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FATCA Update – The Proposed Regulations are here!

Webcast | February 21, 2012



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With You Today



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Agenda

- 1. Recap of Where We Have Been**
- 2. The FATCA Timeline**
- 3. Changes to FFI Process**
- 4. What Is an Account? What Is a Withholdable Payment?**
- 5. Overview of the FATCA Process**
- 6. Reporting**
- 7. Industry Focus**
- 8. Next Steps**

What industry are you in?

Question 1

1. Banking and capital markets
2. Asset Management
3. Insurance
4. None – I am only here for the CPE credits

Where Have We Been?

Recap of FATCA

Purpose of FATCA

- Prevent and detect offshore tax evasion
- Increased information reporting
- Enforced by withholding tax

Major functions impacted by FATCA

- Client on-boarding
- Tax reporting
- Tax withholding
- Governance

Regulatory process – Where are we? Where have we been?

Recap – The FATCA Notices

<i>Notice</i>	<i>Issued</i>	<i>Topics covered</i>
2010-60	8/29/2010	<ol style="list-style-type: none">1. Defined the scope of certain grandfathered obligations2. Provided initial guidance on what entities would be considered FFIs and NFFEs3. Set forth the account due diligence procedures with respect to new and preexisting accounts held by individuals and entities4. Provided initial guidance on the information required to be reported by FFIs with respect to their US accounts and recalcitrant account holders5. Requested further comments on a number of issues
2011-34	4/8/2011	<ol style="list-style-type: none">1. Modified the account due diligence procedures for preexisting accounts held by individuals2. Provided initial guidance regarding the definition and identification of passthru payments3. Provided guidance on initial categories of FFIs that would be deemed compliant with the requirements of section 1471(b)4. Modified and supplemented the guidance in Notice 2010-60 regarding the reporting required of FFIs with respect to their US accounts5. Provided initial guidance regarding the interaction of the qualified intermediary (QI) regime and chapter6. Provided initial guidance regarding the application of section 1471(b) to expanded affiliated groups
2011-53	7/14/2011	<ol style="list-style-type: none">1. Provides for phased implementation of certain requirements under chapter 42. Discusses certain substantive and procedural matters

Multilateral Efforts

The Joint Statement

- IRS considering intergovernmental partnerships to:
 - Avoid legal impediments to compliance
 - Simplify practical implementation
 - Reduce FFI costs
- Would allow FFIs in so-called “FATCA partner countries” to take a different path to compliance
- Could eliminate passthru withholding for eligible FFIs
- France, Germany, Spain, Italy and UK issued a joint statement with US

In my company, FATCA is led by:

Question 2

1. Corporate Tax
2. IT
3. Operations
4. Project manager
5. Compliance
6. I'm just here for the CPE

Timelines

Timelines – Phased Implementation

- FFIs and USFIs each have their own timeline
- Phased implementation starting in 2013, and ending in 2017
- Some systems and procedures need to be ready on Jan 1, 2013
- Major key dates:
 - January 1, 2013 – USFIs need new account procedures in place
 - January 1, 2014 – FATCA withholding commences on withholdable payments
 - July 1, 2014 – Need to certify due diligence is complete on high value accounts
 - September 30, 2014 – First FATCA reporting is due
 - January 1, 2017 – FATCA withholding scheduled to commence on foreign passthru payments

FATCA Timeline – For FFIs (for Agreements Effective July 1, 2013)

