

FATCA

New definitions

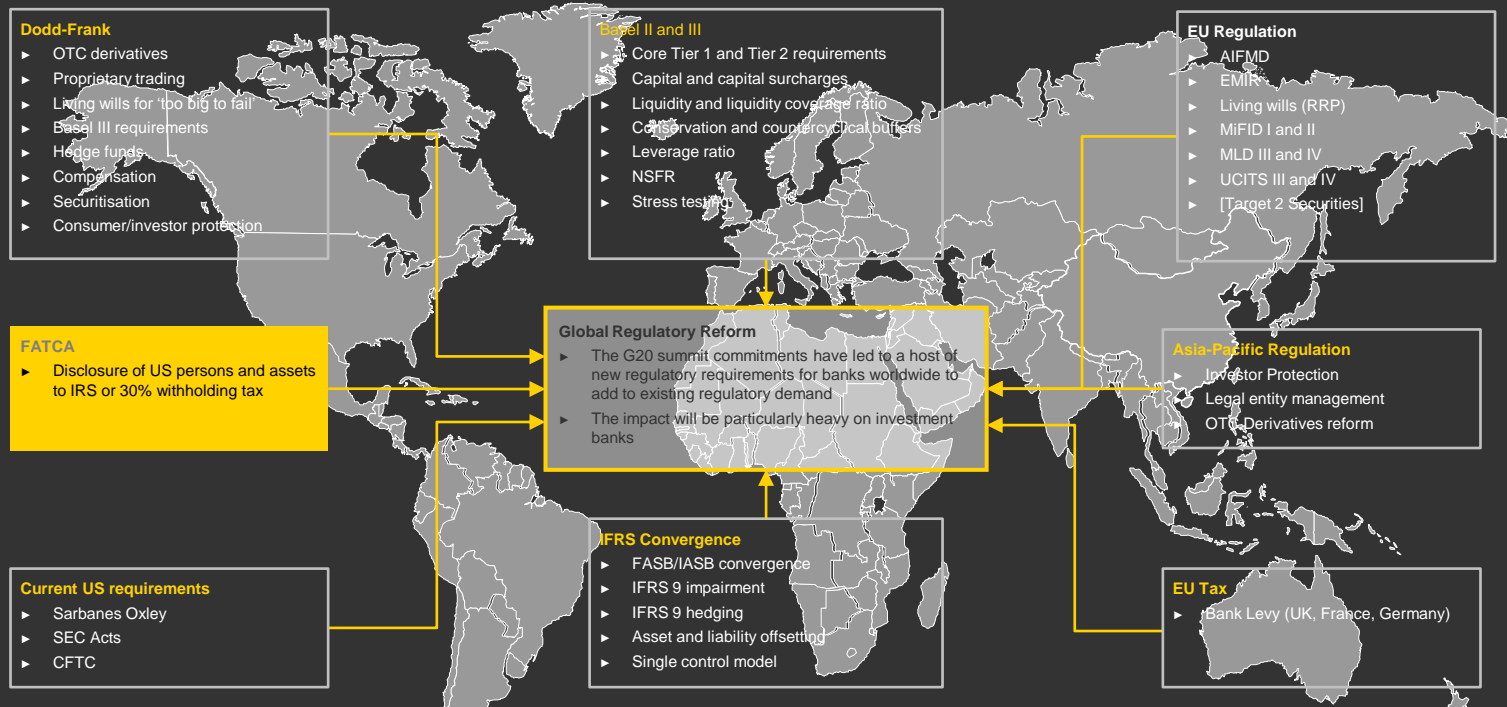
New classifications

New rules

New ideas

Global regulatory landscape

The landscape of future regulatory reform is truly global of which FATCA is one of them. These affect all the financial services industry



Note: Many 'regulations' are still only at proposal, draft or consultation stage. Nevertheless, all are expected to reach final enactment, however much amended between now and then, and become enforceable law within the next 2-3 years. This is necessary to meet the commitments made by the G20 summit countries. What is shown here are the major regulatory changes, and is not meant to be exhaustive.

Agenda

1. FATCA requirements
2. Recent amendments
3. Options for efficient compliance
4. Strategic questions and challenges
5. Where to find more information

FATCA

Before you know how,
You need to **know what**

What is FATCA

FATCA is a new reporting and withholding regime enacted by the United States.

