

News Briefing

Wolseley set to launch £1bn rights issue

Wolseley is planning to launch long-awaited £1bn rights issue as soon as the end of the week in an attempt to dig its way out from under its £3bn debt pile. The builders' merchant is also expected to announce writedowns at Stock, the loss-making US retail division. **Page 17**

Stanted inquiry del

The start of a second round of building of a second round and terminal at Stanted and by BAA has been postponed because of uncertainty over future ownership of the airport. **Page 2**

Brown's Capitol e

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Sharia bank

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Macquarie assurance

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Government bond rush

European banks have increased holdings of government debt. **Page 37, www.ft.com/eurobanks**

Gas investors burned

Violent price swings in the US natural gas market have taken investors by surprise. **Page 36**

Debt-laden Wolseley close to launching £1bn rights issue

By David Fickling, Kate Burgess and Neil Hume

Wolseley is planning to launch a long-awaited £1bn rights issue as soon as the end of the week in an attempt to dig its way out from under its £3bn debt pile.

The struggling builders' merchant is also expected to announce significant writedowns at Stock, the loss-making retail division heavily exposed to the stagnant US housing market.

The move follows a series of rights issues from UK companies, including HSBC's £12bn fund-raising plan yesterday. Amid forecasts that more than £50bn could be raised by UK companies by the end of the year, some investors now fear that the market will struggle to digest more capital raising.

Wolseley has lost nearly 80 per cent of its equity value since

June 2007 as falling profits in its core US market have hit revenues, and the weakness of sterling has seen net debt balloon. Shares in the company fell 10p to 190p, reducing its market capitalisation to £1.1bn.

Nearly 50 per cent of the market cap of Wolseley was wiped off the shares at the end of January after it announced the decline in the pound had seen net debt rise by 22 per cent in five months. Analysts at the time said the company would be unable to prevent itself breaching banking covenants which require its net debt to be no higher than 3.5 times earnings before interest, tax, depreciation and amortisation.

Analysts at UBS, house brokers, estimated Wolseley's equity in the year to July 31 would be £608m against net debt of £2.58bn. In an attempt to keep within the debt covenants,

Wolseley reduced working capital, cut jobs and set up an arrangement to raise cash from selling its pending invoices over the last five months of last year.

The company cut 7,500 jobs over the five months to the end of January. It also announced in October that it would close nearly a third of branches of Stock in North America.

Heavily-indebted companies in the housebuilding and construction sector have been particular targets of speculation around capital raisings.

There has been market speculation about an issue from Persimmon, one of the UK's largest housebuilders, when it reports its preliminary results today. Wolseley's results are expected on March 23.

The company was unavailable for comment.

Persimmon debt terms, Page 20

Companies and sectors in this issue

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Foreign Account Tax Compliance Provisions of HIRE:

Technical Overview and Practical Considerations

For Foreign Financial Institutions and Investment Vehicles

17th May, 2010

Chris Tragheim and Robert Bridson

Agenda

Background to the legislation

Technical overview

- Foreign Account Tax Compliance provisions enacted:
 - Enforcement of disclosure of U.S. Beneficial Owners
 - Effective Date
 - Application of New Chapter 4
 - Withholdable Payment defined
- Impact on Foreign Financial Institutions
- Reporting United States accounts
- Impact on other foreign entities
- Technical Overview
- FATC Decision Tree

Agenda

Practical considerations

- Observations on information collection and verification
- Definition of US person
- Lifting the corporate and trust veil
- Expanded affiliated groups
- Secrecy jurisdictions
- Processes, procedures and training
- Way forward risk assessment phase
- Foreign Account Tax Compliance Roadmap

Contacts

Background to the legislation

“The world has forever changed”

“In order to operate in a global market, institutions must be transparent”

- Most regulatory authorities are placing additional burdens on financial institutions to provide customer information
- Information reporting to tax authorities is a proven revenue generator
- U.S. Congressional hearings found substantial U.S. Tax evasion by U.S. taxpayers that held financial assets through offshore accounts and offshore entities



