

Foreign Account Tax Compliance Act (FATCA)

What We Know and Don't Know

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What is FATCA?

The State of the Law

- New Chapter 4 of the Internal Revenue Code (IRC)
 - Signed into law by President Obama on 3/18/2010
 - Effective prospectively for payments made on or after 1/1/2013
- Statute requires significant government guidance to be implemented
 - Treasury/IRS guidance is being published in waves
- What we have so far
 - The statutory provisions
 - Treasury/IRS Notice 2010-60 dated 8/27/2010 provided preliminary guidance on priority issues and requested comments
 - Treasury/IRS Notice 2011-34 dated 4/8/2011 provides preliminary guidance in response to priority concerns identified by commentators, modifies the 1st Notice and requests specific comments
 - Provides guidance in 7 areas of importance
 - Treasury/IRS Notice 2011-53 dated 7/14/2011 provides some transition relief regarding the implementation of the reporting and withholding provisions of FATCA

Treasury/IRS Guidance Needed

- **What we need:**
 - Proposed regulations, a comment period and a public hearing
 - Targeted for December 2011
 - Final regulations well before 12/31/2012
 - Targeted for June 2012
 - IRS agreement for foreign financial institutions
 - Draft targeted for January 2012
 - New tax certifications and/or revisions to Form W-8 series
 - New information return and tax return
 - Should Form 1042 and 1042-S be used for Chapter 4 withholding and reporting?
- **Observation:** Any delay in Treasury/IRS guidance
 - puts pressure on the effective date and
 - narrows the window for building needed systems and procedures
 - may cause FIs to develop transition systems and procedures before final regulations issued

FATCA Basics

- Objective is to combat offshore tax evasion by U.S. persons who invest
 - Directly through financial accounts maintained offshore
 - Indirectly through ownership of foreign entities
- Accounts held directly or indirectly by U.S. persons are referred to as “U.S. Accounts”
- Intent is to achieve this objective by expanding information reporting by financial institutions (FIs) to the IRS on U.S. owned offshore financial accounts
 - Unlike the present law requirement that a non-US controlled foreign intermediary or flow-through entity report only the U.S. source income of a U.S. person on Form 1099,
 - FATCA will require reporting on non-US source income, gross proceeds from the sale/redemption of U.S. securities and bank deposits owned by U.S. Accounts

More FATCA Basics

- Places reporting burden on the foreign financial institution (FFI) that carries the U.S. accounts
 - Unlike QI regime, FATCA does not presently permit an FFI to pass-up the reporting responsibility on a U.S. Account to an upper-tier financial institution
 - Statute does allow for withholding responsibility to be passed to an upper-tier FI
- Requires the disclosure of the identity of U.S. owners of privately held foreign entities
 - Potentially means looking through certain foreign corporations and foreign complex trusts to identify their owners
 - Current tax law treats only foreign partnerships, simple trusts and grantor trusts as transparent foreign entities

When Does FATCA Withholding Apply?

What Types of Payments Are Subject to Withholding?

- The Role of Withholding
 - 30 Percent FATCA withholding (new Chapter 4 withholding)
 - A tool for enforcing expanded reporting or disclosure requirements
 - FATCA is an overlay on current U.S. nonresident tax and backup withholding
 - If FATCA withholding applies, then the U.S. nonresident tax and backup withholding do not apply
 - If FATCA withholding does not apply, then the U.S. nonresident tax and backup withholding may still apply
- FATCA withholding applies to “withholdable payments”, including
 - U.S. source income from securities
 - Interest on bank deposit accounts maintained in the United States or in a foreign branch of a U.S. bank
 - Gross proceeds from the sale/redemption of U.S. securities or contracts that produce U.S. source dividends or interest
- Exceptions:
 - Income effectively connected with a U.S. trade or business
 - Unlike Form 1042-S, there is no presumption that payments made to US branches of foreign banks or insurance companies is effectively connected income
 - Payments on obligations outstanding on March 18, 2012 (“Grandfathered obligations”)

