Joint Industry FATCA Seminar

24 June 2013 at HKCEC, S221

AM Seminar	*PM Seminar*	*PROGRAMME*	
8:30 am	**2:00 pm**	*Registration*	
9:00 am	**2:30 pm**	*Welcome and Opening remarks* **Ms Ka Shi Lau**, *Chairman & Retirement Schemes Subcommittee Chairman, HKTA* *Introduction – FATCA-IGA* **Mr Sam Yu**, *Executive Committee Member & Chairman of Regulatory Subcommittee, HKIFA*	
9:05 am	**2:35 pm**	*Plenary Session* **Mr Jackie Liu,** *Principal Assistant Secretary for Financial Services& the Treasury (Financial Services)* **Mr Lennard Yong**, *Councillor of Life Insurance Council, HKFI (Moderator)* **Mr Karl J. Paulson Egbert**, *Registered Foreign Lawyer, Dechert* **Mr Charles Kinsley**, *Tax Principal, KPMG China* **Ms Angelica Kwan**, *Partner, U.S. Tax, PricewaterhouseCoopers Hong Kong* **Mr Richard Weisman**, *Partner – Hong Kong, Baker & McKenzie*	
10:35am	**4:05pm**	*Coffee Break*	
11:00 am	**4:30 pm**	*Breakout Session 1 - **Banking***	**Ms Victoria De Alwis**, *Regional Head of Tax, Asia Pacific Finance, HSBC & Chairman of Taxation Committee of HKAB (Moderator)* **Mr Tim Clough,** *Partner, Risk and Control Assurance Practice, PricewaterhouseCoopers Hong Kong* **Mr Paul DePasquale,** *Associate, Baker & McKenzie* **Ms Shing Peng Ong,** *Senior Manager, Internal Audit, Risk & Compliance – Financial Services, KPMG* **Ms June Yu Yuk Ping,** *Partner, Financial Services, KPMG*
		*Breakout Session 2 - **Funds***	**Ms Isabella Chan,** *Executive Committee Member & Vice Chairman of Regulatory Subcommittee, HKIFA (Moderator)* **Mr John C. Crager,** *Global Head of Tax, HSBC Securities Services - Fund Services* **Mr Karl J. Paulson Egbert,** *Registered Foreign Lawyer, Dechert* **Mr Wout Kalis,** *Head, Alternative Investment Services Asia Pacific of Citibank, Securities and Fund Services*
		*Breakout Session 3 - **Insurance***	**Mr Lennard Yong,** *Councillor of Life Insurance Council, HKFI (Moderator)* **Ms Lisa Aaron,** *Regional Risk Programme Director & FATCA Programme Lead, Prudential Corporation Asia* **Mr William Choy,** *Head of Compliance, AIA International Limited* **Mr Charles Kinsley,** *Tax Principal, KPMG China*
		*Breakout Session 4 - **MPF and ORSO***	**Ms Ka Shi Lau,** *Chairman & Retirement Schemes Subcommittee Chairman, HKTA (Moderator)* **Ms Kym Fortescue,** *Chief Compliance Officer, AIA Group* **Ms Angelica Kwan,** *Partner, U.S. Tax, PricewaterhouseCoopers Hong Kong* **Mr Cliff Li,** *Legal Counsel, Manulife (International) Limited* **Ms Rachel Tsang,** *COO, Bank Consortium Trust Company Limited*
		*Breakout Session 5 - **Private/ Charitable Trusts***	**Ms Samantha Bradley,** *Legal Counsel, Sir Elly Kadoorie & Sons Ltd (Moderator)* **Mr Andrew Ho,** *Senior Manager, Private Clients, TMF Group* **Mr Richard Weisman,** *Partner – Hong Kong, Baker & McKenzie*
12:30 pm	**6:00 pm**	*End*	

* Please note that the programme and speakers are subject to change.

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Joint Industry FATCA Seminar

Angelica Kwan
Partner, U.S. Tax
PricewaterhouseCoopers, HK

Charles Kinsley
Tax Principal
KPMG

Karl J. Paulson Egbert
Registered Foreign Lawyer
Dechert

Richard L Weisman
Registered Foreign Lawyer
Baker & McKenzie

Lennard Yong - Moderator
CEO ING HK & Macau

Agenda for Plenary Session

	Session	Speaker
1	Hong Kong Update: where are we now	Charles
2	Why FATCA Compliance Has to Be Group-Wide	Angelica
3	FATCA Internal Compliance Program and Reporting	Angelica
4	FATCA Withholding	Angelica
5	FFI Agreements and administrative procedures	Karl
6	Compliance verification and due diligence	Karl
7	Intergovernmental agreements	Richard
8	Timelines and next steps	Charles

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Hong Kong: where are we now?

Hong Kong: where are we now?

- **Final FATCA regulations** issued on January 17, 2013.
- These followed the statute, IRS Notices, proposed regulations, and model Intergovernmental Agreements (IGAs)
- While the evolution of FATCA continues, **uncertainty remains**
  – For example: FFI agreement, final withholding certificates, reporting forms, proliferation of IGAs, harmonizing regulation under chapters 3 and 61
  – That said, the final regulations provide impacted entities with some much needed answers

Hong Kong: where are we now?

- **Options** for foreign financial institutions **in Hong Kong**

  i) Hong Kong IGA?

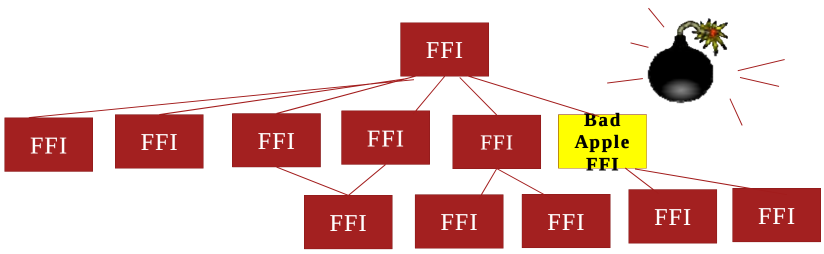
  - Model I vs **Model II**

  ii) **Full** FATCA **Compliance**

  - FFI Agreement
- Key **Hong Kong concerns**
  - Personal Data Privacy Ordinance
  - Retirement Funds (MPF / ORSO)
  - Insurance

2 Why FATCA Compliance Has to Be Group-Wide

One "Bad Apple" FFI Can Taint Its Group



Unless – For 2014 and 2015 only – Final Reg conditions are met

Or Unless Conditions in any HK IGA are met

Under Final Regs

- For an FFI in an **Expanded Affiliated Group** to comply with FATCA, **all FFIs in the Group** (together with their branches) have to comply or be "registered deemed-compliant FFIs"
- **> 50% Test for Group**
- Under the Final Regs, for **2014 and 2015 only**, a **Limited FFI** (or Limited Branch) does not taint the Group

Affiliated FFI doing nothing on FATCA taints Group

Under Final Regs, Bad Apple FFI taints Group from 2016 on

Final Regs: When Does a Bad Apple FFI Not Taint Affiliates?

Under Local Law EITHER:

(1) On US Accounts, cannot do ANY of the below:

Report US Account to US

Close US Account

Transfer US Account to "Good" Fin Inst'n

(2) On Recalcitrants and FFIs Not Complying with FATCA, cannot do ANY of the below:

FATCA Withholding on Account

Block Account (Stop Transactions)

Close Account

Transfer Account to "Good" Fin Inst'n

Final Regs: Bad Apple FFI Has to Do More…

Bad Apple FFI has to also meet ALL these conditions:

- **Register with the IRS** its "Limited FFI" status, and get named as part of the Group
- **Do FATCA due diligence procedures**; keep 6 years
- **Report US accounts** to the IRS if permitted
- **Not open new US or US-owned accounts**
- **Not open new accounts for non-compliant FFIs**
- Let counterparties know Limited FFI status, and suffer **30% FATCA withholding** on US investment income

To Not Taint Affiliates, Bad Apple FFI has to Make Meaningful Effort to Comply with Parts of FATCA

How would any HK IGA Change Things?

HK IGA Protection of HK FFIs Against Taint of Bad Apple FFIs Can Last Indefinitely

Some requirements for FFIs to not taint **"Related Entity" FFIs** are the same. Main differences are a Bad Apple FFI:

- Need only show **inability to report or withhold** under local law of Bad Apple FFI. **Does not generally have to show inability to close, block or transfer account**
- Instead of not opening new US accounts or accounts for FFIs not complying with FATCA, **does not solicit** these customers where they are **not resident/formed** in country of Bad Apple FFI
- Cannot be used to circumvent FATCA

Even with IGA, Bad Apple FFI Doing Nothing Still Taints Affiliated FFIs

3 FATCA Internal Compliance Program and Reporting

Final Regs: FFI Compliance Program

FATCA Final Regs require an FFI to:

1. appoint a **responsible officer**
2. establish **policies, procedures and processes** sufficient to satisfy FFI agreement,
3. periodically review and have RO certify as follows:

Type of certification	One time or ongoing?	When is certification required?
Compliance and effective internal controls	Ongoing, every 3 years	6 months after each 3-year review period -- first certification **30 June 2017** for FFI agreements effective 31 December 2013
Due diligence on pre-existing accounts	One time	60 days after 2nd anniversary **-- 29 February 2016** for agreements effective 31 December 2013
Not assisting customers to avoid FATCA since 6 August 2011	One time	

Final Regs: Form 8966 Reporting on US Accounts

First Report Due: 31 March 2015 **For calendar year 2013 and 2014 Info**	**US Customers** • Name, address and US taxpayer ID number • Account number • **Account balance or value**	**Non-US Entities with substantial US owners (typically > 10%)** • Name, address, US taxpayer ID number for US owner(s) • Account number • **Account balance or value**
Due 31 March 2016 **For calendar year 2015 Info**	• **Payments paid or credited to the account** • Plus above info	
Due 31 March 2017 **For calendar year 2016 Info**	• Full reporting, including all the above plus • **Gross proceeds on sale of assets**	

Final Regs: More Reporting

- **Recalcitrant Customers**:

  Total number and total balance in each of 5 categories
- Customers that are **FFIs Not Complying with FATCA**:

  Some payments made to each non-compliant FFI customer
- If FFI has **withheld** on payments made to its customers (the same categories above):

  Additional reporting

4 FATCA Withholding

FATCA Withholding on Recalcitrants and FFI Customers Not Complying with FATCA

- Key illustrative dates:
  - **1 January 2014** — **FATCA withholding commences on certain withholdable payments** (i.e. US source interest income and other US source investment income) made to:
    - **Recalcitrant Customers**
    - **Customers that are FFIs not complying with FATCA**
  - **1 January 2017** — **FATCA withholding commences on gross proceeds on sale of US stocks or securities**
  - 1 January 2017 — FATCA withholding scheduled to commence on "foreign passthru payments" no earlier than this date

FFI Agreements

and administrative procedures

The IRS Registration Process

- The first concrete deadline.
- Participating FFIs and registered deemed-compliant FFIs must register with the IRS.
- The IRS will set up a FATCA Registration Portal through which FFIs will interact with the IRS.
  - Timing: no later than 15 July 2013.
  - Deadline: no later than **25 October 2013** to be included on the list of "good FFIs" who won't be withheld upon on 1 January 2014.

The IRS Registration Process (cont.)

- Form 8957 is the form used for registration.
  - Can be submitted through the portal or with a printed copy of the form.
- Who should register? Every participating FFI and registered deemed-compliant FFI.
  - "Investment entities" may consider registration by a central "Sponsoring FFI."
- Once registration is approved by the IRS, FFIs will receive a Global Intermediary Identification Number ("**GIIN**").

The FFI Agreement

- The U.S. has no direct jurisdiction over most FFIs. How will it make FFIs agree to comply?
- Either local governments will cooperate to make FATCA the "law of the land" (i.e., Model I IGAs) or FFIs will need to sign an FFI Agreement that binds them.
  - Agreement will be "signed" as part of registration.
- No FFI agreements in Model I jurisdictions. But FFIs should expect to comply with similar local regulations relating to due diligence and reporting.

Compliance verification

and due diligence

What Information Should FFIs collect for New Accounts?

- Withholding certificates (Form W-9, Form W-8?).
- Generally: review account opening information, including AML/KYC info; obtain additional information if US indicia present.
  - rely on existing customer intake procedures except for passive NFFE account or “owner-documented FFI”.
  - IGAs will generally require “self-certification” regarding non-US tax status combined with standard KYC.

Due Diligence Requirements of Participating FFIs

- FFI Agreement will require due diligence as to US/non-US tax status of "account holders" (including debt and equity owners unless FFI interests are publicly traded or FFI is a bank, broker or investment manager; excluding accounts of estates) and FFI/NFFE status and, if required, ownership of foreign entity holders
- For entity account holders, will include determination of FFI/NFFE status and possibly US owner information
  - Preexisting individual accounts: exempt accounts ≤ $50K and individual owned cash value insurance contracts ≤ $250K; no manual review of paper records unless account >$1 million; accounts >$1 million also require inquiry as to actual knowledge of any relationship manager.
  - pre-existing entity accounts: exempt accounts ≤ $250K until >$1 million; for all other accounts, rely on AML/KYC/other existing info; if passive NFFE account >$1 million, obtain substantial US owner information.

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Due Diligence - Logistics

- FFIs can rely on self-certifications and other documents unless they know or "have reason to know" the document is incorrect.
- FFIs can appoint third parties to complete the verification and due diligence process but remain responsible for any failure to comply.

FATCA Due Diligence Timeline

Deadline	Action item
31 December 2013	Participating FFI's FFI Agreement and registered deemed-compliant FFI's registration must be effective to avoid withholding
	All accounts maintained by this date (or, if later, the FFI Agreement effective date (for participating FFIs) or before the date of implementation of required account opening procedures (for registered deemed-compliant FFIs - generally their registration date)) treated as "pre-existing accounts"
1 January 2014	Withholding agents, participating FFIs, registered deemed-compliant FFIs and UKFIs must implement account opening procedures for new accounts by this date (or, if later, the FFI Agreement effective date (for participating FFIs) or registration date (for registered deemed-compliant FFIs))
30 June 2014	Withholding agents and participating FFIs must complete due diligence for pre-existing "prima facie FFI" accounts (or, if later, 6 months after the FFI Agreement effective date (for participating FFIs))
31 December 2014	Model 1 FIs and participating FFIs must complete due diligence for pre-existing individual "high value" accounts by this date (or, if later, 1 year after the FFI Agreement effective date (for participating FFIs) or within 6 months after the end of the calendar year in which the account became "high value" (for all Model 1 FIs))
31 December 2015	Withholding agents and participating FFIs must complete due diligence for pre-existing entity accounts other than "prima facie FFI" accounts (or if later, 2 years after the FFI Agreement effective date (for participating FFIs))
	UKFIs (and other Model 1 FIs?) and participating FFIs complete due diligence for pre-existing individual accounts other than "high value" accounts (or, if later, 2 years after the FFI Agreement effective date (for participating FFIs)); UKFIs (and other Model 1 Fis?) must complete due diligence for pre-existing entity accounts >$250K as of 31 December 2013, or within 6 months of end of 2013 or later year in which a remaining pre-existing entity account >$1 million

INTERGOVERNMENTAL AGREEMENTS

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Richard Weisman
Partner, Baker & McKenzie, Hong Kong

Origin of Intergovernmental Approach

Joint Statement

On 8 February 2012, the IRS issued proposed regulations regarding FATCA implementation

Also on 8 February 2012, the IRS issued a joint statement with 5 European jurisdictions regarding an alternative intergovernmental approach to implementing FATCA

G5

The original 5 FATCA cooperation jurisdictions are France, Germany, Italy, Spain and the UK

Origin of Intergovernmental Approach

Joint Statement

On 21 June 2012, the US Treasury issued joint statements with Switzerland and Japan that suggested an alternative IGA framework

FATCA partners may choose among two models

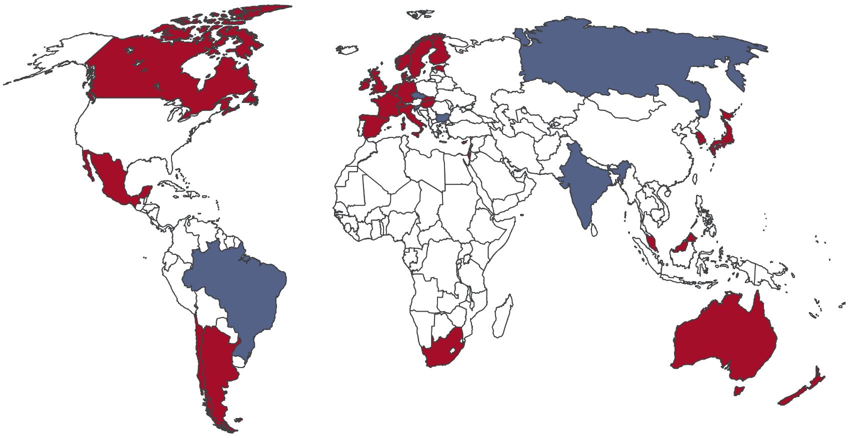
Model 2

Direct reporting by FFIs to the IRS, supplemented by information exchange upon request by the FATCA partner and the US

Does not set up a new domestic reporting regime

Japan, Switzerland, Bermuda

IGA Coverage



IGA signed, initialled, or in progress

Exploring options

Status of IGA Negotiations

IGA Status	Country
Signed Model 1	Denmark, Germany, Ireland, Mexico, Norway, Spain, United Kingdom
Signed Model 2	Switzerland, Japan
Committed to sign	France, Italy
Finalizing IGA	Canada, Finland, Guernsey, Isle of Man, Jersey, Netherlands, Bermuda
Negotiations in progress	Argentina, Australia, Belgium, Cayman Islands, Chile, Cyprus, Estonia, Hungary, Israel, Korea, Liechtenstein, Malaysia, Malta, New Zealand, Slovak Republic, Singapore, Sweden, South Africa
Exploring options	Brazil, BVI, Czech Republic, Gibraltar, India, Lebanon, Luxembourg, Romania, Russia, Seychelles, Sint Maarten, Slovenia