Foreign Account Tax Compliance provisions enacted

- Introduced in October 2009 as "Foreign Account Tax Compliance Act of 2009" or "FATCA"
- To improve tax compliance respecting offshore financial accounts owned by non-exempt U.S. persons
- Used as a revenue raiser to pay for "Hiring Incentives to Restore Employment Act" or "HIRE"
- Revenue estimate - \$8.7 billion over 10 years
- Signed into law – March 18, 2010



Enforcement of disclosure of U.S. Beneficial Owners

- New Chapter 4 of Internal Revenue Code created
- Imposes a new 30 percent withholding tax on
 - “withholdable payments” made to
 - “foreign financial institutions” (FFIs)
 - or non-financial foreign entities (NFFEs)
- Unless
 - FFI enters into an agreement with the IRS to identify and report certain US owners
 - NFFE discloses US owners or certifies to non-US ownership



Effective date

- Chapter 4 shall apply to payments made after December 31, 2012
- Payments on “obligations” outstanding on March 18, 2012 (the 2nd anniversary after enactment) are exempted from withholding
- Statutory provisions are not self-implementing
 - Substantial Treasury guidance is needed
 - IRS must draft an agreement for FFIs



Application of New Chapter 4

- New Chapter 4 is not an amendment to the existing Chapter 3 provisions (NRA withholding) for US non-resident tax
- Chapter 4 must be applied before existing Chapter 3 rules
- If withholding applies under Chapter 4, no withholding is required under Chapter 3
- Results in two tiers of potential withholding taxes on offshore financial accounts
- Tax documentation sufficient to avoid Chapter 3 tax may not suffice for Chapter 4



Withholdable Payment defined

- Chapter 4 definition is broader than Chapter 3
- Chapter 4 covers
 - Any US source FDAP income, including interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, and emoluments
 - Any gross proceeds from the sale of any property that could produce US source dividends or interest
 - Interest on deposits at foreign branches of US banks are resourced as US source income for purposes of Chapter 4 only
- But excludes income effectively connected with a US trade or business



Impact on foreign financial institutions

Provision

- Withholding agent must deduct 30% on withholdable payments unless FFI has entered into an agreement with the IRS
- Under the agreement the FFI agrees to:
 1. Obtain information regarding each account holder to determine if account is a US account
 2. Comply with verification and due diligence procedures to be prescribed by Treasury
 3. Report annually to IRS on U.S. accounts
 4. Deduct and withhold 30% from any pass through payment to a recalcitrant account holder or a non compliant FFI
 5. Comply with IRS requests for additional information on U.S. accounts
 6. Obtain a waiver where information is prevented from being reported because of foreign law and, if a waiver can not be obtained, close the account

Comment

- Content of Regulations will be crucial
- Link to KYC and anti-money laundering procedures
- Withholding is not an alternative to reporting
- Possible exemption if:
 - institution does not hold US accounts or
 - institution belongs to a class of institutions with low risk of tax evasion
- May require solicitation of additional information or documentation from existing account holders
- A compliant FFI may elect to be subject to withholding by an upstream withholding agent instead of doing withholding itself

Reporting United States Accounts

Provision

- Information to be provided by FFI is :
 1. Name, address and TIN of each account holder that is a U.S. person
 2. Name, address and TIN of each substantial U.S. owner
 3. Account number
 4. Account balance or value (at times determined by the Secretary)
 5. Gross receipts and gross withdrawals or payments from account
- Alternatively, elect to report income and gross proceeds paid to U.S. accounts on Forms 1099 in the same manner as a U.S. withholding agent

Comment

- Significant systems implications
- Content of Regulations will be crucial
- Covers all accounts held in expanded affiliated group
- Simplified cash-basis reporting on Form 1099 by non-US controlled FFI's is being considered