Grandfathered Obligations

- **Notice 2010-60:** The term “obligation” means any legal agreement that produces or could produce withholdable payments but does not include:
 - An instrument treated as an equity for US tax purposes
 - An agreement that lacks a definitive expiration or term (e.g., savings deposits, demand deposits)
 - A brokerage, custodial or similar agreement to hold financial assets for others and collect income
 - Any obligation that is materially modified. Such obligations will be treated as new instruments and no longer grandfathered.
- **Observation:** An FI is not required to apply the grandfather rule, but if it does, security data bases and contractual obligations will need to track grandfathered obligations and modifications
- **Examples of affected obligations:**
 - Debt obligations issued by U.S. corporations or the U.S. government or its agencies
 - Syndicated loans made to U.S. corporations
 - Repo agreements where the collateral seller is a U.S. legal entity
 - Obligations that produce pass-thru payments (Notice 2011-53)
- **Possible modifications:**
 - Repo roll-overs, revolving loans, taxable reorganizations

When Are Withholding Agents Required to Withhold Under FATCA?

- When paid to FFIs, unless
 - the FFI enters into an agreement with the IRS (a participating FFI), or
 - the FFI is a deemed-compliant FFI
 - The FFI is treated as excluded (e.g. hedging centers of non-FFI groups)
- When paid to non-financial foreign entities (NFFEs), unless
 - the NFFE discloses the identity of its U.S. owners to the withholding agent,
 - the NFFE certifies to non-US ownership, or
 - the NFFE is an excluded NFFE
- When a participating FFI elects to be withheld upon
- When paid by a participating FFI to a recalcitrant account,
 - A recalcitrant account holder is any account holder that does not comply with reasonable requests for information needed to determine if the account is a U.S. account or to report the account to the IRS

Withholding on Pass-thru Payments

- Participating FFIs (but not USFIs) must withhold on “passthru payments” made to recalcitrant account holders and nonparticipating FFIs
- **Statute:** A “pass-thru payment” is defined as a withholdable payment or other payment to the extent “*attributable to*” a withholdable payment
- **Notice 2011-34, Section 2,**
 - Explains the “attributable” to concept for the first time
 - Adopts a ratio of U.S. assets to total assets (the “passthru payment percentage” or “PPP) rather than direct tracing
 - PPPs must be calculated and published quarterly by participating FFIs and deemed-compliant FFIs
 - Their accuracy must be certified to the IRS every 3 years
 - If a participating FFI or deemed-compliant FFI does not publish its PPP, the PPP is deemed to be 100%.
 - The deemed PPP of a nonparticipating FFI is 0%.

Whose PPP Applies?

- For custodial payments:
 - A custodial payment is made by an FFI as a custodian, broker, nominee or other agent on a security issued by another entity
 - Use the PPP of the participating FFI that issued the debt or equity interest (the issuer's PPP)
- For non-custodial payments:
 - The payor is a participating FFI (including a non-U.S. hedge fund or private equity fund) that issued the debt or equity interest,
 - Use the payor's PPP
 - Exception: Debt or equity interests issued by a participating FFI that are regularly traded on an established securities market

Transition Relief from Chapter 4 Withholding

- **Notice 2011-53:**

- Postpones the start date for Chapter 4 withholding from January 1, 2013 to:
 - January 1, 2014 for US source FDAP income
 - Intent is to limit withholding on types of payments already subject to withholding under Chapter 3
 - Q: Will this effective date also apply to US source interest on bank deposits or short-term debt?
 - Existing withholding systems are not programmed to withhold 30 percent on such payments
 - January 1, 2015 for gross proceeds on US securities
 - January 1, 2015 or later for pass-through payments (for participating FFIs only)

How Do Participating FFIs and USFIs Become FATCA Compliant?

Duties and Obligations

Duties of Participating FFIs

- To avoid 30 percent FATCA withholding, an FFI must enter an agreement with the IRS and perform the following tasks:
 - Obtain information necessary to determine if each account is a U.S. account
 - Comply with verification and due diligence procedures to be prescribed by Treasury
 - File annual reports with the IRS on U.S. accounts
 - Withhold and pay the IRS 30 percent of pass-thru payments made to
 - Recalcitrant account holders,
 - FFIs that are not participating FFIs or deemed-compliant FFIs,
 - Non-compliant NFFEs, and
 - FFIs electing to be withheld upon
 - Comply with IRS requests for additional information on U.S. accounts
 - Obtain a waiver of foreign laws that would prevent reporting (e.g., privacy or bank secrecy laws) on a U.S. account or close the account