	2012	2013	2014	2015	2016	2017
FFI Governance		<ul style="list-style-type: none"> Jan 1 2013 – FFI can enter into FFI Agreement online (Note 1) Jul 1 2013 – IRS encourages FFIs to sign up by July 1 2013 to ensure readiness by Jan 1 2014 	<ul style="list-style-type: none"> Jul 1 2014 – Certify completion of review of pre-existing high value individual accounts (Note 2) 	<ul style="list-style-type: none"> Jul 1 2015 – Certify completion of account identification procedures and documentation requirements for all other pre-existing individual accounts 	<ul style="list-style-type: none"> Jan 1 2016 – Two-year transition period ends for "Limited FFIs" and "Limited Branches" 	
Due diligence for pre-existing accounts			<ul style="list-style-type: none"> Jul 1 2014 – Complete due diligence for any pre-existing account holder that is a prima facie FFI Jul 1 2014 – Complete due diligence for high value accounts 	<ul style="list-style-type: none"> Jul 1 2015 – Complete due diligence for all other pre-existing accounts 		
Due diligence for new accounts		<ul style="list-style-type: none"> Jul 1 2013 – New account opening procedures must be in place to identify US accounts (Note 3) 				
Withholding	<ul style="list-style-type: none"> Jan 1 2013 – Cut-off date for grandfathered obligations 		<ul style="list-style-type: none"> Jan 1 2014 – FATCA withholding begins on US source FDAP income 	<ul style="list-style-type: none"> Jan 1 2015 – FATCA withholding begins on gross proceeds 		<ul style="list-style-type: none"> Jan 1 2017 – FATCA withholding expected to begin for foreign passthrough payments
Reporting			<ul style="list-style-type: none"> Sep 30 2014 – Begin limited reporting for US accounts and aggregate reporting for recalcitrant accounts (calendar year 2013) with respect to accounts identified as of June 30 2014 (Note 4) 	<ul style="list-style-type: none"> Mar 15 2015 – Begin Form 1042 FATCA reporting Mar 15 2015 – Begin Form 1042-S FATCA reporting (calendar year 2014) for US source FDAP income 	<ul style="list-style-type: none"> Mar 15 2016 – Form 1042-S reporting (calendar year 2015) now includes gross proceeds; as well as foreign reportable amounts paid to NPFIs Mar 31 2016 – Reporting on US accounts (calendar year 2015) required to include income associated with the US account 	<ul style="list-style-type: none"> Mar 15 2017 – Form 1042-S reporting (calendar year 2016) expected to include foreign passthrough payments Mar 31 2017 – Reporting for US accounts (calendar year 2016) required to include proceeds paid to US accounts

(1) IRS may make the online FFI registration system available before Jan 1 2013

(2) As part of the first certification, FFI must certify that it did not have any procedures in place from August 6, 2011 that would assist account holders in the avoidance of FATCA

(3) New accounts are generally permitted a 90-day grace period before being treated as recalcitrant

(4) Limited reporting includes name, address, TIN, account number, and account balance of each specified US person who is an account holder. For account holders that are NFFEs that are US owned foreign entities, report name, address and TIN (if any) of such entity and each substantial US owner of such entity

FATCA Timeline – For US Withholding Agents (including USFIs)

	2012	2013	2014	2015	2016	2017
Due diligence for pre-existing and new entity Accounts (Notes 1 and 2)		<p>◆ Jan 1 2013 – New account opening procedures must be in place to classify entity-owned accounts</p>		<p>◆ Jan 1 2015 – Complete due diligence on pre-existing non-US entity accounts</p>		
Withholding		<p>◆ Jan 1 2013 – Cut-off date for grandfathered obligations</p>	<p>◆ Jan 1 2014 – FATCA withholding begins on US source FDAP income, including payments to pre-existing entity accounts held by prima facie FFIs and documented NPPFIs</p>	<p>◆ Jan 1 2015 – FATCA withholding begins on gross proceeds</p>		
Reporting			<p>◆ Mar 15 2014 – Begin reporting on substantial US owners of US-owned foreign entities (calendar year 2013) (Note 3)</p>	<p>◆ Mar 15 2015 – Begin Form 1042 FATCA reporting</p> <p>◆ Mar 15 2015 – Form 1042-S reporting (calendar year 2014) on US source FDAP income</p>	<p>◆ Mar 15 2016 – Form 1042-S reporting (calendar year 2015) now includes gross proceeds</p>	

- (1) US Withholding Agents only perform due diligence on entity clients, not on individuals
- (2) The due diligence process must be completed prior to making a withholdable payment
- (3) Reporting requirements include name of the US owned foreign entity; and name, address and TIN of each substantial US owner

When does FATCA withholding begin?