How IGAs Work

How IGAs Work

General Framework

FATCA partner agrees to:	The United States agrees to:	Both governments agree to:
•Pursue legislation to require FFIs in its jurisdiction to comply with FATCA •Enable FFIs to apply FATCA due diligence, reporting, and withholding •Transfer to the US the information reported by the FFIs	•Eliminate the obligation of each FFI to enter into an agreement directly with the IRS (Model 1) •Allow FFIs to comply with reporting obligations by reporting to FATCA partner rather than reporting directly to the IRS (Model 1) •Eliminate US FATCA withholding on payments to FFIs (both models) •Identify specific categories of FFIs in FATCA partner jurisdiction that are exempt or deemed compliant (both models) •Commit to reciprocity with respect to collecting and reporting information to FATCA partner from the US (optional and subject to safeguards)	•Develop a practical and effective alternative approach to achieve the policy objective of passthru payment withholding •Commit to work with other FATCA partners and the OECD on adapting FATCA in the medium term to a common model for automatic exchange of information, including development of reporting and due diligence standards

Model 1 Framework

- Institutions report information to local authorities
- FATCA partner issues internal laws related to withholding on payments to non-cooperative entities, similar to FATCA
- Deemed-compliant FATCA partner financial institutions will not suffer withholding
- Reciprocal and non-reciprocal versions
- The authorities will send information to IRS

Structure of Model 1 IGA

- Preamble
- Article 1 – Definitions
- Article 2 – Obligations to Obtain and Exchange Information with Respect to Reportable Accounts
- Article 3 – Time and Manner of Exchange of Information
- Article 4 – Application of FATCA to FATCA partner Financial Institutions
- Article 5 – Collaboration on Compliance and Enforcement
- Article 6 – Mutual Commitment (includes reciprocity article in reciprocal version)
- Article 7 – Consistency in Application to FATCA partners
- Article 8 – Consultations and Amendments
- Article 9 – Annexes
- Article 10 – Term of Agreement
- Annex I – Due Diligence Obligations
- Annex II – Non-Reporting Financial Institutions and Products

Main Components of Model 1

- Article 2
  - FATCA partner obligations to obtain information from its financial institutions on US accounts
  - Domestic implementing legislation to enable reporting
  - Automatic information exchange with US
- Article 4
  - Simplification of FATCA responsibilities for FATCA partner financial institutions
  - No withholding or termination of recalcitrant accounts
  - Grants exemptions to low-risk financial institutions
  - Relaxes expanded affiliated group rule
- Article 6
  - Commitment between US and FATCA partner to streamline FATCA rules and find alternative to passthru payment mechanism

Model 1 IGA - Reciprocity

- Reciprocal or nonreciprocal nature generally depends on whether local government has adequate safeguards and protections to ensure that information is only used for tax purposes;
- Not likely available for jurisdictions that do not tax foreign-source income of residents

Model 2 Framework

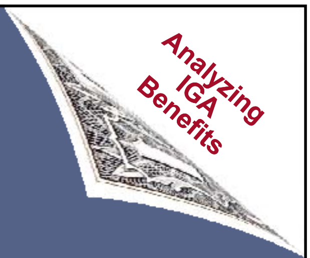
- Laws of each country will be modified to allow the information to be exchanged without local law issues
- Exchange of information, upon request, between countries regarding recalcitrant account holders
- Deemed-compliant FATCA partner financial institutions will not suffer withholding
- Group exchange
- General FATCA rules apply to financial institutions in FATCA partner jurisdiction

Structure of Model 2 IGA

- Preamble
- Article 1 – Definitions
- Article 2 – Reporting and Exchange of Information
- Article 3 – Application of FATCA to FATCA Partner Financial Institutions
- Article 4 – Verification and Enforcement
- Article 5 – Mutual Commitment
- Article 6 – Consistency in Application to FATCA Partners
- Article 7 – Reciprocal Information Exchange (reciprocal IGA only)
- Article 8 – Consultations and Amendments
- Annex I – Due Diligence Obligations
- Annex II – Non-Reporting Financial Institutions and Products

Areas of Uncertainty

- Working together to develop a practical and effective alternative to foreign passthru payment withholding that minimized burden
- Local interpretations of IGA requirements and FATCA regulations remains unclear
- Complexity for multinational banks regarding numerous applicable regimes



Analyzing IGA Benefits

Comparing Models

- Model 2, FATCA partner government confers authority to financial institutions and removes local legal hurdles
- Model 1 imposes a potentially larger information collection burden on governments
- FFIs generally perceive Model 1 as less burdensome compared to Model 2
- Model 2 designed for jurisdictions that are not interested in participating on a government-to-government basis
- Two different information exchange models
- Not two vastly different approaches to FATCA implementation
- Agreements are not significantly customized

Comparison of Framework

Question	Model 1 IGA	Model 2 IGA	Core FATCA
Is the FFI required to sign an FFI Agreement?	No	Yes	Yes, to avoid withholding
EAG rule applies?	No	No	Yes
Is the FFI required to register with the IRS?	No, unless required under local implementing laws	Yes	Yes
Can resident non-exempt FFIs remain non-participating?	No	No	Yes*
What entities can be deemed compliant?	Annex II (by agreement)	Annex II (by agreement)	Treas. Reg. § 1.1471-5

Comparison of Local Law Issues

Question	Model 1	Model 2	Core FATCA
Is the FFI required to close recalcitrant accounts?	No	No	Yes
Does the arrangement resolve local law restrictions on reporting?	Yes	Yes	No
Does the arrangement resolve local law conflicts on withholding?	Yes	Yes	No
To whom does the FFI report?	Local authority	IRS	IRS

Comparison of Withholding Issues

Question	Model 1	Model 2	Core FATCA
Is the FFI subject to FATCA withholding on US source FDAP	No	No	No (if FFI enters FFI Agreement) Yes (if FFI does not enter FFI Agreement)
Is the FFI required to withhold on resident FFIs	No	No	Yes, if resident FFI is a non-participating FFI
Is the FFI required to withhold on recalcitrant account holders?	No	No	Yes

Pros and Cons of Entering IGA

Benefits	Potential Negative Factors
Potential carve-outs for specified financial institutions	Local tax authority takes on new reporting and audit responsibilities
Removes many withholding obligations for FFIs in FATCA partner jurisdiction	All FFIs in the partner country have to be PFFIs or exempt or deemed-compliant. (Query whether option to stay out of FATCA is really viable)
No required account closure for "recalcitrant account" holders if certain information is provided	Multiple versions of FATCA may apply to multinational financial institutions
Resolves local law data protection and privacy issues	
Model 1 removes requirement for financial institution to enter agreement with the US	
FFI in an IGA jurisdiction can continue to retain its good standing as a FATCA-compliant FFI even with an FFI that is not compliant, indefinitely	
Jurisdiction may be perceived internationally as a jurisdiction committed to mitigate tax evasion and to support greater tax transparency and international cooperation	

IGA Observations

– Comparatively easier for FATCA partner financial institutions to comply with FATCA compared to FATCA regulations
– IGAs are particularly helpful for FATCA partners that have no or smaller global presence

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Partner, Baker & McKenzie, Hong Kong

Timeline and next steps

FATCA Time Line for Foreign Financial Institutions 14 July 2013 to 30 June 2014

June 30, 2014
H Deadline for FFIs to complete remediation on preexisting entity accounts held by prima facie FFIs *(begin withholding)**

July 15, 2013 E
IRS portal opens

Q4 2013 F
October 15, 2013
GIINs assigned
October 25, 2013
Last date to register with IRS to ensure inclusion on FFI list (safe harbor)
December 2, 2013
FFI list published by IRS List
December 31, 2013
FFI agreement becomes effective

G **January 1, 2014**
New account due diligence/identification begins

FATCA withholding begins on U.S. source FDAP payments to new account holders identified as NPFFIs, Recalcitrants, and Passive NFFEs with undisclosed Substantial U.S. Owners

Preexisting account due diligence begins

* These dates assume that the PFFI's FFI agreement is approved by the IRS and effective on December 31, 2013.

Timeline and next steps

- **Before you can register**

i) Can you comply with the requirements of the FFI agreement?

ii) Have you classified your entities for FATCA purposes?

- An entity's FATCA classification drives its compliance obligations
- Identify which entities must register/enter into FFI agreements
- EAG: All or nothing approach
- Impact of IGAs on the entity and wider EAG

iii) What about your different stakeholders (internal/external)?

- Identify key business relationships that are impacted (e.g., product distribution channels and service providers)
- just because you are compliant does not mean you escape the impact of withholding…..

TIME IS SHORT

Joint Industry FATCA Seminar

Breakout Session 1 - **Banking**

Moderator

Victoria De Alwis
Regional Head of Tax, Asia Pacific Finance, HSBC &
Chairman of Taxation Committee of HKAB

Speakers

Tim Clough
Partner, Risk and Control Assurance Practice, PricewaterhouseCoopers, Hong Kong

Paul DePasquale
Associate, Baker & McKenzie

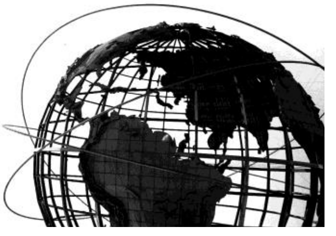
Shing Peng Ong
Senior Manager, Internal Audit, Risk & Compliance - Financial Services, KPMG

June Yu
Partner, Financial Services, KPMG

Fundamentals of FATCA

Monday, 24 June 2013 | Baker & McKenzie

Paul DePasquale, Associate, Hong Kong



Topics Covered

- Fundamentals
- Where do we go from here?

Fundamentals

Participating FFI - PFFI

– To become a PFFI and avoid 30% withholding, an FFI must enter into an agreement with the IRS

PFFI Obligations

– Identify account holders
– Due diligence
– Information reporting
– Withholding on certain payments to recalcitrant account holders and non-participating FFIs
– Compliance verification

Where do we go from here?

Selected Compliance and Transactional Issues

– Organizational Analysis
– Financial Accounts and other Relationships
– Account Terms and Conditions
– Lending Agreements
– Derivatives Contracts

Expanded Affiliated Group Rules

– Each FFI in an Expanded Affiliated Group (“EAG”) must become a participating FFI or registered deemed-compliant FFI for any other member of the group to become a participating FFI or registered deemed-compliant FFI
– Transitional limited affiliate exception
– Relief under applicable IGA

Assessing Group Compliance

– Classification of group entities
– Identifying local legal restrictions on FATCA compliance
– Register or establish deemed compliance or exemption

Financial Accounts and other relationships

– FATCA affects:
  – depository accounts
  – custodial accounts
  – investment accounts
  – certain debt and equity interests issued by FFIs
  – cash value insurance contracts
  – annuities

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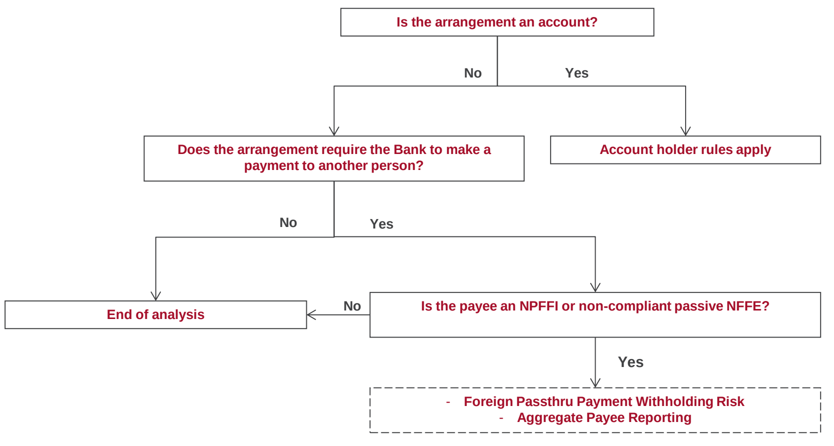
Financial Accounts and other relationships



Financial Account Due Diligence

– Identify US persons

– Implement systems to facilitate the relevant information reporting for US persons

– Assessing size of US client base to determine whether the cost of expanding current reporting systems to deal with compliance is worthwhile given the size of the US client base

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Due Diligence and Documentation

– Generally, withholding agents and financial institutions may rely on certifications and documentary evidence obtained from the payee/account holder unless the withholding agent or financial institution knows or has reason to know the documentation is unreliable
– Final regulations permit more flexibility in allowable documentation, including use of substitute forms and non-English language forms

Account Terms and Conditions

– Obligation of parties to provide and maintain self-certification and valid documentation for determining FATCA status
– Authorization to disclosure information/report to IRS or domestic tax authority
– Model 2 IGA consent provisions
– Waiver of applicable restrictions on reporting
– Contractual ability to withhold if required by FATCA
– Ability to close account/terminate contract if required by FATCA
– Indemnification, confirmation, and notice

Lending Agreements

– Ensuring FATCA compliance
– Passing of information and certifications between the parties
– Requirement to update certifications and information
– Waiver of confidentiality and providing disclosure provisions
– Notice and termination rights regarding non-FATCA compliance and changes in circumstances
– Maintaining grandfather protections
– Understanding LMA/LSTA riders

Derivatives Contracts

– PFFIs and US payers that do not address FATCA withholding for transactions with NPFFI counterparties are at risk for grossing up the NPFFI counterparty
– ISDA FATCA Protocol shifts risk of FATCA withholding to the recipient of the payment
– Documentation
– Waiver
– Reporting

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Joint Industry FATCA Seminar

Challenges to Compliance to FATCA for Banks

24 June 2013

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Implications to Banks

Impact

I Business Strategy

II Operations and Processes

III Compliance

Impact on your business strategy

Should you say "NO" to US clients or embrace them?

What are the incremental costs of doing business with U.S. Persons?

Is it legal to not accept U.S. customers?

What is the impact on profitability?

How do you minimize the impact on your customers' experience when reaching out for additional information?

Should you consider what your peers are doing?

How can you minimize changes to systems, existing policies and procedures?

How much can you leverage on? You may not have as many US Persons as you thought to justify massive changes

Can you say "NO" to withholding?

Do you really want to deal with recalcitrants and NPFFIs given a choice?

Is it legal to not accept recalcitrants or NPFFIs customers?

What is the impact on profitability?

Can you minimize the cost of compliance as a group?

Is it possible to consolidate and reduce the number of entities that falls under the FFI definition?

Is it possible to transfer U.S. customers to U.S entities?

Think Strategic

Consider Costs and Benefits

Impact on your operations and processes

1 Register with IRS as PFFI

FFI Agreements

- A Lead FFI will be responsible for registering for all FFIs within the EAG.
- All members of an EAG must be registered as a PFFI, Registered DCFFI, or Limited FFI, in order for the EAG to be considered as FATCA compliant.
- All FFIs registered with IRS will agree to comply with FATCA requirements pertaining to their FATCA status, as well as the jurisdictions that they are operating in. For example:
  - ✓ FFIs in Model 1 IGA countries – require to follow local regulatory requirements, as these jurisdictions will implement laws and regulations consistent with FATCA requirements.
  - ✓ Other FFIs (including FFIs in Model 2 IGA countries) – require to follow requirements as stipulated in the FFI agreements.
  - ✓ FFI agreements will only cover FFIs and branches that are not covered under an applicable Model 1 IGA since these operations are subject to the rules set out in the applicable jurisdiction(s)

How to register with IRS?

FFIs can start registering on the FATCA Registration Portal beginning 15 July 2013

All PFFIs and DCFFIs will then be assigned with a GIIN. The GIIN will be used to identify the FFI as a FATCA-compliant FFI.

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Impact on your operations and processes (Continued)

Register with IRS as PFFI

Challenges

- How should the consolidated compliance groups be structured in the EAG?
  - What is the right number and size of the groups? 1 or more than 1?
  - What are the pros and cons of a centralized or decentralized approach?
- If the parent company is a Chinese entity, or the EAG is headquartered in China, which entity should be the Lead FFI ?
- How to manage registrations of each entity within the EAG, especially in the event of change?
  - If there is a change in an entity's operations or product offerings, will it affect its FATCA status and registration with IRS?
  - How to maintain and update registration with IRS?
  - Is there a need to enhance to update the existing product development process?

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Impact on your operations and processes (Continued)

2 Identify U.S. accounts

New Customers

- Generally may rely on FFIs' existing account opening and AML due diligence procedures
- Information that may be regarded as U.S. indicia will be collected
- Additional documentation are required to be collected, i.e. withholding certificate and/or other kinds of documentary evidence as required by FATCA
- For documentation requirements for classifying FATCA status of entity accounts, the final regulations generally allow FFIs to rely on a self-certification from an entity account holder, unless FFIs know or have reason to know that account holder's claim of FATCA status is incorrect

Pre-existing Customers

- To the extent FFI's computerized systems can link the accounts hold by an account owner by reference to a data element, or a relationship manager knows the accounts are directly or indirectly owned, controlled, or established by the same person, aggregate balances of those accounts
- Individual accounts : Based on the amount of aggregated account balances, determine if the account requires an electronic search or enhanced review is for identifying U.S. indicia
- Entity accounts: For Passive NFFEs (i.e. >50% of the entity's income attributes to investment income), based on the amount of aggregate balance, determine whether a certification is needed from the entity declaring if it has any substantial U.S. owner
- FFIs requires to annually perform due diligence for accounts with aggregated balance > USD 1M but have been excluded from review in previous years

What is an U.S. Account ?