Impact on other foreign entities

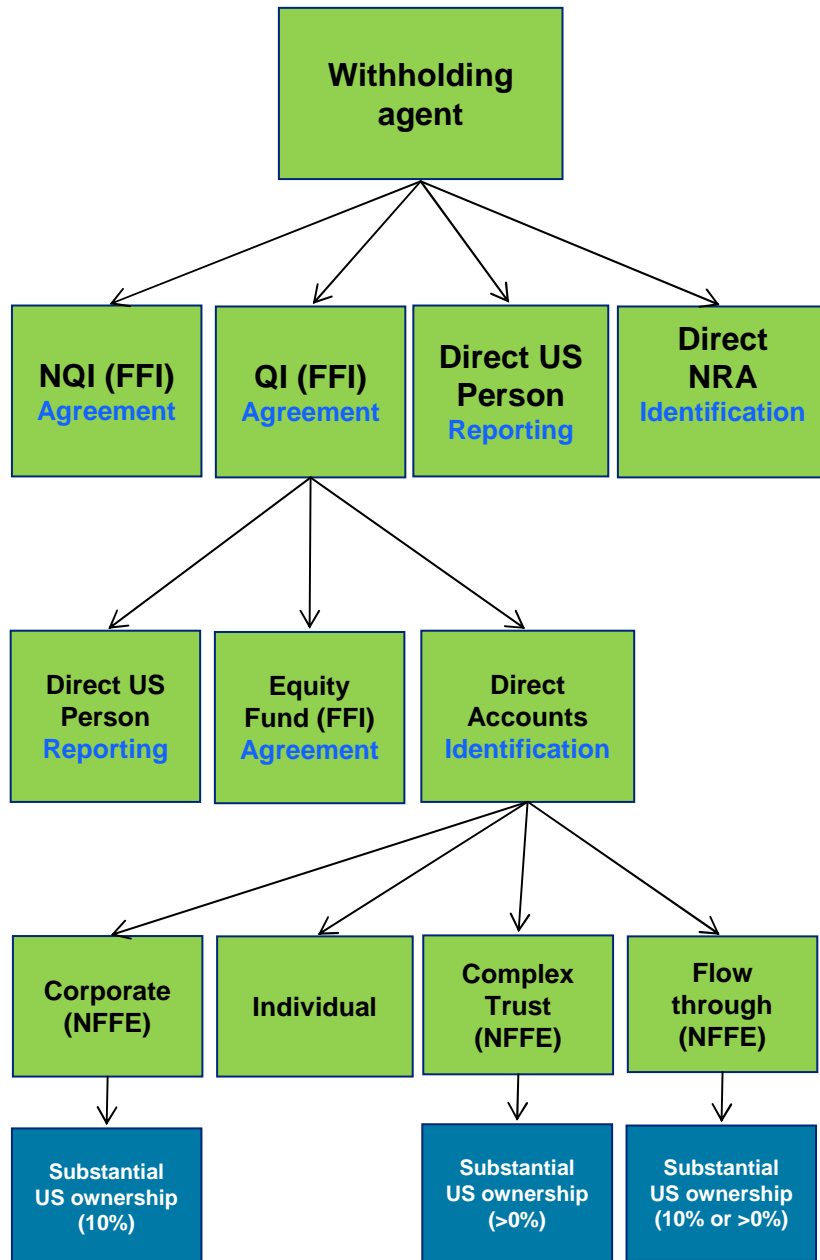
Provision

- Requires a withholding agent to withhold 30% on withholdable payments unless the foreign entity provides either:
 1. A certificate that it has no substantial U.S. owner or
 2. Provides name, address and TIN of each substantial U.S. owner

Comment

- Foreign entity is every entity that is not a foreign financial institution (NFFE)
- Limited exemptions
- How to identify FFI versus NFFE customers
- Significant systems implications

Technical overview



A financial institution for these purposes is:

- 1.any entity that accepts deposits in the ordinary course of a banking or similar business
- 2.any entity that is engaged in the business of holding financial assets for the account of others and
- 3.any entity engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities, interests in partnerships, commodities, or any interest (including a futures or forward contract or option) in such securities, partnership interests, or commodities. Accordingly, the term financial institution may include among other entities, investment vehicles such as hedge funds and private equity funds. Additionally, the Secretary may provide exceptions for certain classes of institutions.

A financial account is, except as otherwise provided by the Secretary:

- 1.any depository or custodial account maintained by a foreign financial institution and,
- 2.any equity or debt interest in a foreign financial institution (other than interests that are regularly traded on an established securities market)
- 3.any equity or debt interest that is treated as a financial account with respect to any financial institution is treated for purposes of this provision as maintained by the financial institution
- 4.the technical analysis anticipates that the Secretary may determine that certain short-term obligations pose a low risk of U.S. tax evasion and may exclude such debt for these purposes

Withholding agent:

- 1.a withholding agent includes any person, in whatever capacity, having the control, receipt, custody, disposal, or payment of any withholdable payment.