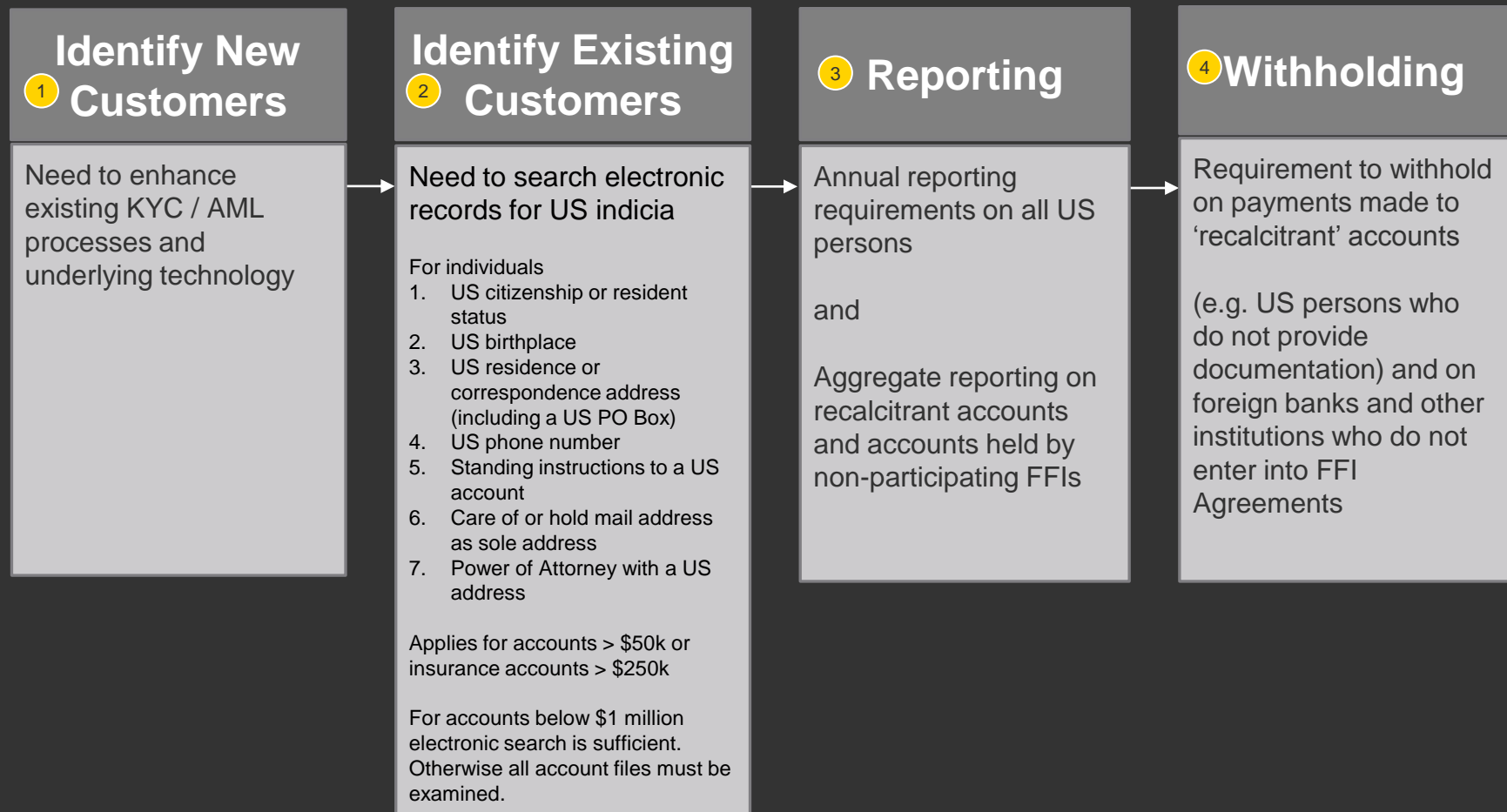
- ▶ The US tax authorities (IRS) have been concerned that US taxpayers are evading tax by investing in foreign institutions. In response FATCA was enacted on 18 March 2010.
- ▶ FATCA provides the IRS with a new tool by strengthening the **information reporting** and compliance around US persons who have money invested outside of the US.
- ▶ From 1 January 2014, a Foreign Financial Institution (FFI) will suffer **30% withholding** on certain US source income unless it enters into an “**FFI Agreement**” with the IRS.

FATCA requirements

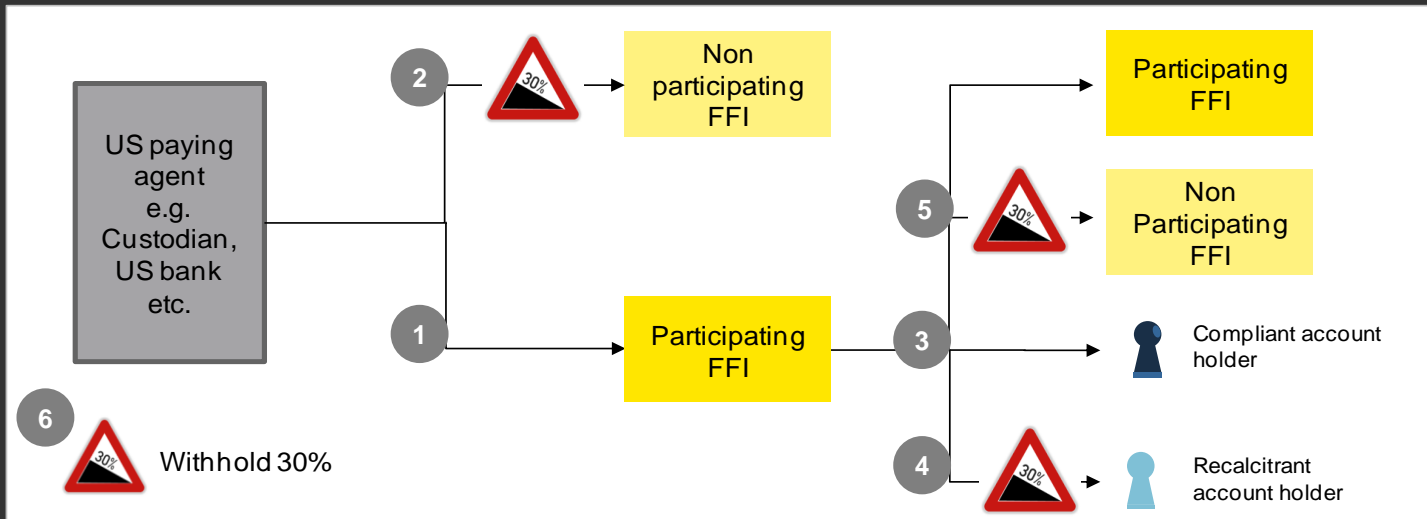
- ▶ In the Agreement the FFI undertakes a
 - ▶ review of its accounts to identify US persons directly or indirectly holding accounts with US indicia (**Identification**)
 - ▶ make certain reports to the IRS (**Reporting**)
 - ▶ agrees to withhold on certain amounts paid to uncooperative account holders and to other financial institutions that do not enter into an FFI Agreement (**Withholding**)
- ▶ The goal of the US tax authorities is to **receive information about US persons**
- ▶ Series of IRS Notices providing preliminary guidance, details and a timeline. Proposed regulations have been issued 8 February 2012 and final regulations by summer 2012.