A financial account that is held by a specified U.S. person or U.S. owned foreign entity

A U.S. person
is one who is a citizen, a green card holder or a tax resident

A U.S. owned foreign entity :
corporation or partnership or certain trusts where specified US person owns >10%, directly or indirectly

A financial account:
any depository account, any custodian account, any debt or equity interest in a FFI (other than that regularly traded on an established securities market), and any cash value insurance or annuity contracts

- FIs are required to be caution of any change of circumstances, i.e. any new and change of account information that affects the validity of current FATCA status. If there is a change of circumstances, FFIs are required to perform due diligence on the corresponding account
- A withholding certificate or written statement or documentary evidence will remain valid until the last day of the third calendar year following the year in which the withholding certificate or written statement is signed, or the documentary evidence is provided to the FFIs
- Nevertheless, documentary evidence that contains an expiration date may be treated as valid until that expiration date if doing so would provide a longer period of validity than the three-year period
- The final regulations also provide circumstances that withholding certificates, written statements, or documentary evidence shall remain valid until the FFI has obtained the knowledge of a change in circumstances that makes the information on the documentation incorrect

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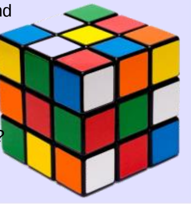
Impact on your operations and processes (Continued)

Identify U.S. Accounts

Challenges

- Is it sufficient to address FATCA requirements by solely relying on existing KYC / AML procedures?
  - Following local regulatory requirements is sufficient to fulfil FATCA's due diligence requirements? Any enhancement required?
  - If inconsistency is found between client's documents and self-certification, do we need to collect additional documentation? Will there be adverse impact on customer relationship?
  - Can front-line staff familiarize themselves with new customer on-boarding procedures, including the updated policies and procedures, guidelines and account opening forms, within a short period of time?
- Is there any mechanism to follow up with customers with no response to FFI's request for additional information, dormant accounts, or recalcitrants? Can we close these accounts for complying with FATCA?
- How to identify accounts that reach the due diligence threshold and perform appropriate reviews on an ongoing basis ?
- Do the existing system capabilities need to be enhanced?
  - Is a centralized customer database required?
  - Does the current system support account aggregation?
  - How to identify accounts that have already performed a review?
  - Are new flags in the system required to enable reporting to the IRS and ongoing monitoring?



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Impact on your operations and processes (Continued)

3 Withholding

Withholding Tax

- For NPFFIs and recalcitrants, PFFIs are required to withhold 30% on their withholdable payments receiving
- The final regulations exempt from withholding foreign passthru payments and gross proceeds from sales or dispositions of property occurring before January 1, 2017. The scope of foreign passthru payments has not been finalized in the final regulations yet

Grandfather rule

The final regulations exempt from chapter 4 withholding all obligations outstanding on January 1, 2014, and any associated collateral. In addition, because evolving areas of the law may create chapter 4 withholding obligations in the future and create uncertainty and risk in the meantime, the final regulations address obligations (and associated collateral) that:

- May give rise to withholdable payments through future regulations under section 871(m) (relating to dividend equivalent payments) or,
- May give rise to foreign passthru payments under the chapter 4 foreign passthru payment rules.

Such obligations are grandfathered if the obligations are outstanding at any point prior to six months after the implementing regulations are published

What are withholdable payments？

Any payment of interest, dividends, premiums, annuities, and other fixed or determinable annual or periodical gains, profits, and income *(FDAP income)*, if such payment is from sources within the U.S. Also include certain non-financial payments, and any gross proceeds from the sale or other disposition of any property of a type which can produce interest or dividends from sources within the U.S.

What are Foreign Passthru Payments？

Although definition is not finalized, it generally means by applying a PFFI-specific percentage (i.e. its U.S. assets / total assets) to foreign sourced FDAP payment, and transform a portion of that payment into withholdable payments

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Impact on your operations and processes (Continued)

Withholding

Challenges

- Can you identify **ALL** products subject to withholding?
- Do you have the legal rights to withhold? How to handle customer reaction?
- How do you withhold for dormant accounts?
- Considering scale and cost effectiveness, should the withholding mechanism be manual or automatic? Should it be centralized or handled by individual business units?
- How to refund over-withheld tax to customers?
- Can staff familiarize themselves with new withholding procedures within a short period of time?

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Impact on your operations and processes (Continued)

4 Reporting to IRS

Reporting

Annual tax return (Form 1042) and Annual information return (Form 1042-S)

First submission due 15 March 2015

Annual FATCA Report (Form 8966)

First submission due 31 March 2015

Form 1042 and Form 1042-S reporting

Aggregated withheld tax and withholdable payments in relation to NPFFIs and recalcitrants

Form 8966 reporting

Reporting Timeline	Reporting Period	Name, address, and TIN of each substantial U.S. owner	Account number	Year-end account balance	payments of income	payments of proceeds
On or before 31 March 2015	2013 and 2014	√	√	√		
On or before 31 March 2016	2015	√	√	√	√	
On or before 31 March 2017 and annually thereafter	2016 and annually thereafter	√	√	√	√	√

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Impact on your operations and processes (Continued)

Reporting to IRS

Challenges

- Do the existing system capabilities need to be enhanced?
  - Is a centralized customer database required?
  - Does the current system support account aggregation?
  - Does the current system support IRS reporting requirements?
- Considering scale and cost effectiveness, should the reporting mechanism be manual or automatic? Should it be centralized or handled by individual business units?
- Can staff familiarize themselves with the new reporting procedures within a short period of time?

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The FATCA compliance challenge

The Responsible Officer ("RO") needs to make the first certification to IRS in 60 days following the date that is 2 years after the FFI Agreement Effective Date, also every 3 years afterwards. The RO of the Consolidated Compliance Program (if such program is elected) is required to certify for all its FFI members

- Certify that that it has completed the account identification procedures and documentation requirements for all financial accounts that are pre-existing or, if it has not, treats such accounts as recalcitrant or non-participating
- Certify that the PFFI did not have any formal or informal practices or procedures in place from 6 August 2011, through the date of such certification to assist account holders in the avoidance of the FATCA provisions
- Certify that the PFFI has established a compliance program sufficient for the PFFI to satisfy the requirements of the FFI agreement. RO must periodically review the sufficiency of the FFI's compliance program and the FFI's compliance with the FFI agreement
- Report any material failures/event of default and remedial measures

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The FATCA compliance challenge (Continued)

Compliance

Challenges

- Does the existing compliance function and structure needs to be strengthened?
  - FATCA compliance framework
  - FATCA compliance monitoring program
- Non participation by FFIs in non-IGA countries will cause other PFFIs in the EAG to be non-participating as well; notwithstanding, this will not affect the FATCA status of FFIs in IGA 1 / IGA 2 jurisdictions
- How to ensure all members of an EAG are effectively complying with FATCA? How to ensure all non-compliant cases are identified, reported, and followed-up on a timely basis?
- How to conduct FATCA compliance training to relevant staff?
- Which department should help the RO to fulfil the above responsibilities?

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Other information

FATCA views of China and Hong Kong's regulatory bodies

Mainland China	
Challenges	• Publicly, Chinese government, regulatory bodies, and the financial sector are relatively silent on FATCA to date ➢ Chinese secrecy law – does not allow Chinese FFIs to report on their customers to the IRS; "Limited FFI" FATCA status however, allows them to defer compliance to 2016 • Lack of FATCA professionals • Varying quality of customer files in terms of completeness and timeliness
Progress of FATCA compliance projects	• It is understood that representatives of the Chinese Government met the IRS earlier this year to discuss possible arrangements between China and the U.S. However, no formal communication has been issued. Nonetheless, ➢ FATCA Task Force already set up with regulatory and industry representation. ➢ Most leading Chinese FFIs have also set up a FATCA Task Force; many overseas branches / subsidiaries of Chinese FFIs have already commenced FATCA compliance projects. ➢ We understand that an IGA 1 is being sought.

Hong Kong	
Challenges	• Lack of FATCA professionals • Yet to have a consistent practices (e.g. customer due diligence and customer on-boarding procedures)
Progress of FATCA compliance projects	• Most of the FFIs has started their FATCA projects, including banks, insurance companies and major securities firms • Most of the FFIs (including Chinese Banks with branches or subsidiaries in Hong Kong or Macau, major securities firms etc.) are currently conducting FATCA impact assessments, some FFIs have progressed further to start on operational processes design and implementation work • A FATCA committee is usually set up for running FATCA complaint projects

FATCA readiness of the banking industry in Hong Kong

Hong Kong	
Implementation of FATCA compliance project	• European or U.S. based international banks usually deploy their internal resources including a centralized FATCA team supported by local resources, to implement FATCA compliance projects ➢ Engage local FATCA consultants to help with the global FATCA team in providing technical support locally, including advices, training, and constructive discussions etc. • Most of the Hong Kong local FFIs have engaged consultants to support their FATCA compliance work, including: ➢ Outsourcing the FATCA impact assessments to an external professional consultant ➢ Engage local FATCA consultants to provide the internal FATCA team technical advice and support • Most of the FFIs adopt a risk based approach to achieve FATCA compliance, looking for options to reduce compliance costs (e.g. strategic changes) • Some FFIs require independent FATCA consultants to review their FATCA related processes, and assess if effective controls have been put in place
Reason for engaging an external consultant	• Technical insights and interpretations, including aspects in relation to FATCA, U.S. tax and business operations • Market or industry insights and practices • Resources, including project management • Tools • Synergy between local AML rules and FATCA requirements in relation to customer KYC procedures

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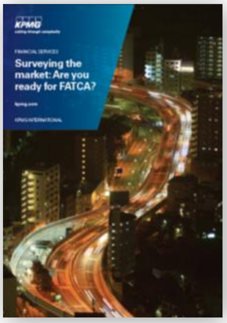
Key findings of recent KPMG Global FATCA Survey



Key Points	Content
Project sponsor	Tax (25%) and Compliance (24%) groups are the leading project sponsors within institutions
Impact	Operations is expected to be the single area most impacted by the Act
Implementation plan	86% of organizations intend to adopt some form of centralized implementation plan, as opposed to taking a purely decentralized approach by country or region
People involved	Majority (63%) estimate 10 or more people will be involved in FATCA planning and implementation, of which 18% say they will use more than 100 people
Budget	Median budget allocation is approximately US$250,000, although there are wide disparities in the amount organizations plan to spend, ranging from less than US$100,000 to more than US$100 million
Process revision	Almost all organizations (92%) feel their client on-boarding, customer identification or documentation processes will need to be revised as a result of FATCA
Greatest compliance challenge	Account identification requirements emerge as the top-ranked FATCA-related compliance challenge, followed by documentation requirements and systems changes

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FATCA Compliance Timeline - now and after 2013

How to Prioritize Compliance Requirements for Banks

June 2013

pwc

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In order to prioritise - focus on 6 key principles

Principle	Milestone
Registration	July to December 2013
Account Opening	1 Jan 2014
Existing Account Due Diligence	30 Jun 2014: Prima Facia FFI 31 Dec 2014: High Value Account 31 Dec 2015: other account
Withholding	1 Jan 2014
Reporting	31 Mar 2015 (1st report)
Certification	Annually

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Key FATCA milestones in 2013 and 2014 are:

	2013	2014
IRS registration portal available	July 15	
Last day to register for inclusion on the Dec,2013 IRS list	Oct 25	
Publication of IRS list of PFFIs and RDCFFIs	Dec 2	
Earliest effective data of an FFI agreement	Dec 31	
Enhanced account opening procedures must be in place		Jan 1
Begin FATCA withholding on US source FDAP income		Jan 1
Complete identification and review of pre-existing entity account holders that are prima facie FFIs		Jun 30
Being withholding on pre-existing entity account holders that are un-documented prima facie FFIs		Jul 1
Complete identification and review of pre-existing high value individual accounts		Dec 31

And beyond – 2015 and 2016

	2015	2016
Begin FATCA withholding on any undocumented individual preexisting high value account	Jan 1	
Begin FATCA reporting for US source FDAP	Mar 15	
Limited FATCA reporting on US accounts	Mar 31	
Begin aggregate FATCA reporting on recalcitrant accounts	Mar 31	
Complete review of all remaining pre-existing individual and entity accounts	Dec 31	
Expanded affiliate group transition period ends		Jan 1
Begin FATCA withholding on remaining undocumented pre-existing accounts		Jan 1
Responsible Officer to certify on completion of due diligence		Feb 29
FATCA reporting on foreign reportable amounts paid to NPFFIs		Mar 15
Limited FATCA reporting includes income payments		Mar 31
End of first period of compliance – required certification		Dec 31

And finally – 2017

	2017
Begin FATCA withholding on gross proceeds.	Jan 1
Expected start date of FATCA withholding on foreign passthru payments	Jan 1
Full FATCA reporting begins	Mar 31

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Putting that all together….

	2013	2014	2015	2016	2017/ 2018
FFI Governance	**July 15 2013** - IRS FATCA registration portal available (Note 1) **Oct 25 2013**– Last day to register for inclusion on the Dec 2, 2013 IRS list of PFFIs and RDCFFIs **Dec 2 2013** -First IRS list of PFFIs and RDCFFIs to be published **Dec 31 2013** – Earliest effective date of an FFI Agreement			**Jan 1 2016** – Expanded affiliated group transition period ends for Limited FFIs and Limited Branches **Feb 29 2016** – Responsible officer must be able to certify completion of identification and review for all preexisting individual and entity accounts (Note 2)	**Jan 1 2017** – Interests previously issued in bearer form must be redeemed or immobilized **Jun 30 2017** - First Certification of Compliance and Effective Controls required **Dec 31 2016** - Last day for qualification as Limited Life Debt Investment Entity **Dec 31 2016** - End of first compliance certification period
Due diligence for preexisting accounts		**Jun 30 2014** – Complete identification and review of preexisting entity account holders that are prima facie FFIs	**Dec 31 2014** – Complete identification and review of preexisting high value individual accounts	**Dec 31 2015** – Complete identification and review of all remaining preexisting individual and entity accounts (Note 3)	
Procedures for new accounts		**Jan 1 2014** – Enhanced account opening procedures must be in place to establish the FATCA status of new individual and entity accounts			
Withholding		**Jan 1 2014** –Cut-off date for grandfathered obligations (Note 4) **Jan 1 2014** – Begin FATCA withholding on US source FDAP income for all new accounts and NPFFIs **Jul 1 2014** – Begin FATCA withholding on preexisting entity account holders that are undocumented prima facie FFIs	**Jan 1 2015** – Begin FATCA withholding on any undocumented individual preexisting high value account	**Jan 1 2016** – Begin FATCA withholding on remaining undocumented preexisting accounts	**Jan 1 2017** – Begin FATCA withholding on gross proceeds. FATCA withholding is also expected to begin for foreign passthru payments.
Reporting			**Mar 15 2015** – Begin FATCA reporting on Form 1042-S for US source FDAP income for calendar year 2014 **Mar 31 2015** –Limited FATCA reporting on Form 8966 for calendar years 2013 & 2014 for US accounts (Note 5) **Mar 31 2015** – Begin aggregate FATCA reporting on Form 8966 for recalcitrant accounts	**Mar 15 2016** – Form 1042-S reporting must include foreign reportable amounts paid to NPFIs during calendar year 2015 (also applies to calendar year 2016) **Mar 31 2016** – Limited FATCA reporting on Form 8966 for calendar year 2015 includes income payments	**Mar 31 2017** – Full FATCA reporting on Form 8966 begins for calendar year 2016 **Mar 15 2018** – Begin FATCA reporting on Form 1042-S for US gross proceeds and potentially foreign pass-thru payments for calendar year 2017

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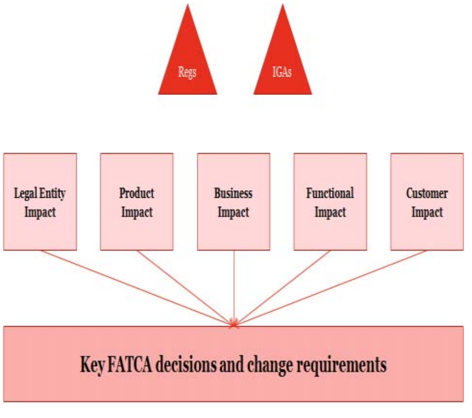
So what are the immediate priorities for Banks?

Multiple routes to compliance are available – selecting the most appropriate requires time



Key decisions may include:

- Will we register our FFIs by 25th October or 31st December 2013?
- Will we change our internal systems or use an off the shelf FATCA package?
- Will we continue to do business with recalcitrant account holders?
- Will we collect additional data from our potential customers?
- Will we establish product restrictions so as to avoid the first withholding requirement?

Thank you

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Joint Industry FATCA Seminar 2013

AM Breakout Session 2 - **Funds**

Moderator

Ms Isabella Chan
Executive Committee Member and
Regulatory Subcommittee Vice Chairman
HKIFA

Panelists

Mr John C. Crager
Global Head of Tax
HSBC Securities Services –
Fund Services

Mr Wout Kalis
Region Head, Alternative Investments
Securities and Fund Services
Global Transaction Services, Citi

Mr Karl J. Paulson Egbert
Registered Foreign Lawyer
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Director and Head of Legal &
Compliance, Asia Pacific
GAM Hong Kong Limited

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Ms Elaine Yu
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Allianz Global Investors GmbH

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Agenda

1. Impacts of FATCA to Funds and Fund Managers
2. The 5 Pillars of FATCA
3. What Should Fund Managers do Now and Beyond 2013?