Duties of Compliant USFIs

- USFIs are withholding agents under FATCA if they have control, receipt, custody, or disposal of any “withholdable payment”
- USFIs must withhold 30 percent from a withholdable payment made to:
 - FFIs that are not participating FFIs or deemed-compliant FFIs
 - Participating FFIs that elect to be withheld upon, and
 - Noncompliant NFFEs
- But USFIs are not required to withhold under FATCA
 - on recalcitrant individual accounts
 - on pass-thru payments attributable to withholdable payments
- USFIs must identify and report to the IRS information on U.S. owners of NFFEs
 - Look-through foreign entities (FEs) and document their ultimate owners, unless the FE is an FFI or an excepted NFFE

What is a "Foreign Financial Institution" Under FATCA?

What is a Foreign Financial Institution (FFI)?

- Under FATCA, the term FFI is quite broad
- Includes any foreign entity that
 - Accepts deposits in the ordinary course of a banking or similar business,
 - Conducts a “substantial” portion of its business in holding financial assets for the account of others, or
 - Is engaged “primarily” in the business of
 - investing, reinvesting or trading in
 - securities, partnership interests or commodities, or
 - any interest therein (futures, forwards or options)
 - Securities is broadly defined and includes debt; equity; partnership interests; interest rate, currency or equity notional principal contracts; other derivatives, and hedges
- Includes foreign entities that are U.S. controlled (CFCs)
- **Observation:** FIs will need to identify:
 - all legal entities within a multi-national group that are FFIs, and
 - any clients or special purpose vehicles that are FFIs

Potential Types of FFIs

Custodians

- Broker-dealers
- Clearing organizations
- Trust companies
- Custodial banks
- Custodians of assets in employee benefit plans

Depository Banks

- Commercial banks
- Savings and loan associations
- Credit unions
- Building societies
- Cooperative Banking

Investment Vehicles

- Mutual funds
- Fund of funds
- Exchange Traded Funds (ETFs)
- Hedge Funds
- Private Equity Funds
- Venture Capital Funds
- Other Managed Funds
- Commodity Pools

Financial holding corporations

- Example – a bank holding company that does not conduct any banking business

Exclusions from FFI Definition

- FI is a legal entity formed under U.S. law (includes foreign branches of U.S. banks) or a U.S. possession
- FI is the U.S. branch of a foreign bank
- Excepted foreign organizations
 - Foreign governments, foreign central banks, International organizations, and entities that regulations will determine pose a low risk of tax evasion
- An FFI that is deemed-compliant, if the FFI:
 - Complies with IRS procedures to insure it maintains no US accounts and withholds on any accounts for non-participating FFIs
 - Alternatively, the IRS determines the FFI is in a class of entities for which FATCA compliance is not needed
- An FE that is a Non-financial foreign entity (an NFFE)
 - Must certify to non-US ownership, or
 - Disclose substantial US owners

Foreign Retirement Plans

- **Notice 2010-60:** Guidance will provide that certain foreign retirement plans pose a low risk of tax evasion and will be exempt from FATCA withholding
- May require that the retirement plan
 - (1) qualify as a retirement plan under the law of the country where established,
 - (2) is sponsored by a foreign employer, and
 - (3) does not allow US participants or beneficiaries other than those who worked in the foreign country where the benefits are accrued
- Commentators are pressing for a broader definition of an excluded foreign retirement plan

Insurance Companies As FFIs or NFFEs

- **Notice 2010-60:**
 - **Excludes from FFI definition**
 - Entities whose business consists solely of issuing insurance or reinsurance contracts that have no cash value (e.g., property and casualty or term life insurance)
 - Excluded insurance companies become NFFEs required to disclose specified US owners
 - **Includes in FFI definition**
 - Entities whose business includes issuing life insurance or annuity contracts that typically combine insurance protection with an investment component
- **Observation:** Need to know what products are sold by the insurance company

What is a Deemed-Compliant FFI?