FATCA requirements

FATCA imposes four main obligations on FFIs:

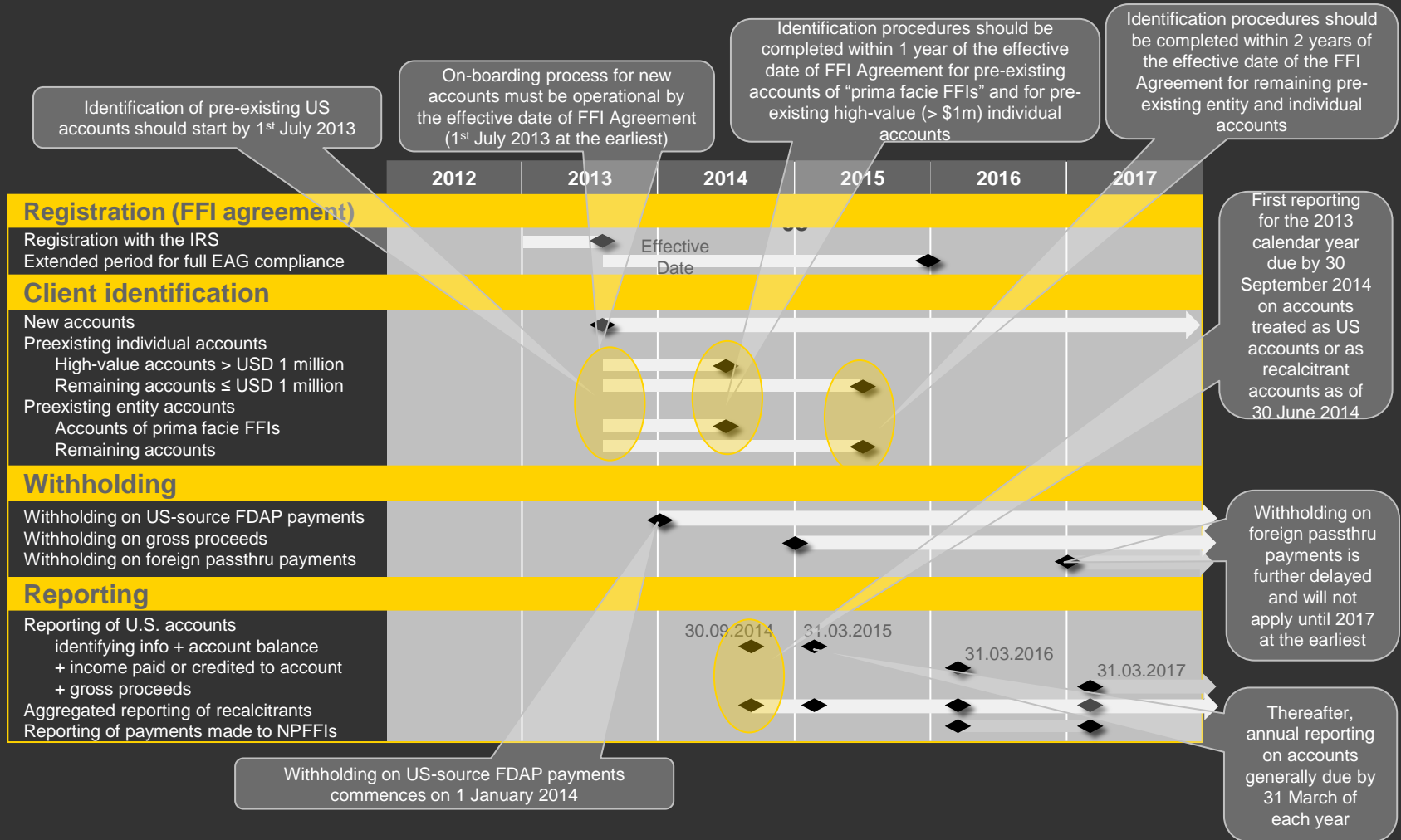


How will FATCA work?



