waivers where needed
The final regulations set out three tests for determining whether an entity is an “investment entity FFI”

1. Primary Business Test
   - The entity primarily conducts a business of one or more of the following:
     i. trading in financial assets and other assets
     ii. portfolio management
     iii. otherwise investing, administering, or managing funds, money or financial assets on behalf of other persons

2. Gross Income Test
   - The entity’s gross income is primarily attributable to investing in financial assets and the entity is managed by another FFI

3. Investment Fund
   - Entity holds itself out as an investment fund or investment vehicle with an investment strategy of investing in financial assets
Owner-Documented FFI

- An owner-documented FFI is a type of FFI for which a withholding agent agrees to treat the FFI as owner documented.
- The withholding agent undertakes the additional due diligence and reporting required.
- The owner-documented FFI provides information on its owners to the withholding agent who, passes on the information of any substantial US owners to the IRS.
Critical for wealth management structures

- Proper analysis of the particular wealth management structures to determine their applicable FATCA classification is critical
- Common structures, entities and vehicles used in wealth management have different FATCA classifications depending on the facts
  - Family offices
  - Private investment companies (PICs)
  - Limited Liability Companies
  - Private Partnerships
  - Holding companies
  - Private trust companies
  - Family trusts
Registering with the IRS
The Registration Process - an overview

- FFI creates online account
  - FFI will enter irs.gov/FATCA and create an access code
  - FFI provides general entity information

- FFI completes registration form
  - FFI and its members will complete registration form by providing basic institutional information (address, incorporation details, branch country, points of contact, etc.)

- FFI receives registration approval
  - Once registration is approved:
    - FIs and branches will receive unique identifying number (GIIN)
    - Will be placed on the IRS FFI list
    - Which will be available to the public via irs.gov/FATCA
The Registration Process

1. Account creation – identify institution type.

2. Account confirmation – receive identification number

3. Registration part 1 – provide Lead FI legal name

4. Registration part 2 – provide country of tax residence

Etc
Registering with the IRS
The Registration Process – all the proposed steps

1. Account creation – Identify Institution type
2. Account Confirmation – Receive Identification Number
3. Provide Lead FI Name
4. Provide Country of Tax Residence Information
5. Provide Mailing Address
6. Provide QI, WP, WT indication
7. Provide Branch Information
8. Provide Responsible Officer (RO) Information
9. Provide Points of Contact Designations
10. Provide Member Information
11. Provide Qualified Intermediary status and details
12. Sign (electronically) the FFI agreement
13. Receive confirmation

Participating Foreign Financial Institution
You are now a PFFI
Registration Part 4: The Agreement
Sign and Check the box.

Once all lead and member information is entered/submitted, the FI will receive a message confirming that the registration process is complete.
The Registration Process

Sample FATCA home page

- All registered FIs will have a tailored homepage that displays key account information.
The IRS FFI list can be accessed via www.irs.gov

The IRS FFI list will be available in searchable form. Also as bulk download / the BIG LIST of FFIs
FFI Registration

FFI Registration Timeline
- FFI online Portal opens no later than 15 July, 2013
- GIINs will be issued beginning 15 October, 2013
  - IRS has indicated the system may generate GIINs automatically
- An entire EAG must be registered in order for any FFIs in the EAG to receive their GIINs
- The first IRS FFI list will be published 2 December, 2013, and will be published on a monthly basis
- The 2 December, 2013 list will be the only list published in 2013
- FFIs must register no later than 25 October, 2013
  - In order to ensure inclusion on the December 2013 IRS FFI list

FFI Registration Framework
- Registration is required for;
  - PFFIs, registered deemed compliant FFIs, Reporting Model 1 IGA FFIs,
  - and Reporting Financial Institutions under a Model 2 IGA
- USFIs will need to register any and all foreign branches
- Reporting Model 1 FFIs and Reporting FFIs under a Model 2 IGA can register
  - Even if the IGA has not been ratified
    - provided that the jurisdiction is listed on a list of IGA jurisdictions by the IRS
- Registration requirements will be included in future IRS guidance
Alphabet soup

- RO → Responsible Officer
- ATP → Authorized Third Party
- FIIN → FATCA Individual Identification Number
- ITIN → Individual Taxpayer Identification Number
- POC → Point of Contact
- GIIN → Global Intermediary Identification Number
- SSN → Social Security Number

- Work for Compliance - Allocation of Roles
- New field definitions for IT
The Registration Framework - as planned by IRS

Responsible Officer (RO)

In-House Authorised Third Party (A TP)

External Authorised Third Party (ATP)

Participating Foreign Financial Institution

1. Selects
2. Selects
3. Selects
4. Selects
5. Selects

- Affirmative Statement
- Positive ID verification
- FIIN issued

- Affirmative Statement
- Positive ID verification
- FIIN issued

- Affirmative Statement
- Positive ID verification
- FIIN issued

- Affirmative Statement
- Positive ID verification
- FIIN issued

- Affirmative Statement
- Positive ID verification
- FIIN issued

Max. of 5 POCs (at least one must be in-house to help during reg. process)