Question 3

1. FATCA withholding was delayed until 2017
2. FATCA withholding begins immediately
3. FATCA withholding begins on January 1, 2014 for US source FDAP withholdable payments
4. Don't know

Changes to FFI Process

Administrative Procedures for FFIs

Registration for PFFI status

- Commences January 1, 2013
- Online registration process

Every member of the group needs to be

- A Participating FFI
- Deemed Compliant FFI
 - Certified Deemed Compliant
 - Registered Deemed Complaint
- *Limited FFI or Limited Branch*

More FFIs Qualify for Reduced Compliance Requirements

Certified deemed-compliant

- Must certify to withholding agent on Form W-8 that it meets requirements:
 - Non-registered local banks
 - Retirement plans
 - Non-profit organizations
 - FFIs with only low-value accounts

Owner-documented FFIs

IRS may provide additional categories

Deemed-compliant does not mean “free pass”

More FFIs Qualify for Reduced Compliance Requirements (continued)

Registered deemed-compliant

- Must register with IRS, agree to conditions, and certify that it meets requirements every 3 years:
 - Local FFI
 - Non-reporting members of participating FFI group
 - Qualified collective investment vehicles
 - Restricted funds
 - FFIs that comply with deemed compliant status under intergovernmental agreement

Transitional Rule for Limited Branches and Limited FFIs Expires January 1, 2016

- Each member of EAG must be a PFFI or a deemed-compliant FFI
- Local law conflicts for branches or subsidiaries in some countries
- Two year transition provided until January 1, 2016
- During transition period
 - Non-participating FFI will not prevent other FFIs within EAG from entering into FFI agreements
 - But FFI in restrictive jurisdiction must agree to perform due diligence to identify US accounts, maintain records and meet certain other requirements
- FATCA withholding will apply on amounts paid to limited branches and subsidiaries

FATCA withholding does NOT apply to which of the following payments?

Question 4

1. Portfolio interest income exempt from NRA withholding
2. Interest on short term debt obligations (under 183 days)
3. US source dividends that qualify for a reduced rate of withholding under an income tax treaty

Verification of Compliance

Certifications required of a “responsible officer”:

1. To the best of responsible officer knowledge, from August 6, 2011 until the date of certification, no formal or informal practices or procedures were in place to assist account holders in the avoidance of FATCA;
2. Within one year of the effective date of the FFI agreement, the responsible officer is required to certify to the IRS that the participating FFI has completed the review of all high value accounts; and
3. Within two years of the effective date of the FFI agreement, the responsible officer is required to certify to the IRS that the participating FFI has completed the review of all other accounts.

Verification of Compliance (continued)

The responsible officer of the participating FFI will also need to periodically certify to the IRS:

1. Conducted periodic reviews of the FFI's compliance with due diligence, withholding and reporting obligations under the FFI agreement.
2. The responsible officer may be required to provide certain factual information and to disclose material failures with respect to the participating FFI's compliance with any of the requirements of the FFI agreement.
3. Verification of compliance through a third-party audit is not required of FFIs.
4. The IRS may choose to perform an audit of the FFI in instances of suspected trends of compliance failures.

What Is an Account?

What Is a Withholdable Payment?

Financial Accounts

Term financial institution means any entity that	The term financial account means
Accepts deposits in the ordinary course of a banking or similar business	A commercial, checking, savings, time, or thrift account, or an account which is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument
Holds, as a substantial portion of its business, financial assets for the account of others	An account for the benefit of another person that holds any financial instrument or contract held for investment
Is engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities, partnership interests, commodities, notional principal contracts, insurance or annuity contracts, or any interest in any of the above	<p>Any equity or debt interest. In the case of equity:</p> <p>Partnership – Equity means capital or profits interest in the partnership</p> <p>Trust – Equity means either an interest held by a person treated as an owner of all or a portion of the trust or a person holding a beneficial interest in the trust</p>
Is an insurance company (or the holding company of an insurance company) that issues or is obligated to make payments to a financial account	Any amount held by an insurance company under an agreement to pay or credit interest thereon; and cash value insurance contracts and annuity contracts issued or maintained by FFI

Financial Accounts, Exceptions

- Debt or equity regularly traded on an established board or exchange
- Accounts held by “exempt beneficial owners” (or by NPFIs that hold solely on behalf of exempt beneficial owners)
 - Exempt beneficial owner – e.g., Foreign governments, International organizations, Foreign central banks of issue, Certain foreign retirement plans
- Equity or debt interests in an FFI that:
 - Is a bank or holds financial assets for the account of others, and
 - Value of interest is not determined by reference to assets that give rise to withholdable payments – i.e., conventional debt and equity is excluded
- Certain Savings accounts
 - Local requirement – Plan organized to provide retirement or pension under laws of country of organization
 - Contribution requirement – Limited by reference to earned income
 - No beneficiary has right to more than 5% of plan’s assets
 - Other requirements
- Contracts that provide pure insurance (term life, health, property, etc., but no investment component or cash value)

Which of the following type of entities could qualify for “deemed-compliant” status?