- 1 Foreign Financial Institutions enter into an **agreement with the IRS** as of 1 July 2013
- 2 Who do not enter will be '**Non-Participating FFIs**' and subject to **30% withholding**
- 3 **Identification and documentation of customers.** Optional **de minimis** level of \$50,000
- 4 Potential US persons will be required to prove US or non US status. US persons must provide documentation and **sign waiver** permitting reporting or be '**recalcitrant**' and subject to 30% withholding
- 5 Additional requirements for distributors, shareholders with interest of **10%** or more in entities, corporate customers and counterparties (**Non-Financial Foreign Entities - NFFEs**).
- 6 Completely new **withholding obligations** are further reaching than any pre-existing US regime.

Modified Implementation Timeline



Don't let the speed of
change leave you behind

Recent amendments

IRS Steps	<ul style="list-style-type: none">▪ Public hearing 15 May 2012▪ Agreement on government-to-government approach▪ Bilateral agreements between US and EU member states▪ Principle of reciprocity between US and EU
General	<ul style="list-style-type: none">▪ Broadly speaking the overall scope remains unchanged▪ Additional guidance on “financial institution” or “financial account”▪ Increased clarity on insurance products in scope▪ Deemed compliance status expanded▪ Some new provisions and adjusted thresholds
New accounts	<ul style="list-style-type: none">▪ Increased reliance on existing AML / KYC procedures▪ Nearest deadline of 1 July 2013 for new FATCA compliant on-boarding process unchanged
Existing accounts	<ul style="list-style-type: none">▪ Overall framework remains unchanged▪ Special review for private banking clients replaced with review of high-value accounts▪ Significant new de minimis threshold for insurance companies
Reporting and Withholding	<ul style="list-style-type: none">▪ Timing of reporting phased in over several years▪ New requirement to report certain payments to non-participating FFI's▪ No further clarification regarding passthru payments

Recent amendments

IRS steps

- ▶ Public hearing 15 May 2012
 - ▶ lot of practical complaints
 - ▶ no immediate response of IRS
- ▶ IRS agreed to EU's demand to receive reporting from governments rather than banks (Europolitics, 9 May 2012)
- ▶ Bilateral agreements between US and EU member states will be prepared (summer 2012)
- ▶ Principle of reciprocity between US and EU pre-agreed

Recent amendments

General

- ▶ Joint statement issued
- ▶ Draft FFI Agreement to be provided by IRS
- ▶ Deemed compliance status expanded
- ▶ New conditions for compliance of the Expanded affiliate group (EAG)
- ▶ Insurance product scoping clarified

Recent amendments

General

- ▶ Adjusted sign-off and certification duties of Chief compliance officer
- ▶ Adjusted de minimis rule
- ▶ Requirement for Private banking replaced with High-value accounts
- ▶ Postponed grandfathering for withholding
- ▶ Audit requirements

Recent amendments

New accounts

- ▶ Increased reliance on existing AML / KYC procedures
- ▶ Clarified need to review and obtain documentary evidence
- ▶ US telephone number newly as one of US indicia
- ▶ Complex requirements for analysis and identification of entities

Recent amendments

Existing accounts

- ▶ Enhanced review for individual accounts above \$1 million
- ▶ Positive clarification for “care of” address
- ▶ US telephone number newly as one of US indicia
- ▶ Complex requirements for analysis and identification of entities

Recent amendments

Reporting

- ▶ Date of first reporting to IRS of 30 Sep 2014 unchanged
- ▶ Generally data to be reported remain unchanged
- ▶ Timing has been phased in over 2014 – 2017
- ▶ New requirement to report on dormant accounts
- ▶ New requirement to report certain payments to non-participating FFI's

Recent amendments

Withholding

- ▶ Some carve-outs from definition of withholdable payments
- ▶ No further clarification regarding passthru payments
- ▶ Withholding on foreign passthru payments delayed until 2017
- ▶ By contrast, withholding by US funds phased in already from 1 January 2014
- ▶ Joint statement:
 - ▶ Would eliminate FATCA withholding on payments to FFIs in that country
 - ▶ FFIs would not be required to terminate accounts of recalcitrant account holders or impose passthru payment withholding