If step 3 not workable grants POA to

External ATP (must be U.S. licensed tax professional)

- Affirmative Statement
- Positive ID verification
- FIIN issued
FATCA Portal as a means of communication

- Issuance of GIIN
- Electronic communication

- Registration
- Group information
- Electronic communication

- Issuance of FIINs

- Registration
- Consolidated compliance group
- RO certification of compliance
- Renewal of QI status

People get FIINs

In-House Authorised Third Party (ATP)

External Authorised Third Party (ATP)

Responsible Officer (RO)
What the FATCA portal should be offering…

- Registration of Responsible Officer and Authorized Third Party
- Issuance of FIINs
- Registration of FFIs and groups of FFIs through lead FFI
- Consolidated compliance group
- Issuance of GIIN
- Cross check / validation of GIINs
- Certification of compliance and assurance by RO
- Electronic communication with the IRS
- Renewal of QI agreement for QIs
- Reporting under a single file format
FATCA Portal as a means of communication – extended to EAG

Compliant Foreign Financial Insitution

- PFFI
- Model 1 FFI
- U.S. Financial Institution

- FFI

- FFI

- PFFI
- Model 1 FFI
- U.S. Financial Institution

- FFI

- FFI

- FFI

- FFI

- FFI

- FFI

- FFI

Each PFFI within EAG must be PFFI or DCFFI except for limited FFUIs
All FFIs must register with IRS
Compliance in the drivers seat

FATCA Governance ➔ Compliance

- Responsible officer (RO) must establish compliance program which includes policies, procedures, and processes sufficient for PFFI to satisfy requirements of FFI Agreement
- The Final Regulations contain a “compliance FFI” concept
  - An EAG can designate one or more compliance groups as well as a compliance entity
  - The compliance FFI is responsible for performing a consolidated periodic review and will likely be able to provide a consolidated RO certification
  - An EAG may have multiple consolidated compliance groups
- Combined Year 1 and year 2 Responsible Officer certifications
  - Certification of:
    1. Completion of high value individual account review
    2. No processes in place to assist with avoidance of FATCA
    3. Completion of remaining preexisting account due diligence requirements
  - Due no more than 60 days following two year period for preexisting account due diligence
  - All certifications will be made online via the FFI Registration Portal
Compliance in the drivers seat

**Ongoing certifications**
- Required once every three years
  - In advance of the certification, the PFFI is required to review its compliance program and compliance with the FFI Agreement
  - RO will be responsible for certifying that;
    - PFFI maintains effective internal controls
    - There were no material failures during the certification period
    or
    - Any material failures that did occur were corrected
  - If a material failure has not been corrected, the RO can make a qualified certification

- A material failure can be either;
  - A deliberate action to avoid the requirements of the FFI Agreement
  or
  - A failure to implement sufficient internal controls

But...
- A material failure will not immediately result in default of the FFI Agreement
- Default will not immediately result in termination of the FFI Agreement
The experience in Switzerland

- The IRS and Department of Justice have demonstrated extraordinary willingness to:
  - Use the courts to enforce U.S. law
  - Prosecute banks and advisors in Switzerland

- Wegelin bank, oldest bank in Switzerland was indicted for conspiracy to help US persons evade tax
  - Wegelin shut down within 10 days of the indictment

- Numerous Swiss bankers and private client advisors have been indicted;
  - Are now wanted felons under US justice
  - Cannot leave Switzerland
  - Banking careers effectively over

- The casualty list is long and getting longer
The Various Initiatives

- QI system
- FATCA (Foreign Account Tax Compliance Act)
- FATF – Financial Action Task Force on money laundering
- EU Savings Directive (EUSD)
- Final withholding tax agreements
- Double Taxation Conventions (DTC)
- Tax Information Exchange Agreements (TIEA)
- Breadth of national measures

FATCA's place

- FATCA is the largest of a raft of initiatives aimed at creating full transparency (automatic information exchange) in tax (financial) matters worldwide

Final Goal

- The final goal is clearly Automatic Information Exchange
- Important when implementing a FATCA program, keep the big picture in sight
The bigger picture. Step 1: Proposed Framework in “Inter-governmental Approach for Improving Tax Compliance and Implementing FATCA”

- Banks collate account details
- Pass to local tax authorities
- Local tax authorities collate data
- Pass to IRS and Treasury
- IRS and Treasury reciprocate

- Cross Check
- Investigations
The bigger picture. Step 2: Bilateral Agreements (TIEAs)
We are already half-way here

- Banks collate account details
- Pass to local tax authorities
- Tax authorities share data on one-to-one basis
- Cross Check
- Investigations
Step 3: Automatic Information Exchange

- Each country accesses its own residents account data
- Easily scalable to include all OECD countries

The tCloud

- Client account details
- All participating countries

Account Holders
- Financial Institutions
- Data collection offices
  - Banks collate account details
  - Pass to collection office
  - Data is fed into the "tCloud"

Tax Authorities
- Each countries tax authorities have access to their own countries residents account details
- In each participating country

USA
- IRS

UK
- HMRC

Germany
- Steueramt

France
- Fiscale

Spain
- Fiscale

Italy
- Fiscale
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