Question 5

1. Qualified FATCA compliant agent
2. Transfer agents operating outside the US
3. Qualified collective investment vehicles

Grandfathered Obligations

Grandfathered obligations – Payments on grandfathered obligations are exempt from FATCA tax withholding

- Extended date from March 18, 2012 to January 1, 2013
- Material modifications
- Must have fixed term
- Cannot be equity
- Due diligence – Must still perform due diligence on financial accounts under a grandfathered obligation
- Reporting – Grandfathered obligation status only impacts FATCA withholding obligations; still have to report

What Is not a Withholdable Payment?

Withholding agent lacks control, custody or knowledge

Payments where the withholding agent has no control over or custody of money or property owned by a payee or beneficial owner of a payment, or lacks knowledge of the facts giving rise to such payments (e.g., wire transfers out of deposit accounts)

Certain short-term obligations

Payments of interest on short-term obligations (183 days or less)

Effectively connected income

Certain income effectively connected with the conduct of a trade or business in the US

Ordinary course of business payments

Payments made in the ordinary course of the withholding agent's business for nonfinancial services, goods, and the use of property

Gross proceeds from sales of excluded property

Gross proceeds from the sale or other disposition of any property that can produce US source FDAP income excluded from the definition of withholdable payment

Sales of Fractional Shares

Sales of a fractional share of stock with gross proceeds less than \$20

Certain accrued interest

Part of Gross Proceeds – Withholding in 2015

Passthru Payments

- IRS responded to comments from stakeholders about identifying, calculating and withholding on foreign passthru payments:
 - Costs
 - Administrative complexity
 - Legal impediments
- Withholding on foreign passthru payments deferred until at least 2017
- In the interim, FFIs must report annually to IRS the aggregate amount of certain payments made to each nonparticipating FFI
- Treasury requests comments on approaches to reduce burden, as well as use of US entity as a “blocker”
- Treasury considering safe harbors for FFIs that elect not to calculate passthru payment percentage

Which of the following pre-existing accounts must be searched diligently (e.g., search all paper files)?

Question 6

1. Private banking accounts
2. Accounts owned by US people living abroad
3. Accounts owned by individuals with a balance in excess of \$1,000,000

Overview of the FATCA Process

Overview of the FATCA Process

General high level steps

- Identify the payee
- Document the payee
- Withhold if required based upon the documentation received, or the lack thereof
- Report with respect to payments made to the payee where required

Identification of the Payee

- Approach for FATCA based upon current rules under chapter 3
- Look to status under chapter 3 and chapter 4
- General Rule – Account Holder is the Payee subject to the following key exceptions:

Account Holder Status Chapter 3	Account Holder Status Chapter 4	Payee
Intermediary – Other than a withholding QI	NFFE & PFFI	Party for whom the Intermediary acts
	NPFFI & others	Intermediary
Intermediary – Withholding QI	PFFI	Intermediary
Flow-through Entity	NPFFI, Active NFFE, Excepted FFI, WP, & WT	Flow-through Entity
	Others	Party for whom the Flow-through Entity acts

Documentation and Documentary Evidence

Three principal documentation standards:

- General – Withholding certificate is always acceptable
 - Offshore Obligations – Documentary evidence and/or written certifications acceptable
 - Transition Rule – Generally applicable until 2017 – Reliance on current documentation plus documentary evidence
 - Documentation Rules generally follow chapter 3 rules
- Beneficial provisions
 - Six month reliance period on existing withholding certificates when new version issued
 - Retroactive treatment of withholding certificates received after payment is made
 - Electronic transmission of withholding certificates – Includes by facsimile
 - Documentary evidence good until expiration
- Presumption Rules in the absence of documentation

Modified Account Due Diligence Rules

Individuals

Pre-existing individual accounts

- Eliminated private banking rules
- \$50,000 or less – Exempt from review
- \$50,000 to \$1,000,000 – Electronic review only
- More than \$1,000,000 – Review electronic and non-electronic files, and include actual knowledge of relationship manager

Indicia of US status

- Added US telephone number as indicia of US status
- Removed indicia for “directions regularly received from a US address”

For calendar year 2013, what new information does a participating FFI have to report under FATCA and when is the reporting due?