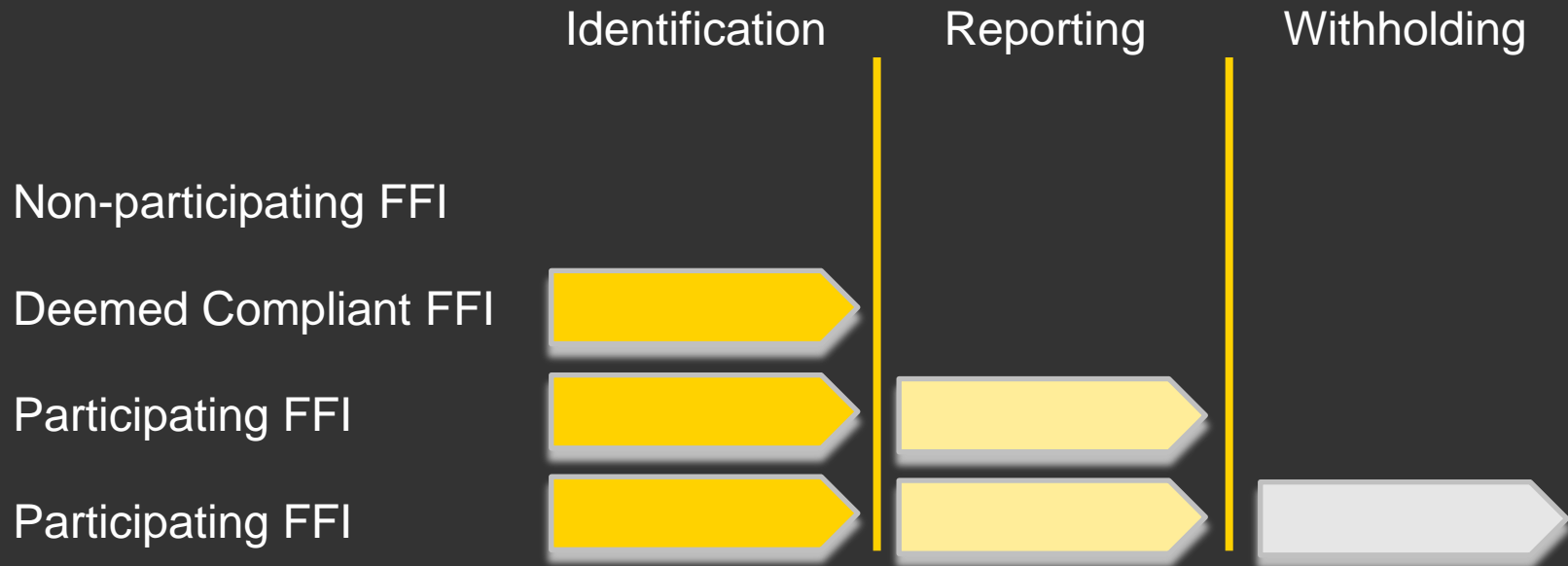
Recent amendments

New conditions for compliance of the Expanded affiliate group (EAG)

- ▶ Before Feb 2012:
 - ▶ Each member of EAG (>50% ownership by the parent) must be participating or deemed compliant in order for any group member to avoid withholding
- ▶ After Feb 2012:
 - ▶ Members must be participating or registered deemed compliant, but
 - ▶ Certain branches and affiliates, if unable to comply with all requirements in FFI agreement **because of local law restrictions**, will not necessarily “taint” other members of EAG before 1 January 2016
 - ▶ Until then, they will be treated as non-participating FFIs (+ other requirements)

It's critical to
be compliant
It's essential to
be **cost effective**

Choice of status for FFI



The choice of formal compliance status and actual operating mode should combine legal analysis of FATCA and well informed business decision

Deemed compliance - overview

Two concepts

- ▶ Registered deemed-compliant FFI
 - ▶ need to register with the IRS
 - ▶ need to provide periodic certification (every three years) that conditions are met
 - ▶ do not need to enter into an FFI agreement
- ▶ Certified deemed-compliant FFI
 - ▶ do not need to register with the IRS but must provide specific documentation

Deemed compliant FFI is treated as if it had entered into FFI agreement, hence it is not expected to be liable to be withheld against as a NPFFI, will not be required to report to the IRS and will not need to apply passthru withholding