- **Notice 2011-34 (Section III)**
 - Proposes certain categories of FFIs that will need to:
 - Apply to the IRS to be recognized as a deemed-compliant FFI
 - Obtain a special FFI-EIN
 - Re-certify every 3 years that the FFI continues to meet the requirements for a deemed-compliant FFI
 - Single Country Bank Groups will be deemed-compliant if:
 - Each FFI in an expanded affiliated group is organized, licensed and regulated as a deposit taking institution in the same country
 - No FFI operates or solicits account holders outside the country
 - Each FFI implements policies and procedures to ensure that it does not open or maintain accounts for non-residents, non-participating FFIs or NFFEs (other than excepted NFFEs in the same country)

Local FFI Members of Participating FFI Groups

- The IRS intends to treat any FFI member of a group that includes a participating FFI as a deemed-compliant FFI if:
 - The FFI member maintains no operations outside its country of organization
 - The FFI members does not solicit account holders outside its country of organization
 - The FFI member implements the pre-existing account and customer identification procedures required of participating FFIs to identify US accounts, non-participating FFIs and NFFEs (other than excepted NFFEs organized and operating in the same country)
 - If any such accounts are found, the FFI members will enter into an FFI Agreement, transfer the accounts to a participating FFI or close the accounts.

Collective Investment Vehicles

- The IRS intends to treat collective investment vehicles as deemed-compliant if:
 - All holders of record of direct interests are:
 - participating FFIs
 - deemed-compliant FFIs, or
 - Beneficial owners who are excluded foreign organizations
 - The fund prohibits the subscriptions/acquisitions in the fund by any person that is NOT in these categories
 - The fund certifies it will calculate and publish pass-thru payments percentages under Notice 2011-34, Section II

Exchange Traded Funds (ETFs)

- An ETF is a collective investment vehicle whose interests are regularly traded on an established securities market
- IRS is considering under what conditions a non-U.S. ETF could be treated as a deemed-compliant FFI
- FFIs that issue only debt or equity interests that are publicly traded do not maintain financial accounts that are subject to FATCA
- However, such FFIs would be required to
 - enter into an FFI Agreement,
 - withhold on pass-thru payments made to non-participating FFIs, and
 - certify that it will calculate and publish any pass-thru payment percentage under Notice 2011-34, Section II

Paying Agents and Transfer Agents

- Many FFIs employ paying agents or transfer agents to act on their behalf in making payments to direct interest holders or maintaining an ownership registry
- A deemed-compliant FFI or a participating FFI is responsible for ensuring that the applicable requirements are met
- However, the IRS intends to allow an FFI to use an agent to perform the necessary due diligence and take any action needed to maintain the FFI's status
- This will allow funds that are run and managed by third-parties to appoint the person (e.g. transfer agent, fund manager, etc.) responsible for meeting the funds obligations.

Qualified Intermediaries (QIs) and Withholding Flow-through Entities

- **Notice 2011-34 (Section V)**

- All FFIs that currently act as QIs will be required to consent to becoming participating FFIs,
 - Unless the QI is a deemed-compliant FFI
- Effective January 1, 2013 subject to transition rules not yet provided
- The same applies to Foreign Withholding Partnerships (FWPs) and Foreign Withholding Trusts (FWTs)
- Comments requested on how to coordinate FATCA requirements with U.S. nonresident withholding tax reporting and withholding obligations

Expanded Affiliated Groups of FFIs

- **Notice 2011-34 (Section VI)**
 - **Statute:** FATCA applies to every member of an FFIs expanded affiliated group
 - An expanded affiliated group includes
 - corporations that are more than 50 percent owned directly or indirectly by a common parent, and
 - Partnerships or other non-corporate entities that are controlled by members of the group
 - Each FFI affiliate in an FFI Group must agree to be a participating FFI or a deemed-compliant FFI
 - Each FFI affiliate will be responsible for fulfilling its own due diligence, withholding and reporting obligations
 - Each FFI affiliate will have its own FFI-EIN
 - Treasury/IRS are studying under what conditions an FFI Group might include non-participating FFI affiliates