Potential FATCA Roles in the Funds Industry

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Key FATCA Requirements	Timeline	Potential Performing Party*					
		Fund Manager	Fund Admin	Trustee	TA / Registrar	Custodian	Distributor
• **Legal Entity Management** – Identification and classification of legal entities as FFIs – Signing of FFI agreement, – Acting as the "sponsoring entity" for the funds, if applicable	• By 1 Jan 2014	• ID & classification of legal entities as FFIs • Sponsoring entity • Sign FFI Agreement		• ID & classification of legal entities as FFIs • Sponsoring entity • Sign FFI Agreement	• ID & classification of legal entities as FFIs		• Communication of fund's FATCA compliance status to investors
• **Client On-boarding – new accounts** – Collection of investor information when accepting new accounts to determine FATCA (e.g. ,U.S.) status	• By 1 Jan 2014	• Onboarding procedures for new investors		• Onboarding procedures for new investors	• Onboarding procedures for new investors		
• **Due Diligence – pre-existing accounts** – Review of prima facie FFIs – Review of high value individual investors – Review of all other pre-existing investors	• By 30 Jun 2014 • By 31 Dec 2014 • By 31 Dec 2015	• Due diligence on pre-existing investors		• Due diligence on pre-existing investors	• Due diligence on pre-existing investors		
• **Withholding** – Identification & calculation of FATCA withholdable payments (e.g., U.S.-source "FDAP" income such as interest and dividend income, and enforcement/collection of 30% FATCA withholding tax	• 1 Jan 2014	• Withholding agent	• Track per share basis Withholding • Withholding agent	• Withholding agent	• Withholding agent	• ID of U.S.-source "FDAP" income • Withholding agent	
• **Reporting** – Reporting on U.S. accounts – Aggregated reporting on recalcitrant accounts and also certain payments to non-participating FFIs.	• Beginning 31 Mar 2015	• Reporting requirements	• Reporting requirements	• Reporting requirements	• Reporting requirements		
• **Certification by Responsible Officer** – Completion of due diligence and not assisting customers to avoid FATCA since 6 August 2011 – Compliance and effective internal controls	• 60 days following 2-yr period for pre-existing diligence • 6 months after each 3-year review period	• Certify FATCA compliance		• Certify FATCA compliance			

*** The FATCA regulations do not prescribe the performance of certain roles and responsibilities to specific parties within the fund management industry. Therefore, the FATCA services and capabilities of the third party service providers listed above may vary.**

Information is provided by PWC.

FATCA: History and Purpose

Background

- Enacted as part of HIRE Act in March 2010
- Proposed Regulations released in February 2012
- *Final Regulations released on January 17, 2013*

Purpose

- To require non-US financial institutions and non-US entities owned by US persons to provide information to the US Internal Revenue Service ("IRS") identifying US persons invested in non-US bank or securities accounts
- Capture US persons who use non-US accounts and funds to evade US tax obligation
- Focus on Foreign (non-US) Financial Institutions (FFIs)
  - *Investment Entities (Funds, Fund Manager, Fund Administrator, etc)*
  - Banks
  - Brokers
  - Other intermediaries including custodians

Information is provided by HSBC Bank Plc.

The Impact of FATCA to Fund Managers

What the IRS thinks it does.

What it really does.

Who Are the Players?

Investor → Distributors → Investment Fund ← Direct Investors?

Registry/ Transfer Agent

Trustee

Fund Administrator

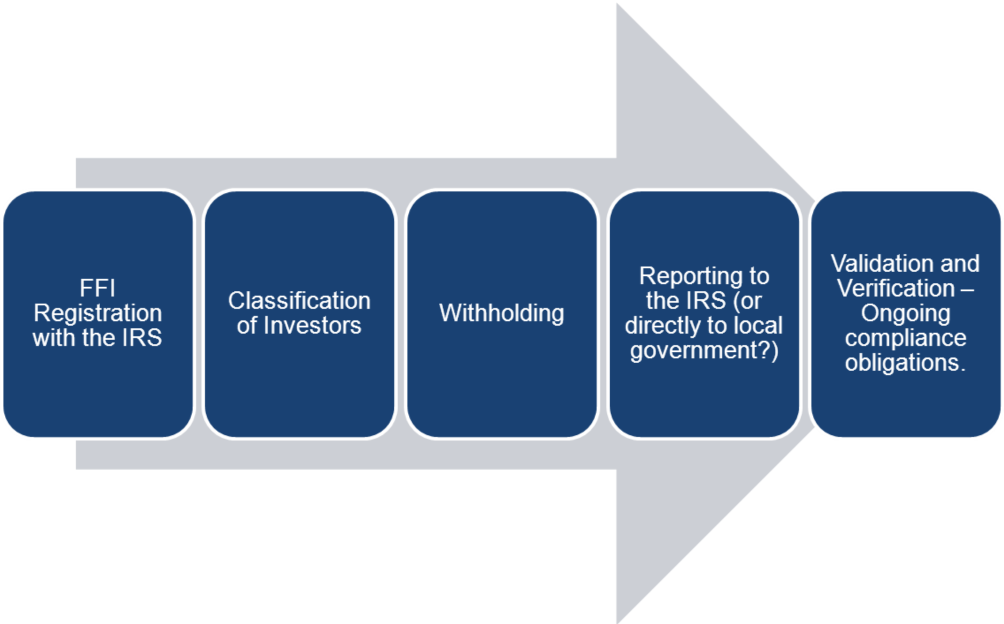
Fund Manager

Fund Accountant

Custodian

What about counterparties, trading intermediaries and other trading partners?

What Will Funds and Fund Managers Need To Do?



FFI Registration

- Both funds and fund managers will have to register.
- Who actually needs to take charge?
  - What is the role of trustees?
- Relevant Dates: system scheduled to open 15 July; 25 October – last day to get funds on the initial "participating FFI" list.
- Final regulations provide new categories of registered and certified deemed-compliant FFIs (details provided in Appendix)
  - Such FFIs are afforded reduced reporting and account due diligence obligations

FFI Registration

- Sponsoring Entities – centralise FATCA compliance.
  - Sponsors must be authorised to manage the FFI and enter into contracts on behalf of the FFI;
  - Must register with the IRS and register each sponsored FFI with the IRS;
- Relevant Dates: system scheduled to open 15 July; 25 October – last day to get funds on the initial "participating FFI" list.

Classification of Investors

- Funds will need to establish FATCA-appropriate KYC processes for new investors and, eventually, survey all existing investors for US indicia (details provided in Appendix)
- Incoming investors
  - Individual investors– government IDs that indicate country of residency or permanent address are sufficient (or collect W-8s).
  - Entities – collect W-8s.
- Who will collect the information?
- Who will <u>review</u> the information?

Withholding

- The first deadline: withholding on FDAP for (a) non-participating FFIs and (b) new account holders begins on 1 January 2014 for shareholders that do not provide appropriate documentation (or do not provide a privacy waiver.)
- No withholding against payments on "preexisting obligations" before 1 January 2016 (but earlier deadlines for recalcitrant shareholders, others who have not provided sufficient documentation.)
- Who will perform the withholding?

Reporting

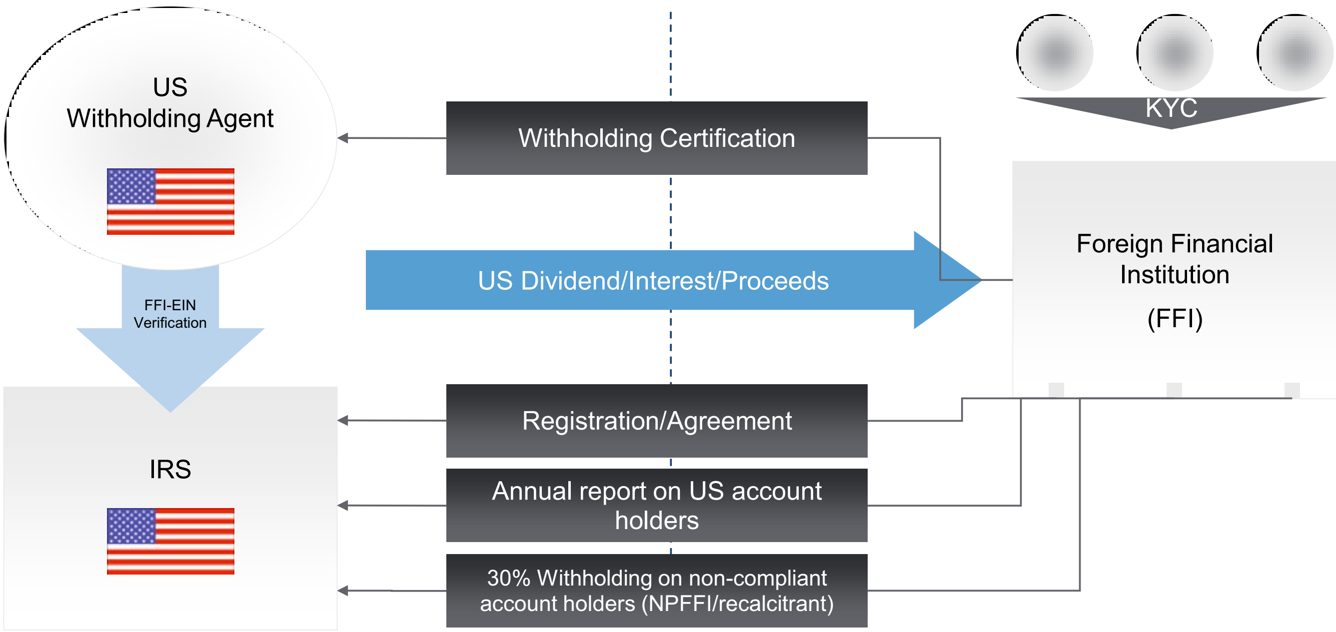
- Who gets reported?
  - Direct US Persons – US entities and individuals
- Substantial US owners
  - Corporate shareholders owning more than 10% of the vote or value of stock;
  - Partners owning more than 10% profit or capital interest in a partnership;
  - Any US "owner" of an 'investment vehicle" (i.e., no de minimus!)
- Who handles reporting?

Validation and Verification

- *Responsible Officer :* who will this be with respect to funds?
  – An officer with sufficient authority to fulfill their duties as a responsible officer.
- Must establish and periodically review compliance program that ensures that FFIs can satisfy the requirements of the FFI agreement.
  – No material failures during certification period;
  – Certification of completion of account ID procedures;
  – Certification that, to the best of RO's knowledge after reasonable inquiry, no formal or informal practices or procedures to asset account holders to avoid Chapter 4 after 6 August 2011.

Information is provided by Dechert.

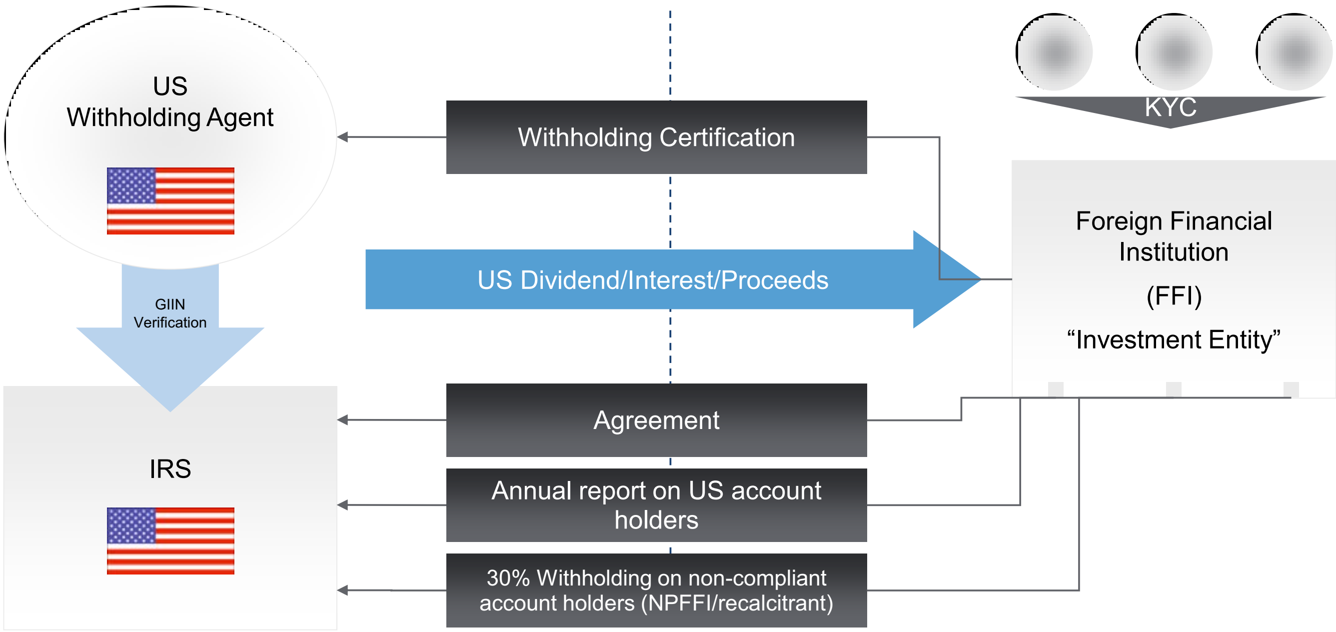
Foreign Financial Institution (FFI) Compliance
FFI Agreement with IRS must be in place to have "Participating" status



1. Registration/Agreement: Register and agree with the IRS through the FATCA Registration Portal
2. Classification: Obtain information regarding each account and each holder to determine if any accounts are US
3. Reporting: For US accounts maintained, report on an annual basis
4. Withholding: Withhold on certain payments made to a recalcitrant and Non-Participating FFI accounts
5. Verification: Comply with due diligence procedures with respect to the identification of US accounts

Information is provided by HSBC Bank Plc.

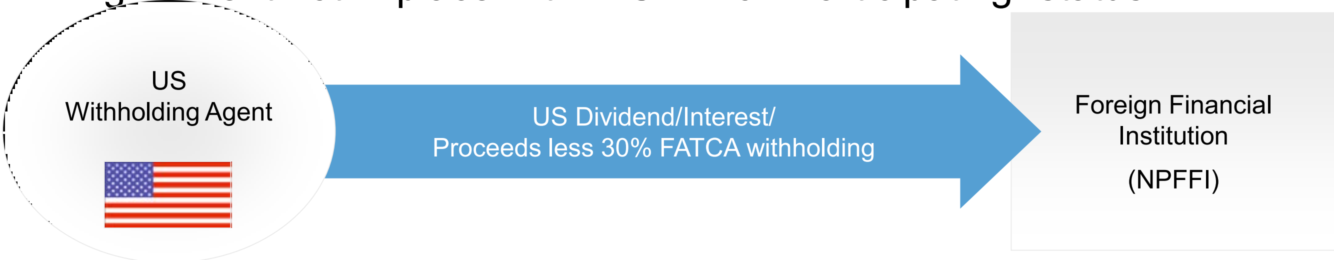
FATCA Compliance Elements and Fund Administration response



1. Agreement: Generally, Fund Administrator will not register funds for their clients.
2. Classification: Generally, Fund Administrator will have 2 different models depending on role with respect to KYC.
3. Reporting: Fund Administrator may be able to support reporting.
4. Withholding: Fund Administrator may be able to support calculation (PPP), remittance and reporting of withholding.
5. Verification: Fund Administrator, generally, cannot act as Responsible Officer (regs generally do not allow) but may be able to provide management reporting to support.

Information is provided by HSBC Bank Plc.

Foreign Financial Institution Non Compliance
FFI Agreement not in place with IRS - "Non Participating" status



Withholding applies to Non Participating Foreign Financial Institutions (NPFFIs)

Subject to 30% withholding:
- US sourced interest, dividends (FDAP) - January 1, 2014
- Gross proceeds on the sale of securities that pay US sourced interest or dividends (FDAP) – January 1, 2017

Factors other than Withholding that will drive FATCA compliance

•Portfolio manager of a NPFFI fund does not have investment flexibility – US Treasuries, US ETFs, transactions with US counterparties would become difficult/infeasible.
•Funds that choose not to invest in securities with withholdable payments in lieu of meeting FATCA compliance (NPFFIs) may face other difficulties such as US brokers/bank withholding agents and upstream FFIs may ask for compliance with certain clients because NPFFIs may need to be dealt with at different terms.
•Sophisticated investors investing in Funds will want to understand if the Fund is FATCA compliant. Investors want to avoid the risk of investing in FFIs that may be subject to FATCA withholding.

Information is provided by HSBC Bank Plc.