Reporting (except as provided by the Secretary):

- 1.the reporting requirements apply with respect to United States accounts maintained by a foreign financial institution and with respect to United States accounts maintained by each other foreign financial institution that is a member of the same expanded affiliated group as such foreign financial institution.

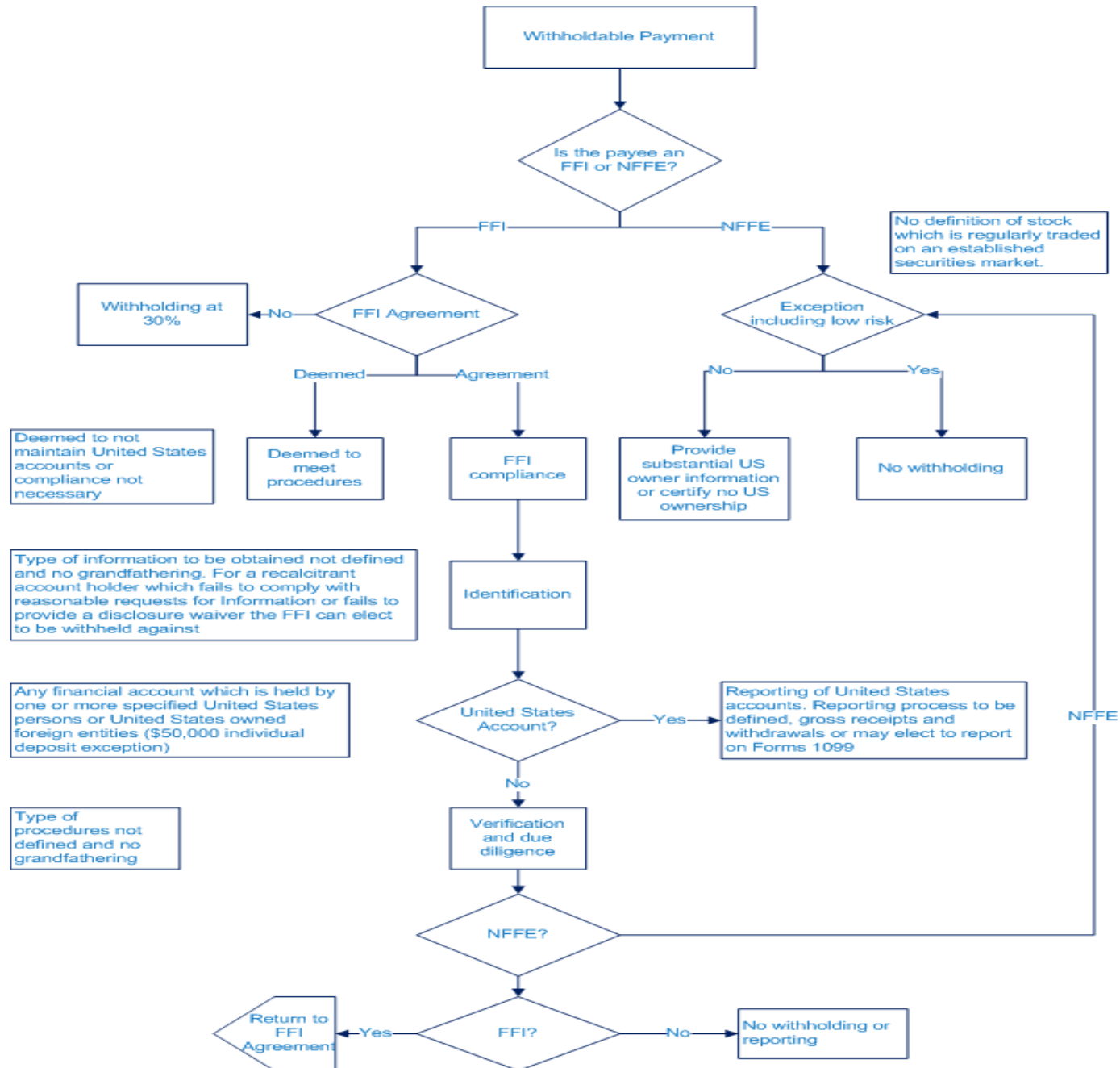
Withholdable payments (except as provided by the Secretary):