Coordinated Application Process

- Each FFI Group will need to designate a Lead FFI
- The Lead FFI will complete and sign the FFI application on behalf of itself and each FFI affiliate, and will provide
 - Specific information on each FFI affiliate
 - Evidence that each FFI affiliate has granted the Lead FFI authority to act on its behalf
- Once the FFI agreement is signed, the Lead FFI will continue to act as a central contact point with the IRS, unless
 - the Lead FFI designates others to serve as ongoing points of contact (POC FFIs) for certain FFIs in a common line of business or operating country

Centralization Compliance Option

- For a participating FFI Group
 - members may designate an FFI in the Group as a Compliance FFI who will assume compliance oversight responsibility
 - Should U.S. shareholders of CFCs be Lead FFIs or Compliance FFIs?
- For collective investment funds
 - May allow centralized option for collective investment funds that have a common asset manager
- FFI agreements will be effective 1/1/2013 or a later signature date

What is a U.S. Account?

Classification of Accounts Under FATCA

- FIs need to determine whether to treat
 - An individual account holder as a U.S. person or a foreign person (or a recalcitrant account of an FFI)
 - An entity account holder as
 - a U.S. person
 - A foreign financial institution (FFI)
 - An excluded foreign organization (e.g., a foreign government)
 - A non-financial foreign entity (NFFE)
 - An FFI as
 - A participating FFI
 - A deemed-compliant FFI or
 - A Non-participating FFI
 - An NFFE as
 - A U.S. owned NFFE (having a substantial US owner)
 - A non-US owned NFFE (no substantial US owners)
 - An excluded NFFE
 - A recalcitrant account of an FFI
- **Observation:** Presents a new and completely different way to categorize client accounts and investors

U.S. Owned NFFEs

- An NFFE that has one or more “substantial” U.S. owners (other than excluded U.S. owners) is considered a U.S. owned NFFE
- Substantial ownership means more than 10 percent of:
 - Vote or value of a corporation’s stock
 - Profit or capital interest in a partnership
 - Any U.S. person that is an owner of a grantor trust and, to the extent provided in regulations, any U.S. person which holds more than a 10% beneficial interest in the trust
- **Observations:**
 - The 10% ownership threshold is lower than the 25% ownership threshold required by U.S. Patriot Act for privately held entities.
 - Most FIs identify the grantors of a trust but unless the FI is also the trustee of the trust, the FI seldom identifies the beneficiaries

Excluded U.S. Owners

- The following types of U.S. owners are NOT considered substantial U.S. owners of a NFFE
 - A corporation the stock of which is regularly traded on an established securities market and any of its affiliates
 - Any tax-exempt organization under IRC section 501(a) or an individual retirement plan
 - Any bank, any REIT or any RIC
 - The United States government, its agencies and instrumentalities
 - Any State, District of Columbia, US possession, political subdivision or its wholly owned agency or instrumentality
- Means that if all U.S. owners of an NFFE are of the type listed above, no information reporting to the IRS will be required by FATCA

Account Documentation

Account Documentation Issues

1. How will account opening procedures need to change to meet FATCA requirements?
2. Will an FI need to obtain additional information about new accounts?
3. Will an FI have to collect Forms W-8/W-9 from ALL its account holders?
4. Will an FI be able to continue to rely on documentary evidence or account statements of foreign status in lieu of Forms W-8 for offshore accounts?
5. Will an FI be able to rely on existing account documentation or will it be necessary to replace/refresh such documentation?
6. How much time will be permitted to classify accounts and obtain new information/documentation?

Preliminary Guidance on Documentation

- Notice 2010-60 addresses how and when FFIs and USFIs must document account holders step by step
 - Distinguishes pre-existing accounts from new accounts
 - Distinguishes individuals from non-individuals
 - Tougher requirements if individuals have certain U.S. indicia
- Notice 2011-34 §1 and Notice 2011-53 modifies procedures for existing accounts
 - For existing Private Banking accounts (whether account is for an individual or an entity), relationship managers (or their designees) must review both paper and electronic records
 - For other pre-existing individual accounts, an electronic search of account data bases for U.S. indicia is sufficient
- For new accounts, FIs must review all account information (including AML/KYC) even if not electronic
- Notice 2011-53: Phases in documentation requirements for existing accounts over 1-2 year period