FATCA – Things Funds/Fund Managers to Consider Planning and Acting on Now

Pre-Effective Date

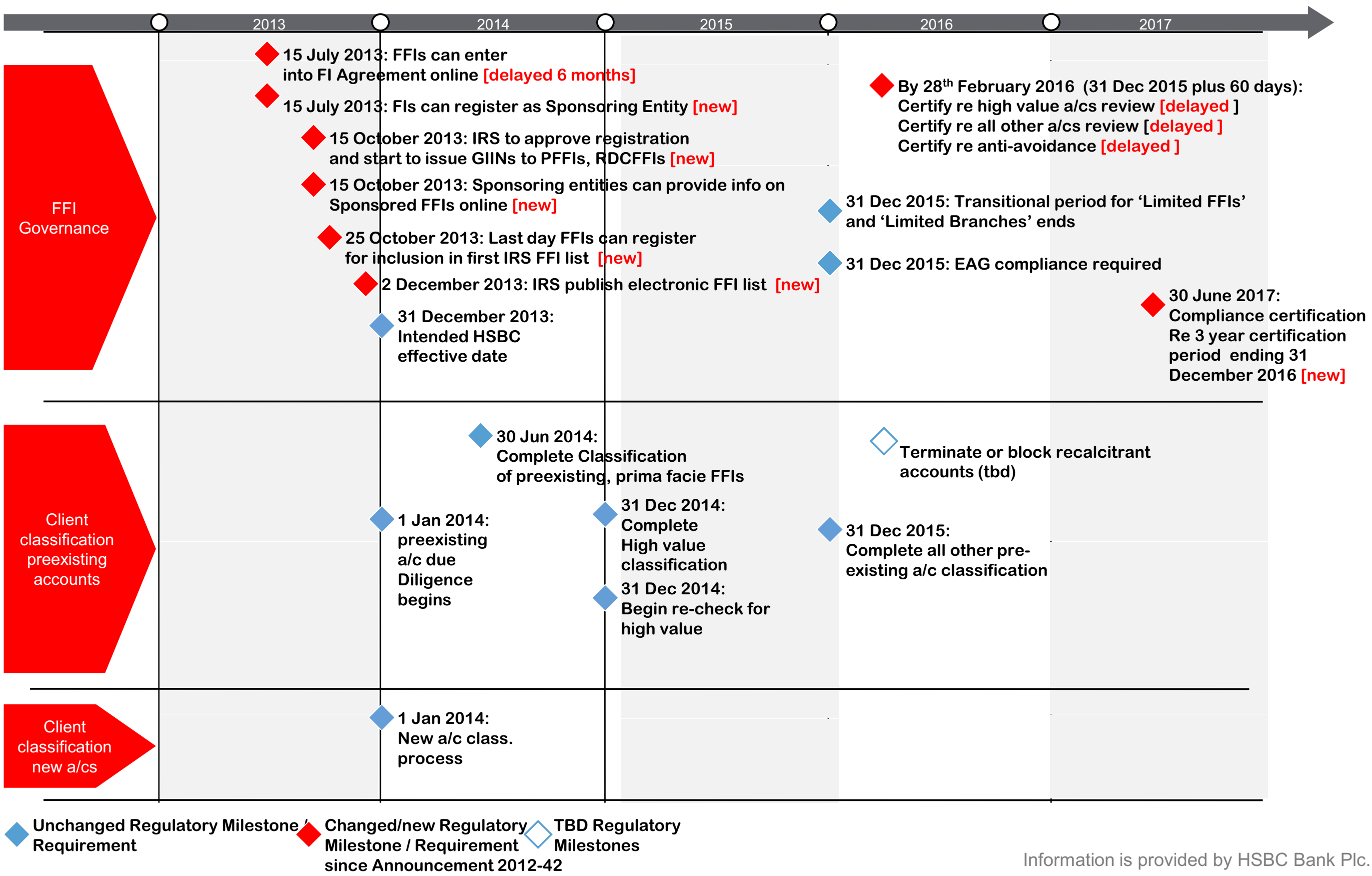
- Decide on FATCA compliance – PFFI, DCFFI, NPFFI for funds
- Understand its own obligations and requirements as a fund management entity.
- Registration/Enter into FFI Agreement – Obtain GIIN
- Provide PFFI Documentation (W-8BEN,W-8IMY) to paying agent service providers.
- Amend Prospectus and Sub-documents to include 5 basic rights of the fund as an FFI:
  - Potential withholding tax being applied against investors
  - Fund has right to gather, use, store investor data.
  - Inform investors that such data may be reported to the IRS or other tax authorities
  - Fund may need to request additional information from the investor for FATCA or IGA purposes
  - Fund has right to take action (ie close account or block account) if information is not provided.
- Identify Responsible Officer
- Adopt written policies and procedures governing its due diligence procedures for identifying and documenting investors as well as its reporting and withholding requirements.
- Review definition of Current Customer Master File to determine if systems and databases maintained by Fund Manager must also be subject to an electronic search.
- PFFI may wish to provide organizational education on fact that responsible officer must certify to best of their knowledge and after conducting reasonable inquiry that there was no formal or informal practice/procedures in place from August 6, 2011, through the date of certification to assist account holders of avoiding FATCA.
- Legal agreements with service providers may change also operating manuals/SLAs may be updated to cover FATCA responsibilities.

Account Holder Classification, On Going Compliance

- Conduct Periodic Reviews of Adherence to Policies and Procedures
- Responsible officer to periodically certify that the PFFI is in compliance with its obligations and may be required to provide information or disclose material failures
- Additionally, a fund manager may have a relationship manager assigned to its investors and the relationship manager may have actual knowledge that that a "high-value account" investor is a US person.
- A fund manager also will need to implement procedures to ensure that the relationship manager identifies change in circumstances of an account.
- For other high-value accounts, a fund manager may have information that is not held by the transfer agent and will need to review such information.
- Maintain documentation including requests made and responses to relationship manager inquiries and all results from electronic searches, if necessary, for 6 calendar years.
- Make responsible officer certification.

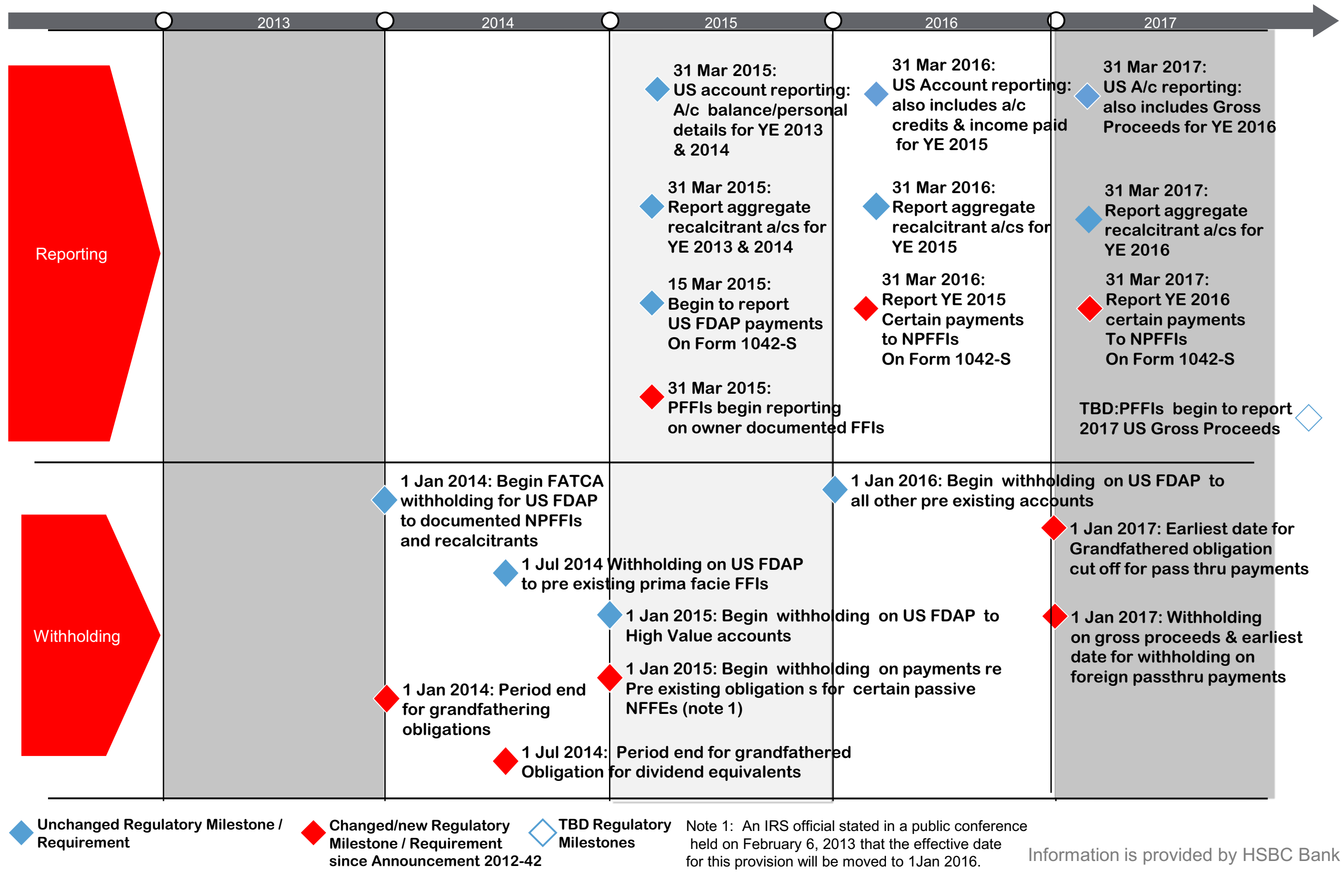
Information is provided by HSBC Bank Plc.

FATCA – Legislative Timeline (Classification)



Information is provided by HSBC Bank Plc.

FATCA – Legislative Timeline (Withholding and Reporting)



Information is provided by HSBC Bank Plc.

Potential FATCA Roles in the Funds Industry

Any US federal tax discussion contained in this communication is not intended to be used, and cannot be used, to avoid penalties under the Internal Revenue Code or to promote, market or recommend any transaction or matter addressed herein.

Key FATCA Requirements	Timeline	Potential Performing Party*					
		Fund Manager	Fund Admin	Trustee	TA / Registrar	Custodian	Distributor
• **Legal Entity Management** – Identification and classification of legal entities as FFIs – Signing of FFI agreement, – Acting as the "sponsoring entity" for the funds, if applicable	• By 1 Jan 2014	• ID & classification of legal entities as FFIs • Sponsoring entity • Sign FFI Agreement		• ID & classification of legal entities as FFIs • Sponsoring entity • Sign FFI Agreement	• ID & classification of legal entities as FFIs		• Communication of fund's FATCA compliance status to investors
• **Client On-boarding – new accounts** – Collection of investor information when accepting new accounts to determine FATCA (e.g. ,U.S.) status	• By 1 Jan 2014	• Onboarding procedures for new investors		• Onboarding procedures for new investors	• Onboarding procedures for new investors		
• **Due Diligence – pre-existing accounts** – Review of prima facie FFIs – Review of high value individual investors – Review of all other pre-existing investors	• By 30 Jun 2014 • By 31 Dec 2014 • By 31 Dec 2015	• Due diligence on pre-existing investors		• Due diligence on pre-existing investors	• Due diligence on pre-existing investors		
• **Withholding** – Identification & calculation of FATCA withholdable payments (e.g., U.S.-source "FDAP" income such as interest and dividend income, and enforcement/collection of 30% FATCA withholding tax	• 1 Jan 2014	• Withholding agent	• Track per share basis Withholding • Withholding agent	• Withholding agent	• Withholding agent	• ID of U.S.-source "FDAP" income • Withholding agent	
• **Reporting** – Reporting on U.S. accounts – Aggregated reporting on recalcitrant accounts and also certain payments to non-participating FFIs.	• Beginning 31 Mar 2015	• Reporting requirements	• Reporting requirements	• Reporting requirements	• Reporting requirements		
• **Certification by Responsible Officer** – Completion of due diligence and not assisting customers to avoid FATCA since 6 August 2011 – Compliance and effective internal controls	• 60 days following 2-yr period for pre-existing diligence • 6 months after each 3-year review period	• Certify FATCA compliance		• Certify FATCA compliance			

* The FATCA regulations do not prescribe the performance of certain roles and responsibilities to specific parties within the fund management industry. Therefore, the FATCA services and capabilities of the third party service providers listed above may vary.

Information is provided by PWC.

FATCA – Questions?

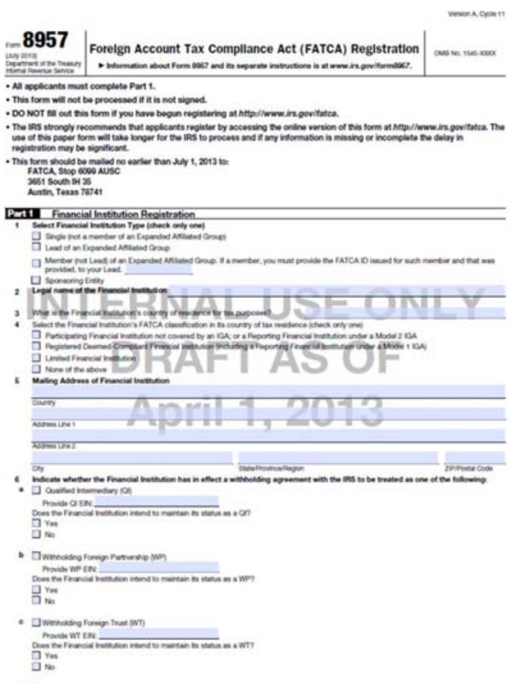
Appendix – Details of 5 FATCA pillars

FATCA: FFI Registration/Agreement

- FFI Registration/Agreement
  - The preamble of the Final Regulations sets forth general description of the registration process and the FFI Agreement.
  - The FATCA Registration Portal will be the primary means of FFIs to interact with the IRS: maintain FATCA registrations, agreements and certifications.
  - Portal will be accessible to FFIs no later than July 15, 2013.
  - FFIs register and agree to comply with obligations as a PFFI or as a “sponsoring entity” or as limited FFIs or registered deemed compliant FFIs (including Model 1 FFIs).
  - After registration, the IRS will approve the registration.
  - IRS intends to issue a GIIN to each PFFI/RDCFFI – assigned no later than October 15, 2013.
  - IRS will electronically post the first list (IRS FFI List) of PFFIs and RDCFFIs on December 2, 2013. This list will be updated monthly.
  - The last date by which a FFI can register with the IRS to ensure its inclusion on the December 2013 IRS FFI list is October 25, 2013.
  - Before the Portal opens – IRS will publish a Revenue Procedure (FATCA Rev. Proc.) containing terms & conditions applicable to FFIs which will be consistent with the Final Regulations.

FATCA: FFI Agreement

- IRS issued Form 8957 on April 1, 2013
- However, IRS encourages online registration rather than registration by mail with this Form.



Version A, Cycle 11

Form 8957 (July 2013) Department of the Treasury Internal Revenue Service | Foreign Account Tax Compliance Act (FATCA) Registration ► Information about Form 8957 and its separate instructions is at www.irs.gov/form8957. | OMB No. 1545-XXXX

- All applicants must complete Part 1.
- This form will not be processed if it is not signed.
- DO NOT fill out this form if you have begun registering at http://www.irs.gov/fatca.
- The IRS strongly recommends that applicants register by accessing the online version of this form at http://www.irs.gov/fatca. The use of this paper form will take longer for the IRS to process and if any information is missing or incomplete the delay in registration may be significant.
- This form should be mailed no earlier than July 1, 2013 to:
  FATCA, Stop 6099 AUSC
  3651 South IH 35
  Austin, Texas 78741

Part 1 Financial Institution Registration

1 Select Financial Institution Type (check only one)
☐ Single (not a member of an Expanded Affiliated Group)
☐ Lead of an Expanded Affiliated Group
☐ Member (not Lead) of an Expanded Affiliated Group. If a member, you must provide the FATCA ID issued for such member and that was provided, to your Lead.
☐ Sponsoring Entity

2 Legal name of the Financial Institution

3 What is the Financial Institution's country of residence for tax purposes?

4 Select the Financial Institution's FATCA classification in its country of tax residence (check only one)
☐ Participating Financial Institution not covered by an IGA; or a Reporting Financial Institution under a Model 2 IGA
☐ Registered Deemed-Compliant Financial Institution (including a Reporting Financial Institution under a Model 1 IGA)
☐ Limited Financial Institution
☐ None of the above

5 Mailing Address of Financial Institution
Country
Address Line 1
Address Line 2
City | State/Province/Region | ZIP/Postal Code

6 Indicate whether the Financial Institution has in effect a withholding agreement with the IRS to be treated as one of the following:
a ☐ Qualified Intermediary (QI)
Provide QI EIN:
Does the Financial Institution intend to maintain its status as a QI?
☐ Yes
☐ No

b ☐ Withholding Foreign Partnership (WP)
Provide WP EIN:
Does the Financial Institution intend to maintain its status as a WP?
☐ Yes
☐ No

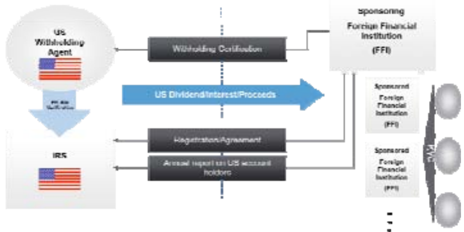
c ☐ Withholding Foreign Trust (WT)
Provide WT EIN:
Does the Financial Institution intend to maintain its status as a WT?
☐ Yes
☐ No

INTERNAL USE ONLY
DRAFT AS OF
April 1, 2013

Information is provided by HSBC Bank Plc.

FATCA: Sponsoring/Sponsored Entities

- Sponsored Entity
  - A new category of Registered Deemed Compliant FFIs
    - Must be an investment entity that is not a Qualified Intermediary, Withholding Partnership or Withholding Trust;
    - An entity has agreed to be a Sponsoring Entity of the Sponsored Entity
  - Remains liable for any failure of its sponsoring entity to comply with the obligations the sponsoring entity has agreed to undertake
- Sponsoring Entity
  - Authorized to manage the FFI and enter into contracts on behalf of the FFI
    - Fund Manager, Trustee, Corporate Director or Managing Partner
  - Has registered with the IRS as a sponsoring entity
  - Has registered the FFI with the IRS
  - Has agreed to perform on behalf of the sponsored entity, all due diligence, withholding, reporting and other requirements that the FFI would have been required to perform if it were a PFFI
  - Identify the Sponsored Entity in all reporting completed on the FFI's behalf.



FATCA: Withholding requirement

- Dealing with US Withholding Agents
  - US FI will withhold on payments in 2014 made to:
    - FFIs documented as NPFFIs (from January 1, 2014 or whenever documented)
    - Undocumented pre-existing Prima Facie FFIs (from July 1, 2014) – limited definition
    - Registered DCFFIs – treat similar to PFFIs
    - Certified DCFFIs such as local banks, retirement plans, non-profit organizations
    - Owner-documented FFIs
  - Rules related to US Withholding Agents will apply to funds that are US domiciled (i.e.,Delaware LPs)

FATCA: Withholding requirement

Dealing with US Withholding Agents

- Withholding certificates – will be changed for FATCA – awaiting the new documents –draft W-8BEN-E actual draft W-8BEN….draft W-8IMYs and W-8EXPs also available.

- Withholdable Payment – Payment of US source FDAP income (interest, dividends) and gross proceeds from the sale or disposition of any property which may produce interest or dividends from sources within the US

- On April 8, IRS issued FFI list schemas and test FFI list. Withholding agents will need to verify tax certificates of compliant FFIs against such lists.