- 1.a withholdable payment is any payment of interest (including any original issue discount), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income from sources within the United States.
- 2.the term also includes any gross proceeds from the sale or other disposition of any property that could produce interest or dividends from sources within the United States, including dividend equivalent payments treated as dividends from sources in the United States pursuant to section 541 of the Act

A specified United States person is any U.S. person other than

- (1) a publicly traded corporation or a member of the same expanded affiliated group as a publicly traded corporation,
- (2) any tax-exempt organization or individual retirement plan,
- (3) the United States or a wholly owned agency or instrumentality of the United States,
- (4) a State, the District of Columbia, any possession of the United States, or a political subdivision or wholly owned agency of a State, the District of Columbia, or a possession of the United States,
- (5) a bank,
- (6) a real estate investment trust,
- (7) a regulated investment company,
- (8) a common trust fund,³⁵¹ and
- (9) a trust that is exempt from tax under section 664(c)352 or is described in section 4947(a)(1).

FATC Decision Tree



Observations on information collection and verification

- Intended that an FFI verify U.S. account status with account opening information and other information held by the FFI
- Negative presumption – need to check all accounts
- Is it easier just to collect Forms W-8?
- Often a multitude of information systems which do not talk to each other
- Movement of data across border may be an issue

Definition of US person

- Definition of a US person very wide
 - Dual citizens of the U.S. and another country
 - U.S. Citizens even if residing outside the United States
 - U.S. Passport holder
 - Born in the US unless renounced citizenship
 - Is a lawful permanent resident of the United States, regardless of where they reside (i.e. a holder of a “green card”) or
 - Substantial presence test: a non-U.S. Citizen that:
 - Is physically present in the United States for at least 183 days by counting
 - All the days (at least 31) in the current year
 - 1/3 the days in the immediately preceding year and
 - 1/6 the days in the second preceding year
 - Is not a diplomat, teacher, student or an athlete
- Can you rely on a “reason to know”?
- Tracking of any changes in status required
- Limited exemptions

Lifting the corporate and trust veil

- Provisions enable the IRS to obtain more ownership information than current requirements
- The FATC provisions move beyond traditional beneficial owners
- Substantial impact on Mutual Funds, Hedge Funds and Private Equity Funds because they are classified as FFIs
- Collective Investment Vehicles are classified as FFIs in the legislation although certain types may be ruled out if low risk of tax evasion
- Information on owners of foreign entities may not be readily available
- Additional data will need to be collected and verified, reported and stored

Expanded affiliated groups

- Broadly expanded affiliated groups include:
 - 50% group members
 - Partnerships if controlled by group members
- Original proposal envisaged affiliated groups under one agreement but the law allows individual agreements
- IRS expects to discuss all group members at the same time



Secrecy jurisdictions

- If any foreign law would prevent the reporting of a US person then an FFI must attempt to obtain a waiver and if not obtained within a reasonable period of time, close the account
- Requirement to close accounts, in these circumstances, can be contra to local law
- Need to track responses



Processes, procedures and training

- Clear that processes, procedures and training fundamental to success
- US Treasury envisions a model of continuing dialogue with affected parties
- Possibility of “staging”
- Possibility of different standards being applied, at least temporarily, to new accounts versus existing accounts



Way forward

- Regulations to be published by Treasury are crucial to understanding the implementation requirements
- At least a dozen key areas where the Secretary has discretion
- Even with the uncertainties many organisations starting to define strategy and build a project team
- Start with Risk Assessment



Way forward – risk assessment phase

Scope

- Structured communications
- Awareness workshops
- Training
- Organisational structure
- Appropriate segmentation
- Critical data streams

Risk assessments

- Analysis of operations and products
- Review of policies and procedures

Data

- Data quality review
- Assurance gap analysis

Gap analysis

- Definition of requirements
- Diagnostic tool
- Reporting obligations

• Methodology

- Gap analysis
- Interview versus questionnaire based approach
- Diagnostic
- Pilot
- Risk based approach
- Reporting framework
- Implementation plan
- Business as usual