Revisions to FFI Procedures for Pre-existing Individual Accounts

- FFI may treat all deposit accounts with a year-end balance of \$50K or less as non-U.S. accounts (even if documented as a U.S. account)
- FFI may treat custodial accounts with a year-end balance of \$50K or less as non-U.S. accounts, unless documented as a U.S. account
- For private banking accounts, the relationship manager (RM)
 - must identify accounts for which the RM has actual knowledge that the client is a U.S. person or has certain U.S. indicia
 - Request documentation establishing U.S. or foreign status for these accounts and a waiver of restrictions from U.S. accounts
 - Treat all associated accounts (including joint accounts) as U.S. accounts
 - Create and retain list of existing accounts and their classification
 - Complete the procedure within the first year
 - Repeat the procedure if RM subsequently become aware of U.S. indicia
 - Retain written requests and responses for 10 years

More Revisions to FFI Procedures for Pre-existing Individual Accounts

- List of U.S. indicia revised to
 - include U.S. place of birth and green cards, and
 - exclude P.O. box addresses outside the United States
- If an individual is born in the U.S. but is not a U.S. citizen, a written explanation of why not or renunciation is needed
- For high value accounts (other than Private Banking accounts)
 - the minimum value was lowered from \$1 million to \$500K,
 - a diligent search of the entire account file is now required, and
 - if find U.S. indicia, must obtain documentation within 2 years
- 5-year period for documenting all individual accounts that lack U.S. indicia has been eliminated
 - Means FFIs will not be required to document ALL individuals

Compliance Certification Requirement

- **Notice 2011-34**
- Chief compliance officer of a participating FFI must certify to the IRS the completion of the procedures for pre-existing accounts
 - Responsible officer will be required to certify that, between the publication date of Notice 2011-34, (April 8, 2011) and the effective date of the FFI Agreement, FFI management personnel did not engage in any activity or have any policies to direct, encourage or assist account holders in avoiding detection as U.S. account holders

What Are the Information Reporting Requirements?

Annual Reporting for Each U.S. Account

- **Statute:** requires a participating FFI to report
 - Name, address and TIN of each direct account holder that is a specified U.S. person
 - For each U.S. owned foreign entity, name, address and TIN of each substantial US owner of the entity
 - Account number
 - Account balance or value
 - Gross receipts/gross withdrawals or payments to the extent prescribed by Treasury
- Alternatively, an FFI can elect to report U.S. account on Forms 1099 in the same manner as a U.S. payor
 - Note: A U.S. controlled (50% or more) foreign corporation is a U.S. payor.

Reporting Developments

- **Notice 2010-60:**
 - IRS is developing a new information return
 - Electronic filing will be required
 - Account balance/value must be reported in USD
- **Notice 2011-34 (Section IV):**
 - Limits reporting on deposit and custodial accounts to year-end account balance/value (rather than the highest reported balance/value for the year)
 - For interests in an FFI, report in accordance with the most frequent determination of value
 - FFIs that are not U.S. controlled will not be required to report adjusted tax basis information on covered sales

Annual Report of Gross Receipts and Withdrawals

- **Notice 2011-34:** Minimizes the FFI reporting burden
 - For deposit and custodial accounts, requires reporting of
 - The gross amount of dividends, interest or other income paid or credited to the account;
 - No reporting of accrued but unpaid income (e.g., OID)
 - Gross proceeds from the sale or redemption of property paid or credited to the account,
 - but only if the FFI acted as a custodian, broker, nominee or other agent for the account holder
 - The FFI must use a consistent method to determine the amount and character of the payment :
 - Use U.S. tax principles,
 - The same principles used by the FFI in reporting on residents to the local tax administration, or
 - If none, use the same manner as for reporting to the holder
 - If neither, use generally applied accounting principles

More on Reporting Gross Receipts and Withdrawals

- **Notice 2011-34** also requires:
- For interests in an FFI, reporting of :
 - All distributions, interest and similar credits
 - Each redemption payment
- For closed or transferred U.S. accounts, reporting of:
 - Income paid or credited up to transfer or closure date;
 - Value or amount withdrawn or transferred
 - Account closure/transfer
- FFI who retains account statements to do so for 5 years and provide them to the IRS upon request