Question 7

1. Account balances for specified US persons, due September 30, 2014
2. US source FDAP paid to specified US persons, due March 31, 2014
3. Gross proceeds from sales of US securities, due March 31, 2015

Modified Account Due Diligence Rules

Entities

Pre-existing Entity Accounts

- \$250,000 or less – Excluded from review, until account balance exceeds \$1,000,000
- May rely on “AML due diligence” requirements and other existing account information to determine whether the entity is
 - FFI
 - US person
 - NFFE excepted from documenting its substantial US owners (i.e., it is engaged in a nonfinancial trade or business), or
 - Passive investment entity (referred to as a “passive NFFE”)
- Passive NFFEs – Must identify substantial US owners
 - Balance more than \$1,000,000 – Must obtain information re substantial US owners
 - Balance not more than \$1,000,000 – May rely on information collected for AML

Reporting

More Clarity and Definition on Reporting Requirements

2014 and 2015 – Limited Reporting for FFIs (for calendar years 2013 and 2014)

- Specified US persons
 - Report name, address, TIN, account number, account balance
- NFFEs that are US-owned foreign entities
 - Report name, address, TIN, account number of entity and each substantial US owner of such entity
- Reporting dates
 - 2013 – Report on 9/30/14, data as of 6/30/14
 - 2014 – Report on 3/31/15, data as of 12/31/14

More Clarity and Definition on Reporting Requirements (continued)

2016 – Report US source FDAP (for calendar year 2015)

- In addition to information reported in 2013 – 2014, begin to report US source FDAP income
- Reporting due 3/31/2016

2017 – Report gross proceeds (for calendar year 2016)

- In addition to information reported in 2013-2015, begin to report gross proceeds
- Reporting due 3/31/2017

Aggregate reporting

- FFIs must report aggregate amounts paid in 2015 and 2016 to non-participating FFIs
- Concession for delay of withholding on foreign passthru payments

When may an FFI register online to become a participating FFI?

Question 8

1. July 1, 2014
2. January 1, 2013
3. January 1, 2014

Industry Focus

Key Considerations for Asset Managers

- Additional categories of deemed-compliant FFIs
 - Restricted funds
 - Qualified collective investment vehicles
- Payments to foreign partnerships and trusts – Look-through rule for identifying payee
- Modified procedures for due diligence on investors
- Temporary (2 yr) safe-harbor for funds that cannot become PFFIs (Limited FFIs)
- Withholding on foreign passthru payments delayed until 2017
- Asset-based computation of passthru payment percentage delayed
- New procedures required to verify compliance

Special Rules for Insurers

Clarity provided on several matters:

- Who is the account holder?
- What is an insurance company?
- Greater thresholds for reviewing pre-existing accounts (cash value insurance or annuity contracts)
 - Not more than \$250,000 – Exempt from review
 - More than \$250,000, less than \$1,000,000 – Electronic review
- Specifically identified what is financial account
- Cash value exclusions
 - Refunds to policyholders
 - Certain policyholder dividends

What are the greatest challenges to organizing your (global) implementation team?