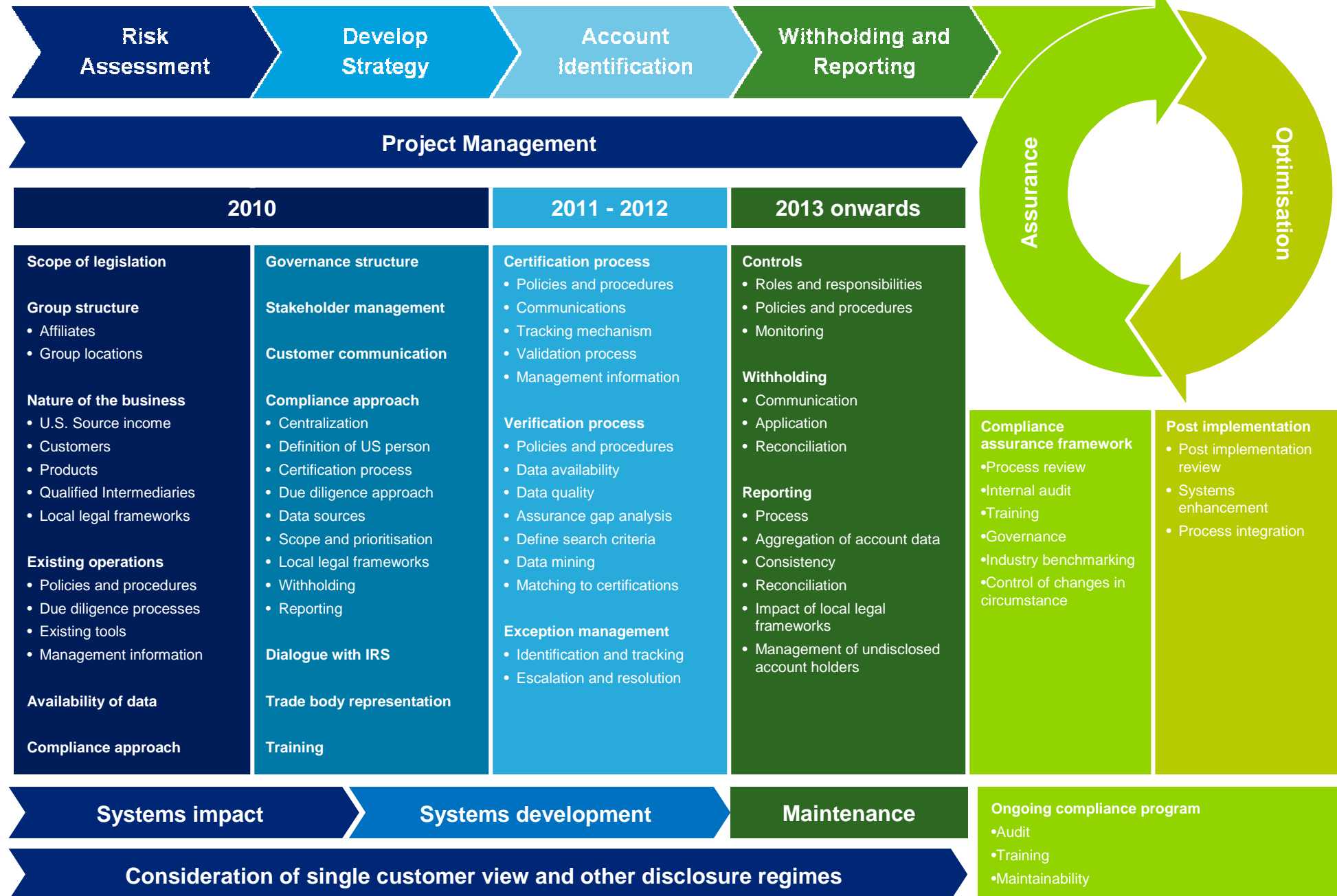
Dialogue with IRS

- Timing
- Representation

Compliance approach

- Health check review
- Assurance on policy and practice

Foreign Account Tax Compliance Roadmap



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