Transition Relief for Reporting

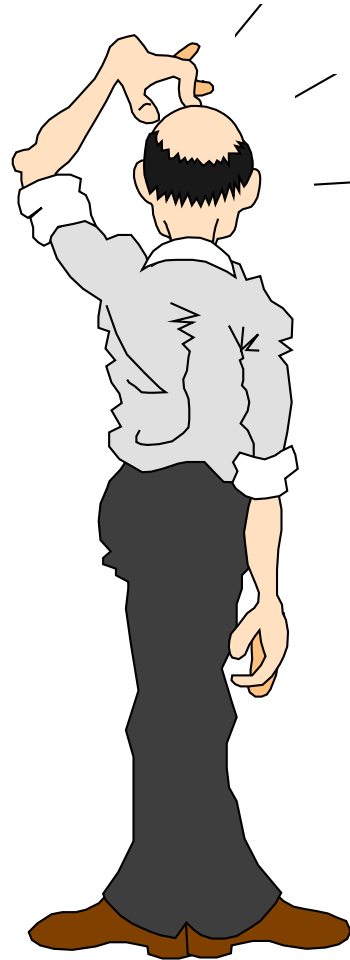
- **Notice 2011-53**
 - Simplifies and postpones reporting for first year only
 - Applies only to participating FFIs
- Reporting Relief for 2013
 - Reporting is due September 15, 2014
 - instead of February 28, 2014
 - Reporting applies to U.S. accounts for which Form W-9 is collected (including substantial U.S. owners of foreign entities) on or before July 1, 2014
 - instead of December 31, 2013
 - Required reporting is limited to information identifying the U.S. owner(s) and the showing account balance/value at December 31, 2013
 - Relief from reporting on gross income and gross proceeds for 2013
- No reporting relief provided for USFIs
 - May mean that USFIs (including the US controlled foreign corporations) must file full Forms 1099 for direct and indirect U.S. accounts for 2013

How to Prepare for FATCA

A Project Plan

- Phase 1 – Impact Analysis
 - Identify all legal entities and business units in scope
 - Inventory existing procedures and systems capabilities
- Phase 2 – Gap Analysis
 - What are the gaps between present procedures and FATCA requirements?
 - Contingency: Need Treasury guidance
- Phase 3 – Implementation
 - Enhance account on-boarding procedures?
 - Enhance electronic data bases of static account data?
 - Build new withholding system?
 - Build new reporting system?
 - Client communication

Any Questions?



Appendix

Treasury Proposal for Phased-in FATCA Implementation (Notice 2011-53)

Area	Requirement	Due Date
Guidance	Publication of proposed regulations	December 31, 2011?
	Identify grandfathered obligations	March 18, 2012
	Publication of final regulations	June 30, 2012?
Account Due Diligence	Apply FATCA compliant new account on-boarding procedures	USFIs - January 1, 2013
	Apply for PFFI Status to avoid FATCA withholding	January 1, 2013 to June 30, 2013
	Perform due diligence on pre-existing Private Banking accounts > \$500K	USFIs - January 1, 2014 PFFIs - July 1, 2014
	Perform due diligence on other pre-existing accounts	USFIs – January 1, 2015 PFFIs – July 1, 2015
Withholding / Reporting	USFIs report to IRS on US owned foreign accounts (Forms- 1099 for 2013?)	Due February 2014?
	PFFIs report to IRS on US owned offshore accounts (2013 year-end balance/value)	September 30, 2014
	Commence withholding on US source FDAP Income	January 1, 2014
	Commence withholding on gross proceeds from sales/redemptions of US securities	January 1, 2015
	PFFIs report to IRS on US owned offshore accounts (Account balance, income and gross proceeds paid in 2014)	March 2015?

Proposed Procedures for Classifying and Documenting Existing Entity Accounts

Step	Required Actions	Unless	Due Date
1	Treat U.S. entities as reportable US accounts	Entity is an excluded US entity type	Year 2
2	Conduct electronic search for entities organized under US law and presume is US account	Document as foreign entity or excluded US entity	Year 2
3A	Identify tentative FFIs by name or electronic search	Classified as U.S. entity above	Year 2
3B	Request FFI EIN and certification that is a participating FFI	Not provided within 2 years	Year 2
3C	Request documentation of status and treat as excluded NFFE	None provided within 1 year of request	Year 2
4A	Look for evidence that entity is engaged in a non-financial trade or business and exclude as NFFE	No such evidence on file	Year 2
4B	In 1 st year, request documentation of status and treat as excluded NFFE	No response is received within 1 year of request	Year 2
4C	If is NFFE, request documentation that is excluded NFFE or identify substantial U.S. owners and treat as U.S. account	No response is received within two years	Year 2