GIIN	FINm	CountryNm
98Q96B.00000.LE.250	Test Bank One	France
98Q96B.00000.BR.826	Branch	United Kingdom
98Q96B.00000.BR.036	Branch	Australia
98Q96B.00000.BR.076	Branch	Brazil
98Q96B.00000.BR.818	Branch	Egypt
98Q96B.00001.ME.276	Test Bank Two	Germany
98Q96B.00001.BR.826	Branch	United Kingdom
8124H8.00000.SP.208	Test Bank Three	Denmark
C54S47.99999.SL.276	Test Bank Four	Germany
C54S47.99999.BR.208	Branch	Denmark
126BM7.00000.LE.826	Test Bank Five	United Kingdom
126BM7.00000.BR.250	Branch	France
126BM7.00001.ME.208	Test Bank Nine	Denmark
126BM7.00002.ME.276	Test Bank Ten	Germany
126BM7.00002.BR.344	Branch	Hong Kong
SE19K4.99999.SL.250	Test Bank Eleven	France
76GHU9.00000.BR.036	Branch	Australia
76GHU9.00000.BR.818	Branch	Egypt
92YNJG.00000.BR.076	Branch	Brazil

FATCA: Classification

Classification will be supported by documentation and knowledge of account holder:

- Different procedures for different types of account holders
  - Documenting individual (new and pre-existing) accounts
  - Documenting entity (new and pre-existing) accounts

- Documentation
  - Withholding certificates
    - Local language is permissible
    - Intermediaries will need to provide “withholding statement” and possibly supporting documentation.
  - Written Statements
  - Documentary evidence
    - Documentary evidence to establish “foreign status”, general documentary evidence, pre-existing account documentary evidence, payee-specific documentary evidence (a letter from an auditor/attorney, bankruptcy filing, corporate resolution etc)

- Standards of knowledge
  - May rely on documentation unless knows or has reason to know such documentation is unreliable or incorrect
  - If information contained in documentation or general account information conflicts with the FATCA status claimed

FATCA: Classification

Classification will be supported by documentation and knowledge of account holder:

- Consolidated Accounts
  - PFFI has option to treat multiple accounts as a single account
  - Benefit: consolidating accounts allow a new account opened by a pre-existing customer to be treated as pre-existing account
  - Benefit: permits reduced due diligence requirements through data/documentation sharing between accounts with a PFFI, its branches or expanded affiliated group
  - Constraint: Accounts must be consistently treated as consolidated accounts.
- Aggregation
  - In applying certain dollar-level thresholds – de minimis, enhanced review – there is a requirement to link and aggregate accounts wherever there is a common data link between computerized systems.
  - Requirement applies to the extent a relationship manager knows that accounts are directly/indirectly held by the same person.
  - Complicates the use of de minimis or not applying an enhanced review.
  - Not explicitly applied to sponsored entities under a sponsoring entity.
- Change in circumstances
  - If documentation exceptions exist and an account no longer meets the exception then PFFI must obtain appropriate documentation
- Record retention
  - Pre-existing accounts for 6 years after identification procedures were performed
  - Original, certified copy, photocopy

FATCA: Classification

Example of Individual KYC process

- Pre-existing Individual Accounts
  - Application of full US indicia (changes to indicia) search applies.
  - Accounts with a balance/value that does not exceed USD50,000 are exempt from review, unless FFI elects otherwise
  - Accounts with balance/value >USD50,000 but <=USD1,000,000 subject to electronically search for indicia of US status
    - Generally, those with US Indicia must be cured with
      - US Person: Form W-9 AND secrecy waiver, if necessary OR;
      - Non-US Person: Form W-8 AND documentary evidence (Cert of Residence, Government ID etc)
  - Accounts with a balance that >USD1,000,000 are subject to an enhanced review of electronic/non-electronic files for US indicia, including an inquiry of the actual knowledge of any relationship manager associated with the account. Non-electronic file review is limited
- New Individual Accounts
  - Classification and documentation of new individual accounts requires an FFI to retain certain documentation establishing the customer's FATCA status.
    - Acceptable documentary evidence that contains an individual's permanent residence address or indicates the country of residency/citizenship:
      - Certificate of residence
      - Government ID
      - Third-party credit report
      - OR; withholding certificate that establishes an individual's status as a foreign person.
  - If US indicia is identified, FFI must obtain additional documentation or treat as a recalcitrant account holder

Information is provided by HSBC Bank Plc.

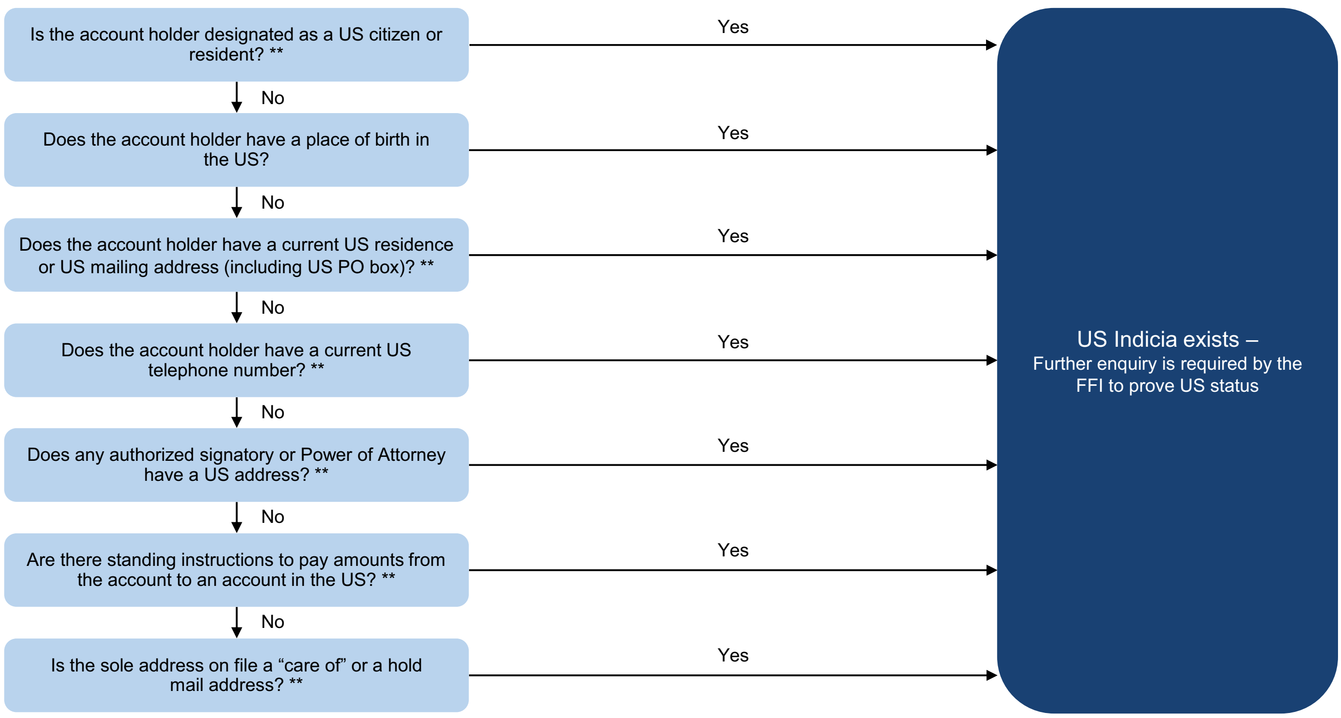
FATCA: Classification

Example of Entity KYC process

- Pre-existing Entity Accounts
  - Accounts need to be actively reviewed for entity US indicia.
  - Entity US indicia applicable to withholding certificates, written statements and documentary evidence have been harmonized.
  - Generally, entity US indicia will need to be cured with a W-8 and documentary evidence that establishes the entity has a foreign status.
  - A withholding certificate provided by a PFFI, RDCFFI or a sponsored FFI if the certificate contains a GIIN that is verified does not need to be otherwise cured.
- Prima Facie FFIs
  - FFIs need to review electronically searchable information in respect of a customer for a QI or NQI designation.
  - USFIs have a requirement to review financial SIC codes
  - Without such designation FFIs don't need to remediate and obtain documentation on entities for 2 years.

FATCA: Classification
US Indicia

Steps required to identify Pre-existing Individual Accounts by Participating FFIs



** Enhanced review is limited in case that these items are all electronically searchable.

Information is provided by HSBC Bank Plc.

FATCA: Reporting

Information reporting requirement

- Form 8966 (FATCA Report)
  - Due March 31
  - IRS shall grant an automatic 90-day extension of time to file Form 8966 via filing Form 8809.
- PFFI Reporting on Specified US Accounts
  - Form 8966
  - Transitional reporting calendar years 2013 & 2014
    - Name, Address, TIN each specified US person
    - Name, Address, TIN of each substantial US owner of any account holder that is a US owned NFFE AND Name of US owned entity
    - FFIs must report account # and account balance/value at the end of the calendar year
  - Transitional reporting calendar year 2015
    - Also include information on certain payments
      - Custody accounts (gross dividends, gross interest, all other income)
      - Fund payments would be distributions and redemption proceeds
  - Reporting for calendar year 2016 +
    - All information + gross proceeds
  - Closing of account information does not apply to funds but applies to depository and custody accounts, et al.

FATCA: Reporting

- Who gets Reported?
  - Direct US Persons – US entities and US individuals, including
    - Individuals resident in the US
    - Individuals with dual nationality (where one is US)
    - Legal residents (i.e. Green Card holders)
    - Individuals born in the US who have not renounced their citizenship
    - Those who satisfy the substantial presence test
  - Indirect account holders or “substantial US owners” – 10%or more ownership
- Substantial US Owners
  - Corporate shareholders owning more than 10% of the vote or value of stock
  - Partners owning more than a 10% profit or capital interest in a partnership
  - Any US “owner” of an “investment vehicle”
- Specified US Persons are those that will be reported on
  - Exclusions from Specified US Person: regularly traded corporations, tax-exempt organizations, IRA, REITs, RICs, Brokers and Dealers, US government and its agencies, Political subdivisions (states, cities, etc)

Information is provided by HSBC Bank Plc.

FATCA: Reporting

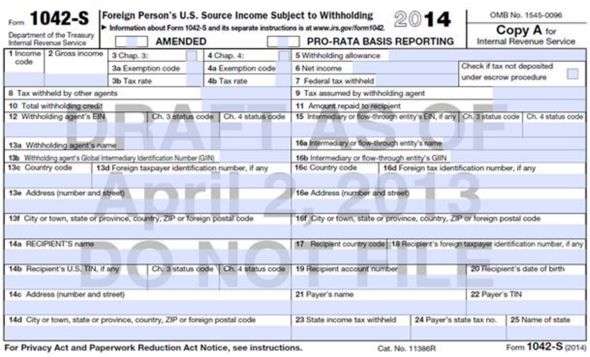
Information reporting requirement

- Recalcitrant Reporting
  - Due March 31
  - Form 8966
  - PFFI must report the aggregate number and aggregate balance/value of accounts at the end of the calendar year including
    - Passive NFFEs that have not provided information regarding their owners
    - US persons that have not provided a valid and effective waiver or not provided a valid W-9 or correct name/TIN when requested
    - Have US indicia but not cured.
    - Do not have US indicia but otherwise recalcitrants.
    - Dormant accounts where account holder has not initiated a transaction in past 3 years and not communicated with FFI in past 6 years.

FATCA: Reporting

Information reporting requirement

- Form 1042-S reporting
  - PFFI/DCFFI makes a payment that is a FATCA reportable amount to a recalcitrant account holder or NPFFI
    - A payment of FDAP that would be a withholdable if paid by a US person.
  - PFFI/RDCFFI may report in pools consisting of it recalcitrant holders and payees that are NPFFIs
  - PFFI/RDCFFI may perform specific payee reporting to report a FATCA reportable amount made to a recalcitrant holder/NPFFI when withholding was applied.
  - A PFFI/DCFFI that is a NQI, NWP, NWT or an FFI with an election to be withheld upon is not required to report the payment on Form 1042-S if the payment is made to a NPFFI/recalcitrant and its withholding agent withheld the correct amount.
  - Reporting with IRS made before March 15th.
  - New Forms expected; must be furnished to recipient.


Form 1042-S Foreign Person's U.S. Source Income Subject to Withholding 2014 OMB No. 1545-0096
Department of the Treasury Internal Revenue Service
▶ Information about Form 1042-S and its separate instructions is at www.irs.gov/form1042.
AMENDED PRO-RATA BASIS REPORTING
Copy A for Internal Revenue Service
1 Income code
2 Gross income
3 Chap. 3:
3a Exemption code
3b Tax rate
4 Chap. 4:
4a Exemption code
4b Tax rate
5 Withholding allowance
6 Net income
7 Federal tax withheld
Check if tax not deposited under escrow procedure
8 Tax withheld by other agents
9 Tax assumed by withholding agent
10 Total withholding credit
11 Amount repaid to recipient
12 Withholding agent's EIN
Ch. 3 status code
Ch. 4 status code
15 Intermediary or flow-through entity's EIN, if any
Ch. 3 status code
Ch. 4 status code
13a Withholding agent's name
16a Intermediary or flow-through entity's name
13b Withholding agent's Global Intermediary Identification Number (GIIN)
16b Intermediary or flow-through entity's GIIN
13c Country code
13d Foreign taxpayer identification number, if any
16c Country code
16d Foreign tax identification number, if any
13e Address (number and street)
16e Address (number and street)
13f City or town, state or province, country, ZIP or foreign postal code
16f City or town, state or province, country, ZIP or foreign postal code
14a RECIPIENT'S name
17 Recipient country code
18 Recipient's foreign taxpayer identification number, if any
14b Recipient's U.S. TIN, if any
Ch. 3 status code
Ch. 4 status code
19 Recipient account number
20 Recipient's date of birth
14c Address (number and street)
21 Payer's name
22 Payer's TIN
14d City or town, state or province, country, ZIP or foreign postal code
23 State income tax withheld
24 Payer's state tax no.
25 Name of state
For Privacy Act and Paperwork Reduction Act Notice, see instructions.
Cat. No. 11386R
Form 1042-S (2014)
DRAFT AS OF April 2, 2013 DO NOT FILE

FATCA: Withholding

- Withholding by FFIs will not apply to payments with respect to preexisting obligations made before January 1, 2016, except for:
  - Withholding by FFIs on payments to Prima Facie FFIs that have not indicated they are PFFIs is required as of July 1, 2014.
  - Withholding on payments to P-NFFEs that have not provided proper certifications to substantial US owners is required as of January 1, 2015 → this is expected to be moved to January 1, 2016 also.
  - Withholding on payments to high value accounts that are considered "recalcitrant" is also required as of January 1, 2015.
- Withholding by FFIs on FDAP with respect to new account holders begins on January 1, 2014 if appropriate documentation is not received at account opening if a US account holder has not provided a data privacy waiver, if necessary.
- FFIs will need to withhold on FDAP payments to FFIs who have declared they are NPFFIs from January 1, 2014.
- Payments exempt from withholding based on valid documentation:
  - Payments to PFFIs
  - Payments to D-CFFIs
  - Payments to Exempt Beneficial Owners
  - Others…..certain savings accounts, certain term life insurance contracts, certain escrow accounts,

FATCA: Withholding

- Withholding on gross sale proceeds reserved.
- Passthru Payments has presented numerous questions and issues for funds and custodians to apply – the proposed regulations has pushed the requirement for foreign passthru payments out to 2017. Reserved in the Final Regulations
- Generally, a 3 year validity on W-8s but indefinite validity available on:
  - Individuals but where there is no current US address or US phone number.
  - Entities a PFFI/RDCFFI with a valid GIIN.
  - W-8EXP
  - W-8BEN-E, if furnished with documentary evidence establishing a foreign status.

FATCA: Verification

- FATCA is much different than other reporting requirements under US tax law due to the Verification requirements
- Responsible Officer (RO)
  - Any officer of any PFFI with sufficient authority to fulfill the duties of a responsible officer
  - Officer of any DCFFI with sufficient authority to ensure the FFI meets the applicable requirements of a DCFFI
- RO to establish Compliance Program includes policies, procedures, and processes sufficient for the participating FFI to satisfy the requirements of the FFI agreement.
- RO may designate others to implement and oversee the compliance with the verification requirements but must make any required certifications to the IRS themselves.
- RO must periodically review the sufficiency of the FFIs compliance program and FFIs compliance with requirements of the FFI agreement during the certification period and every 3 years certify compliance with the IRS.
  - RO has established a compliance program subject to ongoing/periodic review
  - Maintains effective internal controls and that there were no *material failures* during the certification period – or if they did occur that they were corrected and action taken to prevent such failures from occurring in the future.

FATCA: Verification

- Other RO Certifications:
  - 1) review of high-value accounts/undocumented account holders
  - 2) certification of completion of account ID procedures and documentation requirements for all pre-existing accounts
  - 3) certification to the best of the RO's knowledge after conducting a reasonable inquiry, the participating FFI did not have any formal or informal practices or procedures in place August 6, 2011, through the date of such certification to assist account holders in the avoidance of Chapter 4.
- IRS may make inquiries to request additional information regarding the information reported on the returns filed by the PFFIs.
- Event of default defined – must be remediated, doesn't result in automatic termination of agreement.

Deemed Compliant FFIs

- Deemed Compliant FFIs (DCFFIs)
  - Two types of DCFFIs: Registered DCFFIs and Certified DCFFIs
- Categories of Certified Deemed Compliant FFIs
  - *Nonreporting IGA FFI*, *Limited life debt investment entities (already established securitization SPVs),* Nonregistering local banks, FFIs with only low-value accounts.
  - Owner-documented FFIs
    - Investment entity with no non-participating FFI investors and pushes documentation up-stream.
    - May need to be careful on accepting these types! Classification validation and reporting requirements!
  - *Sponsored, closely-held investment vehicles (limitations on investor type)*
- Registered DCFFIs
  - Procedural requirements
    - Register with the IRS and agree to comply with the terms of its registered deemed-compliant status.
    - Have its responsible officer certify every three years to the IRS, that all of the requirements for the deemed-compliance have been satisfied since date the FFI registration as a deemed-compliant FFI becomes effective.
    - Maintain in its records the confirmation from the IRS of the FFI's registration as a deemed-compliant FFI and GIIN or such other information as the IRS specifies in forms or other guidance; and
    - Agree to notify the IRS if there is a change in circumstances that would make the FFI ineligible for the deemed-compliant status for which it has registered, and to do so within six months of the change in circumstances unless the FFI is able to resume its eligibility for its registered-deemed compliant status within the six month notification period.