Question 9

1. Training and awareness
2. Budget
3. Enabling implementation consistency
4. Lack of resources
5. All of the above

Next Steps

Additional Guidance to Be Issued

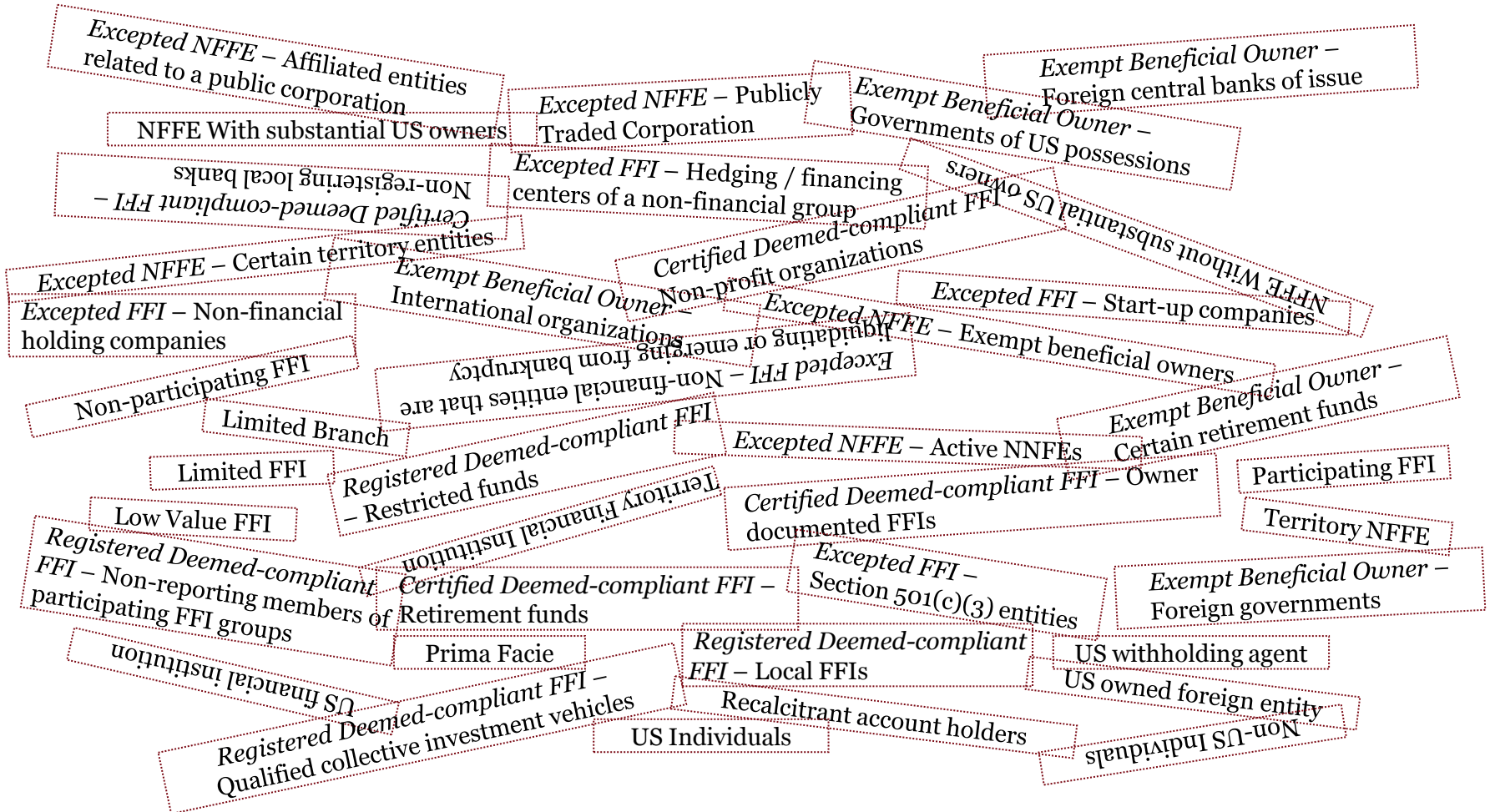
- Final regulations – Expected summer / fall 2012
- Changes to forms
 - Withholding certificates (e.g., Form W-8)
 - Information returns (e.g., Form 1042-S)
- FFI agreement – Draft expected early 2012

How will you educate your technology, operations and business staff on FATCA?

Question 10

1. Detailed multi-part training program consisting of conference calls, webcasts and online tutorials
2. Making available industry thought leadership pieces
3. Don't know

39 Classifications of Payees



Questions

Top 5 Technology Challenges for FATCA

FATCA is expected to have a significant impact on technology and operations of affected institutions. Changes to existing business systems, creation of new systems, and significant data analysis (e.g., pre-existing accounts, operating entities, financial products, obligations) will be required.

<i>Topic</i>	<i>Requirement</i>	<i>Key Challenges</i>
Tech & Ops Governance		
Reliance on AML/KYC		
Increased number of FATCA Classifications		
Aggregation of Accountholder Balances & Information		
Analysis and Remediation of Pre- existing Accounts		

Tune in next time

Thank you!

***Our next
webcast is
March 7, 2012***



Scott Dillman



Michael Down



Richard Inserro



Rebecca Lee

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<http://www.pwc.com/us/fatca>

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