Deemed compliance

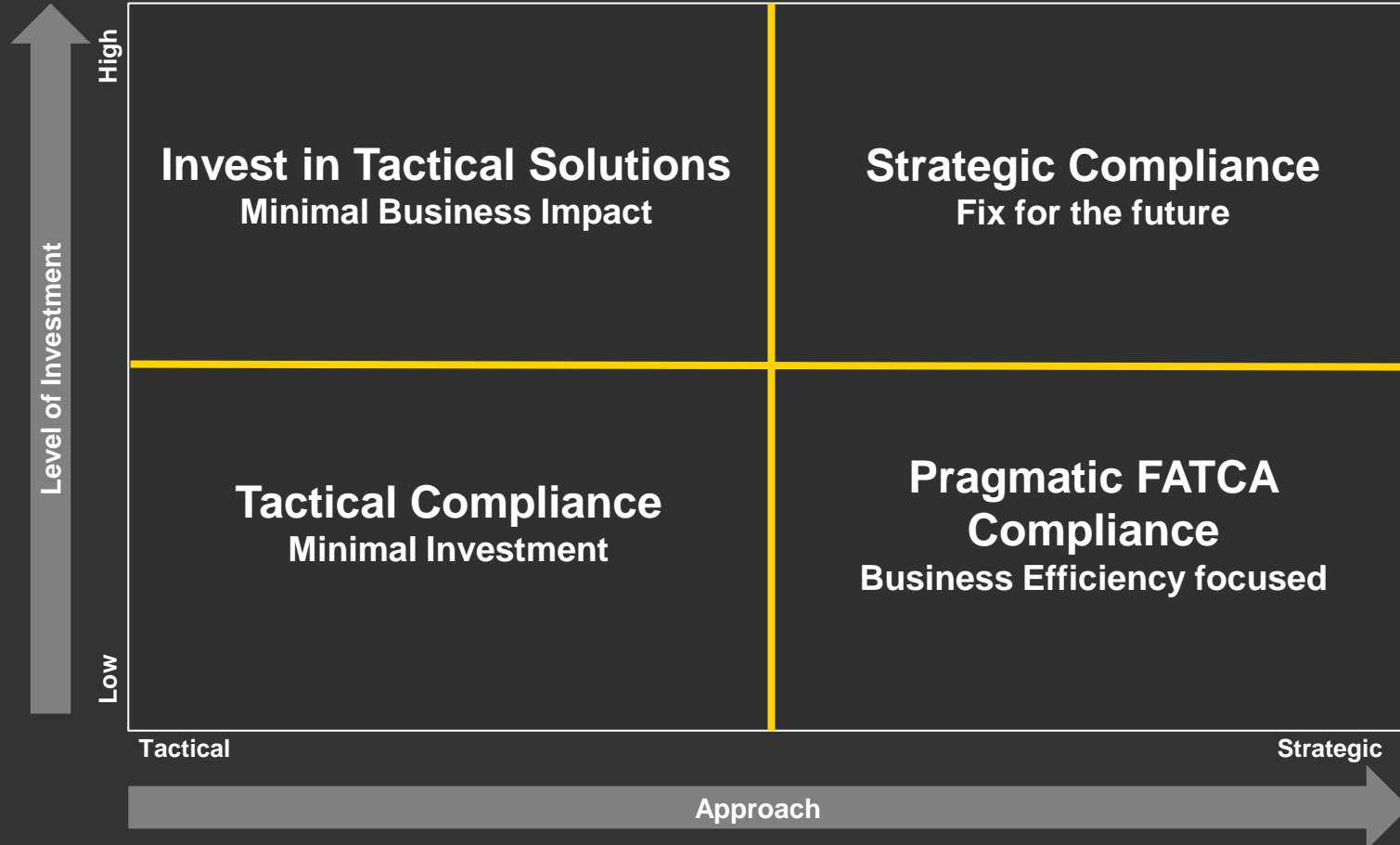
Registered deemed compliant FFIs:

- ▶ Local FFIs
- ▶ Non-reporting members of a PFFI group
- ▶ Qualified CIVs (QCIVs)
- ▶ Restricted funds

Certified deemed compliant FFIs:

- ▶ Non-registering local bank
- ▶ FFIs with only low-value accounts
- ▶ Retirement funds
- ▶ Non-profit organizations

Options for FATCA compliance



Options for FATCA compliance

Invest in Tactical Solutions

Minimal Business Impact

- Focus on achieving FATCA compliance through the **least amount of operational change**
- May require use of 'bolt on' tools and services to enable processing of FATCA checks
- Changes will be implemented through external services to reduce impact on current programmes
- Use of external operations to identify and report on US persons
- FATCA compliance kept with the service provider

Tactical Compliance

Minimal investment

- Focus on applying **low cost 'work arounds' and process changes locally**
- Design principles based on using existing tools and processes where possible and developing cost effective data searches and separate databases for storage
- Provide templates and tools to local business for their implementation
- Bend systems to accommodate FATCA requirements as appropriate

Pragmatic FATCA Compliance

Business Efficiency focused

- Focus on implementing **FATCA compliance in a business effective way**
- Ensure FATCA changes are embedded into the business processes to ensure reduced business impact whilst proving compliance
- FATCA designed within the IT solutions set
- Reliance on manual processes and maturity of business is minimal

Strategic Compliance

Fix for the future

- Strategic solution – including future requirements and **aligning with other key regulatory change**
- Long term benefits and cost synergies with short term cost implications
- Future proofing against regulations similar to FATCA and business regulatory improvements
- End-to-End design of solution to ensure alignment with business strategy and priorities
- Delivery combined with other in-flight projects – Regulatory portfolio programme anticipated

Opportunities for achieving cost effective compliance

Through E&Y experience of FATCA engagements we have identified a number of opportunities for reducing cost.

	Major opportunities for reducing costs	Impact to strategy	Cost to achieve	Business disruption	Business impact
Strategy for achieving compliance	Adopting deemed compliance model for some legal entities	Neutral	Low	Low	Neutral
	Reducing new business and reporting effort through ceasing business with US customers	Negative	High	High	Negative
	Options for reducing withholding requirement – e.g. transacting only with participating FFIs	Neutral	Low	Low	Neutral
FATCA solution design	Routing US accounts to a specific legal entity	Negative	Medium	Low	Positive
	Maintaining current new business processes and manage US indicia through existing customer processes	Neutral	Low	Low	Neutral
	Not undertaking checks for accounts below the de-minimis value	Neutral	Low	Low	Neutral
	Dedicated area for customers who trigger US Indicia	Neutral	Low	Low	Low
	Non real time indicia checks	Negative	Low	Low	Low
Implementation approach	Storage of FATCA data outside core systems	Neutral	Low	Low	Neutral
	Develop solution through a pilot area	Neutral	Low	Low	Neutral
	Create a common approach which is tailored locally	Neutral	Medium	Medium	Neutral
	Specialist FATCA mobile support team	Neutral	Medium	Low	Neutral
	Offshoring delivery of common activity	Neutral	Low	Low	Neutral
	Adopting tools to reduce the implementation effort	Neutral	Medium	Medium	Medium
	Instigating changes in conjunction with other programmes	Neutral	Medium	Low	Positive
Design and deploy compliance and assurance tests	Positive	High	High	Positive	