Deemed Compliant FFIs

- Categories of Registered DCFFIs
  - Qualified collective investment vehicles
    - Must be regulated in its country of incorporation
    - Each holder must be a
      - PFFI
      - Registered DCFFI
      - A non-specified US Person (corporation whose stock is regularly traded, exempt organization, US, state or municipal government, RICs, REITs, et al)
      - Exempt beneficial owner (foreign governments, political subdivisions of a foreign government, and wholly owned agencies of a foreign government; international organizations and wholly owned agencies of an international organization; foreign central banks; governments of US territories; and certain foreign retirement plans)
  - Restricted Funds
    - Licensed and regulated in a FATF compliant jurisdiction
    - May be sold only through a distributor that is
      - PFFI, Registered DCFFI, Nonregistering Local Bank, Restricted Distributor
    - Prohibits sales to US persons, NPFFIs, or passive NFFEs with substantial US owners
    - Ensure each distribution agreement includes a provision for the distributor to notify the DCFFI of a change of status within 90 days and the FFI will need to certify to IRS that within 90 days of notification will terminate the distribution agreement and redeem those accounts within 6 months of notification
    - For direct accounts, to go through review procedures to identify any US persons or NPFFIs
    - Must adopt policies and procedures to identify account holders to ensure it does not open or maintain an account for a specified US Person, or NPFFI
    - Restricted Distributor is a tightly defined term.

Deemed Compliant FFIs

- Registered DCFFIs
  - Many funds are distributed through local wealth managers/financial planners
  - These distributors may be considered FFIs, however, may not have resources to meet PFFI requirements or may not meet definition of Restricted Distributor in case of a Restricted Fund DCFFI, accordingly may be non-compliant. So it is possible for many funds that are PFFIs may have a substantial investor base potentially subject to reporting/withholding
  - Proposals for restricted funds may deem these compliant but "deemed compliance" will still need certain obligations to be met as well as meeting the "deemed compliance" standard may be difficult to attain/maintain.
  - So full compliance may allow more flexibility where the work and costs are only marginally higher than maintaining a deemed-compliant standard.
  - Can a Sponsored Entity also be a Qualified CIV or Restricted Fund?

Exempt Beneficial Owner

Exempt Beneficial Owners are:

- Foreign Governments (including political sub-divisions)
- International organizations
- Foreign central banks of issue
- Retirement funds
- Entities wholly owned by exempt beneficial owners

Exempt Retirement Funds:

- Treaty qualified retirement fund
  - It was established in a country with which the US has a bilateral income tax treaty in force and is generally exempt from income tax in that country;
  - It operates principally to administer or provide pension or retirement benefits; and
  - It is entitled to treaty benefit on US source income (including limitation on benefits provision).
- Broad-participation retirement fund
  - Fund established to provide retirement, disability, or death benefits to beneficiaries
  - No single beneficiary with a right to more than 5% of the fund's assets
  - Subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in its country of establishment or operation
  - One or more of the following requirements are satisfied:
    - Exempt from tax on investment income in its home country;
    - At least 50% of total contributions from sponsoring employees;
    - Distributions or withdrawals are allowed only upon the occurrence of a specified event or penalties apply.
    - Contributions by employees are limited by reference to earned income or may not exceed $50,000 annually.

Exempt Beneficial Owner

Exempt Retirement Funds:

- Narrow-participation retirement fund
  - Fund established to provide retirement, disability, or death benefits to beneficiaries
  - Fewer than 50 participants
  - Fund is sponsored by one or more employers that are not investment entities or P-NFFIs
  - Employer/employee contributions are limited by reference to earned income and compensation
  - Participants that are not resident of the country in which the fund is established or operated are not entitled to more than 20% of the fund's assets; and
  - Subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in its country of establishment or operation
- Fund formed pursuant to a plan similar to a Section 401(c) plan
- Investment vehicles exclusively for retirement funds
- Pension fund of an exempt beneficial owner

Disclaimer

Joint Industry FATCA Seminar

Breakout Session 3 - **Insurance**

Moderator

Mr. Lennard Yong

Councillor of Life Insurance Council

Hong Kong Federation of Insurers

Panelist

Mr. Charles Kinsley

Tax Principal

KPMG China

Panelist

Ms. Lisa Aaron

Regional Risk Programme Director
& FATCA Programme Lead

Prudential Corporation Asia

Panelist

Mr. William Choy

Head of Compliance

AIA International Limited

FATCA JOINT INDUSTRY SEMINAR

Breakout Session 3: Insurance
Monday 24 June 2013

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AGENDA

1. HKFI UPDATE - Chair, HKFI FATCA Taskforce
2. INSURANCE INDUSTRY COMPLIANCE PREPARATION - Panel
3. COMMENTS & QUESTIONS - All

1. HKFI UPDATE

2. HKFI UPDATE

- **HKFI DISCUSSIONS WITH HK GOVERNMENT**

- **INSURANCE INDUSTRY ISSUES**

  - Contract provisions
  - Customer data - Underlying data more extensive, e.g. FNAs.

3. HONG KONG IGA UPDATE

1. IGA IMPORTANT FOR INSURERS (enable FATCA compliance)

- PDPO: Restricts personal data transfer
- Insurance Contract Law: No unilateral termination. FATCA: Close recalcitrant A/C
- No withholding capability
- Reduce compliance obligations

2. INSURANCE AUTHORITY May 2013 UPDATE

3. FSTB JUNE 2013 UPDATE (HKFI, HKAB, HKIFA, HKTA)

- Model 2 IGA. Request-based flow of taxpayer data

4. GREATER CHINA IGAs: i) China; ii) Macau (TBD)

4. FFI CATEGORIZATION & REQUIREMENTS

Activity	Participating FFI	DEEMED COMPLIANT FFI	Non-Compliant
FATCA Withholding (W/H)	No	No	Yes
Apply for Status	Yes	Yes	No
IRS FFI No.	Yes	Yes	No
Certify Status	Yes	Yes	No
IRS Agreement	Yes	No	No
Determine U.S. Account Holders	Yes	Limited	No
Due Diligence	Yes	Limited	No
IRS Reporting	Yes	No	No
W/H Passthru Payments.	Yes	No	No
Compute PPP	Yes/or 100%	Yes/or 100%	No
Provide other Info.	If requested	Probably Not	No

5. FATCA COMPLIANCE READINESS

- **EARLY READINESS** independent of IGA conclusion, e.g.
  - FATCA Governance, Risk & Control Framework [RO certification: i) from effective date, ii) one time and ongoing, iii) multi-location scope]
  - New Customer Due Diligence in place prior to 1 Jan 2014

- **REDUCE COMPLIANCE BURDEN, e.g.** reliance on AML KYC (FATCA Final Regulations) if sufficient for BAU

- **IRS GIIN REGISTRATION**
  - Recommend GIIN (Global Intermediary Identification Number) registration in September 2013 for categorization e.g. PFFI or Deemed Compliant FFI

    [IRS portal opens 15 July 2013. 25 October 2013 last day for inclusion on 2013 FFI List]

6. FFI agreement vs. IGA requirements

	FATCA regulations				Model 1 IGA	Model 2 IGA
	PFFI	Registered DCFFI	Certified DCFFI	EBO	Reporting FI	Reporting FI
Registration	Yes	Yes	No	No	Yes*	Yes
Self-certification (e.g., Form W-8 BEN-E or Form W9)	Yes	Yes	Yes	Yes	Yes	Yes
New Account Due Diligence	Yes	Depends	Generally, no	No	Yes (per IGA rules)	Yes
Preexisting Account Remediation	Yes	Depends	Generally, no	No	Yes (per IGA rules)	Yes
Withholding against NPFFIs, Recalcitrant Account Holders	Yes	Depends	No	No	Generally, No	Generally, No
Reporting	Yes	Depends	No	No	Yes (locally)	Yes
Address Legal Impediments to Compliance (i.e., account closure, transfer or blockage)	Yes	Depends	No	No	Generally, no	Yes (consent to report per IGA rules)
Governance	Yes	Yes	No	No	Yes (if required locally)	Yes

* Each Reporting FI that is tax resident in a Model 1 Partner Country must comply with the registration requirements of the relevant Model 1 IGA.

2.FATCA PREPARATION – PANEL DISCUSSION

Critical Tasks for Global Insurers

Registration	■ FFI must register with the IRS for FFI Agreement to be "in effect"
New Account Identification	■ FFI must obtain information and perform due diligence on each new account holder to determine which accounts are U.S. Accounts
Account remediation	■ FFI must perform due diligence on Pre-existing Accounts to determine which accounts are U.S. Accounts through electronic / manual files searches
Withhold on Pass-thru Payments	■ TBD: FFI must withhold 30% tax on Pass-thru Payments to made to Recalcitrant Account Holders and NPFFIs
Reporting	■ FFI must report annually, through an electronic filing with the IRS, with respect to all U.S. Accounts
Address Legal Impediments	■ FFI must seek waiver of legal impediments which would prevent FATCA reporting or, alternatively, close, block or transfer the account
Governance	■ A responsible officer must certify every 3 years that the FFI is in compliance with its compliance program and report material failures

Critical Tasks for Global Insurers

Product Classification	▪ Identify products and payments that are within the scope of FATCA
Customer Communication	▪ Create communication plans for existing customers and requirements for new customers
Solution Design	▪ A solution that is “right-sized” for an organization - you do not need a gold-plated solution
Impact on Third Parties	▪ Identify key business relationships that are impacted (e.g., product distribution channels and service providers)
Training	▪ Develop and execute training plans for employees across functions and locations
Ongoing Monitoring / Review	▪ Ongoing monitoring of accountholders/customers is required for change in circumstance. This is not a once-of exercise

3. COMMENTS & QUESTIONS

THANK YOU

Joint Industry FATCA Seminar

Breakout Session 4 - **MPF and ORSO**

Moderator

Ms Ka Shi Lau
Chairman &
Retirement Schemes Subcom Chairman
HKTA

Panelist

Ms Kym Fortescue
Chief Compliance Officer
AIA Group

Panelist

Ms Rachel Tsang
Chief Operating Officer
Bank Consortium Trust Company

Panelist

Ms Angelica Kwan
Partner, U.S. Tax
PricewaterhouseCoopers
Hong Kong Limited

Panelist

Mr Cliff Li
Legal Counsel
Manulife (International) Limited

FATCA Compliance Timeline

- 31 December 2013 Last date for signing of a FFI Agreement with the US Government
- 1 January 2014 New onboarding process for scheme members and unit trust investors must be in place
- 1 January 2014 FATCA withholding tax applies to a scheme with US assets if the scheme has not complied with FATCA
- 31 December 2014 Need to complete due diligence on pre-existing high value (> US$1M) scheme members
- 31 March 2015 FATCA reporting begins on 2013 and 2014 year information
- 31 December 2015 Complete due diligence on all pre-existing (i.e. pre-2014) scheme members

Source: PwC

www.pwchk.com

Joint Industry FATCA Seminar

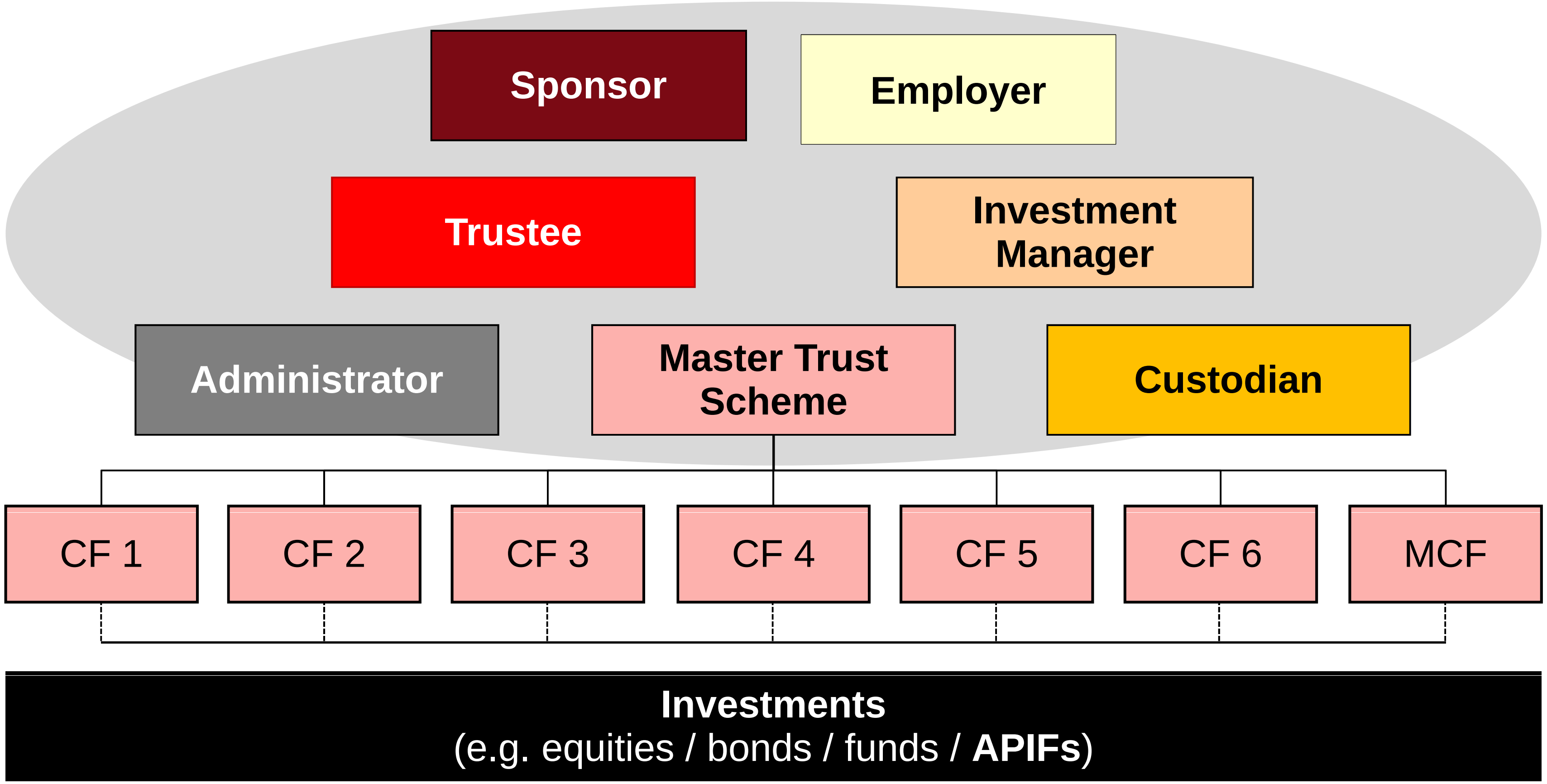
Breakout Session - MPF and ORSO

24 June 2013

Angelica Kwan
US Tax Partner

pwc

MPF Structure



How Does an MPF/ORSO Scheme Comply with FATCA?

- A Scheme needs to **sign an FFI agreement with the US Government** in 2013, where the FFI agrees to:
  - ✓ Collect more information when **opening new scheme member accounts** if **US indicia** are identified
  - ✓ Meet enhanced **due diligence procedures** to identify **US existing scheme members**
  - ✓ **Report to the IRS** on US scheme members
    - ▪ Requires change to MPF Schemes Ordinance Section 41 / ORSO Ordinance Section 77, PDPO and other relevant sections
  - ✓ **Later, possibly may withhold 30% US tax** on certain accrued benefit distributions and pay over to the US Government on:
    - ▪ Scheme members who do not provide information
    - ▪ But requires change in Hong Kong law to allow
- **Responsible Officer** has to personally certify to the US Government that the Scheme complies with the FFI agreement

What Should an ORSO Employer Do?

- **Discuss with ORSO trustee** (and potentially other service providers) **"who" will do "what"** on FATCA compliance, and how **costs for compliance** will be handled
  - ✓ Trustee can help ORSO employer ask whether **lower-tier investment funds** in which ORSO scheme invests are FATCA-compliant, especially if the funds hold US assets
  - ✓ Trustee can provide **updates on IGA** developments
- Encourage **HR / Finance team / pension committee** to get up to speed on FATCA
- If a participating scheme in **a pooling agreement**, contact the sponsor of the pooled ORSO to coordinate

What Steps Can a Corporate Trustee Take?

- **Not wait for further IGA developments**
  - ✓ It takes time to help prepare a Scheme for FATCA readiness
  - ✓ For trustees / administrators storing scheme member data, consider how to handle FATCA information such as US, non-US or recalcitrant status of scheme members
- **Consider developing FATCA service offerings for MPF/ORSO Schemes**
- Coordinate with **MPF Scheme sponsor** or **ORSO Employer**

What Are "US Indicia" a Scheme Should Look For?

1	Designation as **US citizen or US resident**
2	US place of birth
3	Current **US** resident **address** or US mailing address
4	"In care of" address or a "hold mail" address that is the **only address**
5	**Standing payment instructions** to account maintained in the US
6	**US telephone number**
7	A current **power of attorney** or signatory authority granted to person with a **US address**

Concept of "Reason to Know"
Aggregate reporting of "Recalcitrants"

What Reporting Is Done on US Scheme Members?

First Report Due: 31 March 2015 *For calendar year 2013 and 2014 Info*	• US Scheme member's name, address and US tax identifying number • Account number • **Account balance**
Due 31 March 2016 *For calendar year 2015 Info*	• **Payments paid or credited to the account** • Plus items noted above

FATCA Compliance Timeline Under Final Regs

➢ **25 October 2013**	Last day to **register** for inclusion on "good" FFI list (if miss this, register by **31 December 2013**)
➢ 2 December 2013	First IRS list published of FFIs complying with FATCA
➢ **1 January 2014**	**New FATCA-compliant due diligence procedures must be in place for new scheme members**
➢ **1 January 2014**	**FATCA withholding begins on US investment income received by a scheme if it is not FATCA compliant**
➢ 31 December 2014	Need to complete due diligence on pre-existing high value accounts (>$US1M as of 31 December 2013)
➢ **31 March 2015**	Begin **FATCA reporting** for calendar years 2013 & 2014 for **US scheme members**

FATCA Compliance Timeline under Final Regs

➢ **31 December 2015**	Need to **complete due diligence** on all pre-existing accounts
➢ 29 February 2016	Responsible officer certifies completion of FATCA due diligence on pre-existing accounts
➢ **1 January 2017**	**FATCA withholding** begins on **gross proceeds** on the sale of US stock and US securities received by a scheme if it does not comply with FATCA . Earliest date that FATCA withholding may be required for "foreign passthru payments", which will be the subject of future US guidance.
➢ 30 June 2017	First **certification of compliance program and effective internal controls** required by RO

Thank-You

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The materials contained in this presentation were assembled in June 2013 and were based on information available at that time.