Proposed Procedures for Classifying and Documenting Individual Accounts

Step	Identify	Solicit	Treat As	When
1	Documented U.S. persons	N/A	US account	Year 1
1a	Deposit accounts with a year-end 2012 balance of ≤ \$50K (Optional)	N/A	Non-US account	Year 1
2	Other accounts with a year-end 2012 balance of ≤ \$50K (Optional)	N/A	Non-US account	Year 1
3a	Any Private Banking Accounts for U.S. persons (RM has actual knowledge) and value ≥ \$500M	Form W-9 and waiver of any restrictions	US account	Year 1
3b	Any Private Banking Accounts for U.S. citizens or lawful US permanent residents (RM performs diligent review) and value ≥ \$500M	Form W-9 and waiver of any restrictions	US account	Year 1
3c	Any Private Banking Accounts with a US birthplace or address (including US PO box) (RM performs diligent review) and value ≥ \$500M	Form W-9 and waiver, or Form W-8BEN, government issued evidence of non-US citizenship and explanation	US account, unless documented as foreign account	Year 1
3d	Any Private Banking Accounts with standing instructions to transfer funds to US or regular directions from US (RM performs diligent review) and value ≥ \$500M	Form W-9 and waiver or Form W-8BEN <u>and</u> documentary evidence of foreign status	US account, unless documented as foreign account	Year 1
3e	Any Private Banking Accounts with an “in care of” address or “hold mail” address as the sole address or a US power of attorney (RM performs diligent review) and value ≥ \$500M	Form W-9 and waiver, Form W-8BEN, <u>or</u> documentary evidence of foreign status	US account, unless documented as foreign account	Year 1
3f	Any Private Banking Accounts that the RM subsequently becomes aware have US indicia and value ≥ \$500M	Documentation described above	US account, foreign account or recalcitrant account after 1 year	Year 1
3g	Any Private Banking Accounts identified as US accounts above but lack documentation or a waiver of restrictions after 1 year	Documentation described above	Recalcitrant accounts	Year 1

Proposed Procedures for Classifying and Documenting Individual Accounts

Step	Identify	Solicit	Treat As	When
3f	Remaining Private Banking accounts perform diligent review	Documentation described in steps 3a through 3g	US account, documented foreign account or recalcitrant account	Year 3
4a	Remaining accounts and perform electronic search for U.S. citizens or residents	Form W-9	US account	Year 1
4b	Remaining accounts and perform electronic search for US birthplace or address (including US PO box)	Form W-9 or Form W-8BEN, government issued evidence of non-US citizenship and explanation	US account unless documented as foreign	Year 1
4c	Remaining accounts with standing instructions to transfer funds to US or regular directions from US	Form W-9 or Form W-8BEN <u>and</u> documentary evidence of foreign status	US account unless documented as foreign	Year 1
4d	Remaining accounts with only an “in care of” or “hold mail” address or US power of attorney	Form W-9, Form W-8BEN, <u>or</u> documentary evidence of foreign status	US account unless documented as foreign	Year 1
4e	Remaining accounts with US indicia that remain undocumented after 2 years	Documentation described above	Recalcitrant accounts	Year 3
5	Repeat Step 4 annually	Documentation described above	US account, foreign account or recalcitrant account after year end	Year 3 or later

Finding the Tax Law

- The relevant FATCA provisions are in Title V, Subtitle A, Part I of the Hiring Incentives to Restore Employment Act (“HIRE”), Public Law 111-147
- IRS Web site contains
 - A summary of key FATCA provisions
 - Notice 2010-60, dated 8/27/2010
 - Notice 2011-34, dated 4/8/2011
 - Notice 2011-53, dated 7/14/2011
 - Links to the Technical Explanations
- Go to www.irs.gov
 - Select businesses/international businesses , then
 - Open Foreign Accounts Tax Compliance Act (FATCA)

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