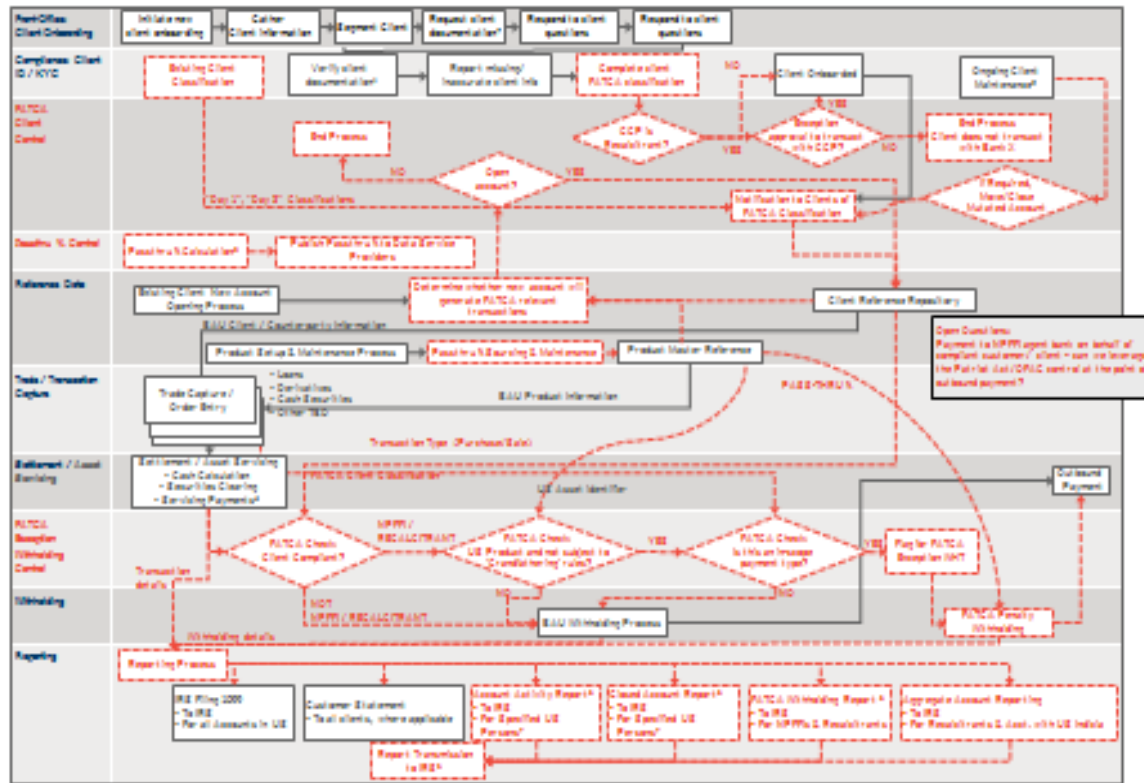
Although FATCA is prescriptive, there are implementation choices with significant impact on cost.

Uncomplicating the complexities of compliance



FATCA requires complex changes to process architecture

Conceptual FATCA Future State Framework



Page 1

- Includes additional validation of instrument type documentation (e.g., IRB, Reverse US, USDR), etc.
- Includes ongoing monitoring for US India situations, particularly environmental
- Calculate interest for products in other Bank 2, future issues and email source for all other products (e.g. interest, dividends, etc.)
- Requires legal opinion and analysis of cross-border data sharing issues
- Elements for asset servicing requirements to IRB is not set for actual for FATCA requirements for account, liability Report, Closed Account Report and FATCA US Report
- Qualified US Person refers to an identified US Person (individual or entity) with an account in a USPP or institution

Library
Existing Process

New Process

ERNST & YOUNG
Quality In Everything We Do

FATCA - Selected strategic questions

1 2 Identify Existing/New Customers

- ▶ How does FATCA sit with existing KYC/AML?
- ▶ Electronic sweep of data. IT issues to consider?
- ▶ Review of existing T&Cs. Is this achievable?
- ▶ What are the regulatory and legal issues around data and product amendments?
- ▶ Determination of product value by reference to surrender value. Are there alternatives?
- ▶ Will the FFI apply the de minimis rule?

3 Reporting

- ▶ Who owns the reporting process?
- ▶ Do data protection rules prevent reporting?
- ▶ Will FFIs need waivers of data protection from US customers?

4 Withholding

- ▶ How will withholding work?
- ▶ Will any necessary withholding be done by US custodians?
- ▶ How to identify US element of withholdable payment?

The FATCA Challenge

Outlined below are the key challenges to cost effective FATCA compliance.