Joint Industry FATCA Seminar

Breakout Session 5 – **Private/ Charitable Trusts**

Moderator

Ms Samantha Bradley
Legal Counsel,
Sir Elly Kadoorie & Sons Ltd

Panelist

Richard Weisman
Partner – Hong Kong,
Baker & McKenzie

Panelist

Mr. Andrew Ho
Senior Manager,
Private Clients, TMF Group

BAKER & McKENZIE
貝克·麥堅時律師事務所

FATCA: Key Concerns With Respect to Private Trusts

Monday, 24 June 2013

Richard Weisman
Partner, Baker & McKenzie Hong Kong

FATCA Overview

What is FATCA?

The Foreign Account Tax Compliance Act ("FATCA") provisions of US tax law were enacted as part of the Hiring Incentives to Restore Employment ("HIRE") Act on 18 March 2010.

What is the purpose?

The purpose of FATCA is to provide the IRS with additional tools in the form of information reporting to counter tax evasion by US taxpayers.

What do we do?

- Enter into agreement with IRS
- Non-US government enters into agreement with IRS
- Do not enter into agreement with IRS and accept withholding on US payments and potentially non-US source payments and collateral consequences through relationships with other financial institutions who participate.

FATCA Where Are We Now?

2010
- FATCA was enacted as part of HIRE Act

2012
- The US Treasury Department released proposed regulations implementing FATCA and issued a statement regarding an alternative intergovernmental approach to implementing FATCA
- Treasury received more than 200 comment letters regarding proposed regulations

2013
- The US Treasury Department released final regulations implementing FATCA in January
- The final regulations did not deal with foreign passthru payments

On-going
- The US Treasury Department continues the process of negotiating intergovernmental agreements
- Form of FFI Agreement and reporting forms are still in process and they are not yet publicly available

Phase-In of FATCA Withholding

- 1 January 2014
  - Withholding on US source income payments (FDAP) that are not grandfathered
- 1 January 2017
  - Withholding on gross proceeds that are not grandfathered
- 1 January 2017
  - Withholding on foreign passthru payments that are not grandfathered

Five Types of FFIs

Category of FFI	Key Classification Factor
Depository Institution	Accepts deposits in the ordinary course of a banking or similar business
Custodial Institution	20% or more of the entity's gross income is attributable to holding financial assets
Investment Entity	Investment funds and investment managers primarily engaged in the business of investing, reinvesting, or trading in financial assets
Specified Insurance Company	Insurance company or holding company of a group that includes an insurance company if the insurance company (or holding company) issues or is obligated to make payments on a cash value insurance or annuity contract
Certain Holding Companies and Treasury Centers	Holding companies and treasury centers that are (1) part of an EAG that includes a depository institution, custodial institution, insurance company, or investment entity under (b) and (c) above, and (2) a holding company or treasury center formed in connection with or availed of by an investment fund

Key Dates 2013-2014

July 2013

- **15 July**: IRS FATCA Portal open for FFI registration

October 2013

- **15 October**: GIIN will be assigned
- **25 October**: Last date for PFFI registration for first PFFI list

December 2013

- **31 December**: Grandfathered Obligation cut-off date

January 2014

- **1 January**: Effective date for 2013 FFI Agreement
- **1 January**: New account opening procedures operational
- **1 January**: FATCA withholding begins on U.S. source FDAP payments that are not grandfathered
- **1 January**: Form 1042/1042-S filing in effect

June 2014

- **30 June:** (or 6 months after FFI Agreement Effective Date) PFFI must document Prima Facie FFI payees
- **30 June:** (or 6 months after FFI Agreement Effective Date), PFFI must withhold on Withholdable Payments (other than Gross Proceeds) to undocumented Prima Facie FFIs

FATCA as Part of US Tax Law

- FATCA provisions are a part of the US Internal Revenue Code and will be interpreted in light of other US tax definitions and provisions, including:
  - Beneficial owner
  - US person
    - US citizen
      - Born in the US
      - In certain circumstances where one parent was US (and parent spent certain amounts of time in the US after the age of 14)
    - Green card holder
    - Resident due to physical presence
  - Entity classification
  - Grantor trust/ non-grantor trust

Classification of Foreign Trusts and PICs under the FATCA regime

– Under FATCA, foreign trusts and foreign PICs are classified as either FFIs or NFFEs. For these purposes, the dividing line between a NFFE and an FFI that has primarily investment income turns on whether the entity is professionally managed.

– Foreign trusts and PICs that have primarily investment income and are professionally managed will qualify as FFIs; foreign trusts and PICs that have primarily investment income and are not professionally managed will be classified as NFFEs.

– A trust or PIC that is a NFFE can avoid withholding either by self-certifying that it has no substantial US owners or by identifying any substantial US owners it has.

Types of FATCA-Compliant FFI Trusts and PICs

– Focusing on three scenarios for FFIs to avoid the 30% US withholding tax on Withholdable Payments:

1. Become a participating FFI by entering into an agreement with the IRS known as an “FFI Agreement.” Under an FFI Agreement an FFI must: (i) identify US accounts; (ii) report certain information to the IRS regarding US accounts; (iii) verify compliance with its obligations pursuant to agreement; and (iv) withhold on foreign passthru payments.
2. Become a deemed-compliant FFI.
3. Become an owner-documented deemed-compliant FFI.

Participating FFI: Obligations

To avoid the 30% withholding a Participating FFI ("PFFI") must:

- Enter an agreement with the IRS to comply with certain requirements
- Under the agreement, a PFFI will be required to:
  - Obtain information on all account holders to determine which accounts are US accounts
  - Comply with required due diligence/verification procedures and certify completion of such procedures
  - Report information on US accounts
  - Deduct and withhold a 30% tax on any "passthru payment" to recalcitrant account holders or other FFIs that are not PFFIs or deemed compliance FFIs
  - Comply with IRS information requests
  - Attempt to obtain a waiver of applicable bank secrecy or other information disclosure limitations or close the US account

Deemed Compliant FFIs

- FFIs can avoid 30% withholding if they are deemed compliant FFIs
- Two types: Registered and Certified
- Registered deemed certified FFIs are still required to meet certain requirements including performing diligence to identify and eliminate US accounts and registering with IRS
- Certified deemed compliant FFIs are required to certify status to the withholding agent

Deemed Compliant FFIs

– The deemed-compliant FFI categories are as follows:

1. Registered deemed-compliant FFI – e.g., “Sponsored Investment Entities”
2. Certified deemed-compliant FFI – e.g., “Sponsored, Closely Held Investment Entities”
3. Owner-documented FFI

Considerations for Choosing a Deemed-Compliant Category

Restrictions

– Trusts with different characteristics may choose different categories.

– It appears that the “sponsored investment entity” category is somewhat less restrictive than the “sponsored closely held investment vehicle” category as it does not put limitations on ownership of more than 20 individuals or holding the trust out as an investment vehicle for unrelated parties.

– It is possible that trusts that do not qualify as “sponsored closely held investment vehicle” because of these requirements could fall within the “sponsored investment entity” category.

Considerations for Choosing a Deemed-Compliant Category

Restrictions

– The “owner-documented” FFI category also has restrictions that may disqualify certain trusts which can still fall within the other categories.

– A significant limitation under the ODFFI rules is that a trust may only be treated as an ODFFI with respect to payments received from and accounts held with a designated withholding agent (or another ODFFI of the same agent).

Considerations for Choosing a Deemed-Compliant Category

Registration with the IRS

– Under the “sponsored investment entity” category, which is a registered deemed-compliant FFI, the trust should registered as an FFI with the IRS. Under the “sponsored closely held investment vehicle” category, which is a certified deemed-compliant FFI, the sponsoring entity should register with the IRS as a sponsor.

– The “owner-documented” FFI may provide a solution for trusts with no reportable accounts and that do not want any interaction with the IRS. Under this category, the designated withholding agent reports to the IRS only on US specified persons who have financial accounts in the trust. No further registration or reporting is required assuming that all of the trust’s assets are held with and payments are received from designated withholding agents that agree to fulfill their obligations under the ODFFI rules.

Comparison of the Relevant Categories of Deemed-Compliant FFIs

– Both IGAs list in their Annex II several categories of deemed-compliant FFIs, and in addition to the categories in Annex II they recognize as deemed-compliant any other FFI that otherwise qualified as a deemed-compliant FFI under the Regulations. Therefore, although the "owner-documented" FFI category is not listed in Annex II of the IGAs, it still applies to the IGAs.

– The revised Model IGAs as published on May 9, 2013 added a new relevant deemed-compliant category – trustee-documented trust.

Trustee Documented Trust

– A TDT is a certified deemed compliant FFI

– Category can apply where the trust is an investment entity

– Trustee must be a PFFI, Reporting Model 1 FFI, or Reporting US Financial Institution, and agree to satisfy various reporting requirements

– The sponsoring entity must report all information required under the IGA with respect to all US Accounts of the trust

Considerations for Choosing a Deemed-Compliant Category

– It appears that the “trustee-documented trust” category is somewhat less restrictive than the “sponsored closely held investment vehicle” category. It should be noted that the IRS may add more limitations and requirements to the currently succinct definition of a “trustee-documented trust.”

A Trust as an Owner Documented FFI

– The owner-documented FFI will be required to provide each withholding agent or participating FFI with which they hold an account a withholding certificate, an annual owner reporting statement (including the name and address of every person that owns an equity interest in the payee), and documentation for each individual, specified US person, owner-documented FFI, exempt beneficial owner, or NFFE that directly or indirectly holds an interest in the payee

– Will be treated as “Certified Deemed Compliant”

– Not required to register with the IRS

Owner-Documented FFIs

– An owner-documented FFI is eligible for deemed-compliant status if all of the following criteria are met:

1. It qualifies as an FFI solely because it is an "investment entity" as defined under FATCA. This means that it cannot also qualify as an FFI because it is a depository institution, custodial institution, or a specified insurance company. In addition, it cannot be owned by or be a member of an extended affiliated group ("EAG") that includes a depository institution, custodial institution, or a specified insurance company.
2. It does not maintain financial accounts for non-participating FFIs.
3. It provides a designated withholding agent with all required documentation regarding its owners and agrees to notify the withholding agent if there is a change in circumstances.
4. The designated withholding agent agrees to report to the IRS the information required.

Owner-Documented FFIs

– An owner-documented FFI may only be deemed-compliant with respect to payments received by, or accounts held with, a designated withholding agent (either a US financial institution or a participating FFI). The designated withholding agent is a withholding agent that agrees to undertake the additional due diligence and reporting required under FATCA.

– Under the Final Regulations, an FFI may, in lieu of a more detailed owner reporting statement and documentation of each owner of the FFI, provide a designated withholding agent with a letter from a qualified auditor or an attorney, signed no more than four years prior to the date of the payment, certifying that the FFI's documentation with respect to its owners and debt holders has been reviewed and that the FFI meets all requirements of an owner documented FFI under the Final Regulations.

A Trust as Account Holder: Who Is a "Substantial US Owner"

– The application of these rules varies fundamentally depending upon whether the trust constitutes a "grantor trust" or "non-grantor trust" for US tax purposes

– As with all other areas of FATCA, US tax law definitions and principles apply

A Trust as Account Holder: Who Is a "Substantial US Owner"

– Identifying the substantial US owners of a Trust (if any) would proceed as follows:

1. Identify any specific US Person treated as an owner of **greater than 0%** of the trust under the grantor trust rules; and
2. Identify any specific US Person that holds, directly or indirectly, more than 10% of the beneficial interests of the trust.

– It is important to note that if any portion of a trust (i.e., anything **greater than 0%**) is treated as a grantor trust as to a specified US Person, the trust is considered to have a substantial US owner.

A Trust as Account Holder: Who Is a "Substantial US Owner"

– Generally, a person holds a beneficial interest in a foreign trust if such person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust. A person will be treated as holding directly or indirectly more than 10% of the beneficial interest in a foreign trust if:

1. The beneficiary receives, directly or indirectly, only discretionary distributions from the trust and the fair market value of the currency or other property distributed, directly or indirectly, from the trust to such person during the prior calendar year exceeds 10 percent of the value of either all of the distributions made by the trust during that year or all of the assets held by the trust at the end of that year.

A Trust as Account Holder: Who Is a "Substantial US Owner"

2. The person is entitled to receive, directly or indirectly, mandatory distributions from the trust and the value of the person's interest in the trust, as determined under Code section 7520 exceeds 10% of the value of all the assets held by the trust; **or**
3. The person is entitled to receive, directly or indirectly, mandatory distributions and may receive, directly or indirectly, discretionary distributions from the trust, and the value of the person's interest in the trust, determined as the sum of the fair market value of all of the currency or other property distributed from the trust at the discretion of the trustee during the prior calendar year to the person and the value of the person's interest in the trust as determined under Code section 7520 at the end of that year, exceeds either 10% of the value of all distributions made by such trust during the prior calendar year or 10% of the value of all the assets held by the trust at the end of that year.

A Trust as Account Holder: Who Is a "Substantial US Owner"

– If the aggregate value of distributions during the prior calendar year to a specified US Person do not exceed $5,000, then under the Final Regulations that person is not treated as a substantial US owner. In the case of a specified US Person that is entitled to receive mandatory distributions, that person is not treated as a substantial US owner if the value of such person's interest in the trust is $50,000 or less.

– This determination of direct or indirect substantial US owners can be made as of the last day of the trust's accounting year or as of the date on which the trust provides the documentation to the withholding agent.

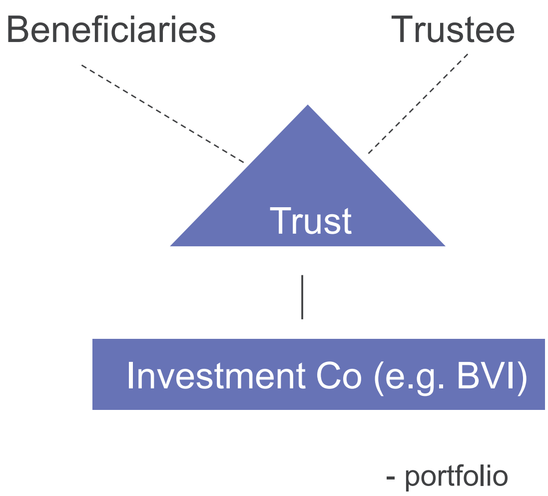
Controlling Person Test

– Under the Model 1 IGA, an FFI must identify all US Reportable Accounts annually to the FATCA Partner tax authority, including those which involve a US Person who is a "Controlling Person." The term Controlling Person means the natural persons who exercise control over an entity. In the case of a trust, this term includes the settlor, the trustees, the protector, the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust.

Application to a Foreign "Grantor Trust"

– With respect to a "grantor trust" where the sole grantor is a non-US person, the determination is relatively simple because a substantial US owner is any specified US person that is treated as an "owner" of the trust for US federal income tax purposes

Application to Underlying Investment Company: NFFE



FATCA Due Diligence

– For accounts that exceed $1 million, a manual file review for U.S. indicia must be performed, including an inquiry of the actual knowledge of any relationship manager associated with the account. The term "relationship manager" may be interpreted broadly.

– A PFFI is entitled to rely on the documentation received from the account holder unless the PFFI knows or has reason to know that the information contained in such documentation is unreliable or not correct.

FATCA Due Diligence

Indicia of potential US status:

1. Identification of any account holder as a US citizen or resident
2. A US address associated with an account (residential or correspondence address)
3. A US place of birth
4. An “in care of,” “hold mail," or PO box address that is the sole address on file
5. A power of attorney or signatory authority granted to a person with a US address
6. Standing instructions to transfer funds to an account maintained in the US
7. A US telephone number

Compliance Verification

– Certifications required of a *responsible officer*
  – To the best of responsible officer's knowledge, from 6 August 2011 until the date of the *FFI Agreement*, no formal or informal practices or procedures were in place to assist account holders in the avoidance of FATCA;
  – 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
  – 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.

Application of FATCA to Charitable Trusts

– If a charitable trust meets the definition of an FFI, then query if FATCA's exclusion for tax exempt and non-profit organizations applies.

– FATCA provides that entities described under Code section 501(c) (tax exempt organizations) are Excluded NFFEs.

– Similarly, non-US entities that are established and maintained exclusively for religious, charitable, scientific, artistic, cultural, or educational purposes are excluded NFFEs in specified circumstances.

Application of FATCA to Charitable Trusts

– A non-US non-profit organization must have no shareholders under their local laws who have a beneficial interest in its income or assets and no income may be applied for the benefit of a private individual or non-charitable entity with exceptions for fair market value payments by the entity for goods or services.

– If Hong Kong were to enter into an IGA, most likely it would ask for Annex II to include tax-exempt institutions and entities (including trusts and companies limited by guarantee) that are exempt from tax under section 88 of the Inland Revenue Ordinance.

Circular 230 Disclosure

Pursuant to requirements relating to practice before the Internal Revenue Service, any tax advice in this communication (including any attachments) is not intended to be used, and cannot be used, for the purpose of (i) avoiding penalties imposed under the United States Internal Revenue Code, or (ii) promoting, marketing, or recommending to another person any tax-related matter.

Q&A

Thank you

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FATCA: Key Concerns With Respect to Private Trusts

Monday, 24 June 2013

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