Challenge	What does this mean to you?
Tax legislation with implications across different functions of FFI	<ul style="list-style-type: none">FATCA brings into inter-play tax, risk, legal and compliance functions of an FFI together for the first time
Global compliance and local delivery	<ul style="list-style-type: none">FATCA is global in nature and all business units in scope must complyEach BU needs to comply with local rules (e.g. privacy and data protection)Non compliance by a business unit/function will result in the whole FFI 'non-compliant'
Challenging time scale: 13 months to compliance	<ul style="list-style-type: none">FATCA compliance needs to complete by 01 July 2013 for on-boarding procedures
Impact on customers - new and existing	<ul style="list-style-type: none">FATCA has direct impact on customers, new and existingCustomer experiences during account opening or data privacy issues with documentation or reporting

Delivering FATCA compliance requires a global approach and effective local delivery

FATCA impact on target operating model

Delivering FATCA compliance requires managing multi-dimensional impacts across various segments and functions. Implementation needs to address implications on target operating model (TOM) to ensure optimal structure after July 2013.

Target operating model dimensions



- Significant impact
- Moderate impact
- Minimal impact

Example high level target operating model

Sales & Client Service (Front Office)	Relationship Management	Client Service	Channels			
	Product & Brand	Marketing	Direct	Online	Phone	Intermediaries/partners
Client & Market Operations (Middle Office)	Business Process Management	Product Service & Management	Compliance	Knowledge Management	CRM Support	
	Operational Support					
Core Processing (Back Office)	Treasury	HR	Finance	IT	Legal & Compliance	
	Operational Risk Management	Facilities Management	Procurement	Tax	Third Party Management	

FATCA has far-reaching effect on the operating model, business model and other functions of the FFI

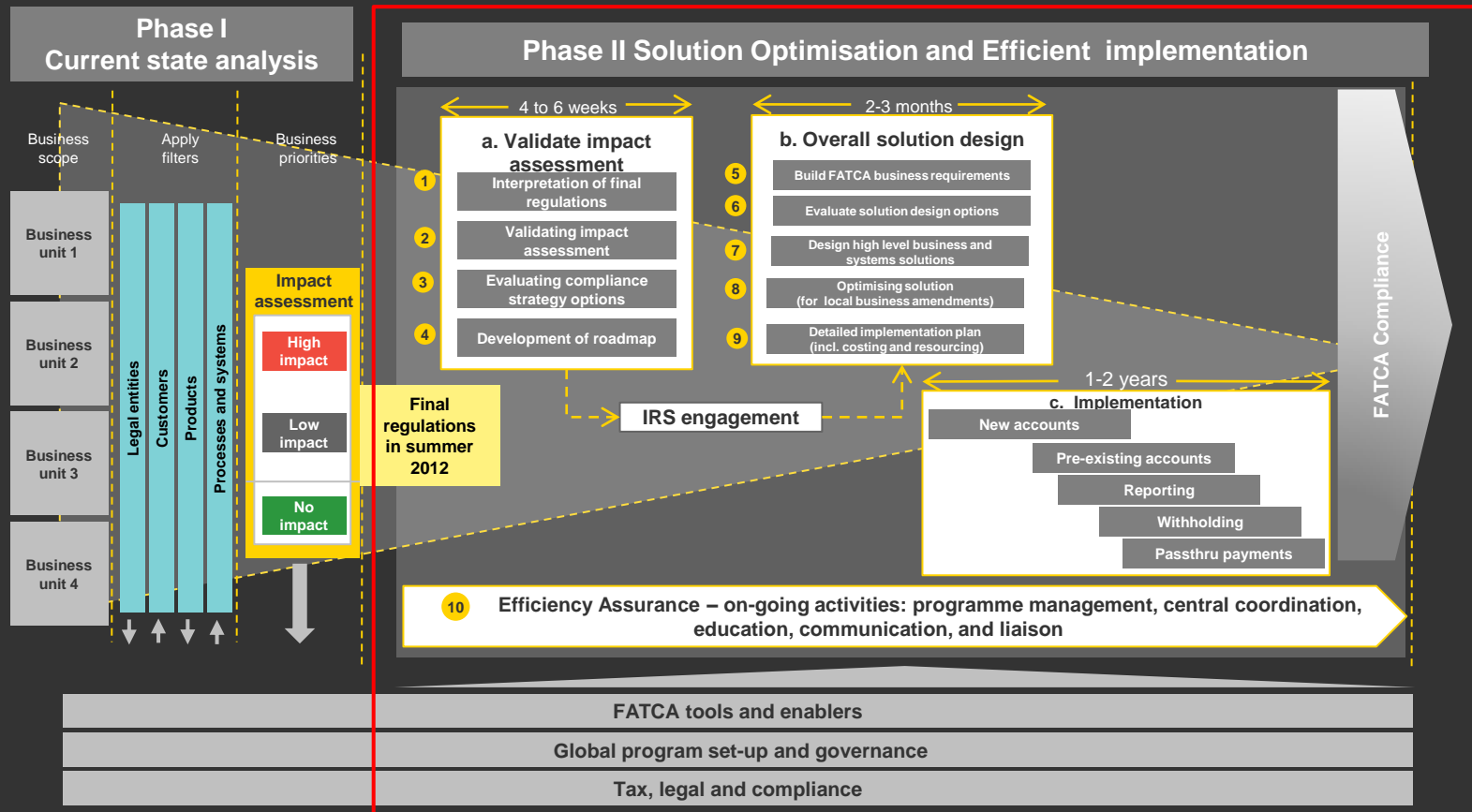
Components of cost effective FATCA compliance

Cost Effective FATCA Compliance

FATCA Regulations Technical Interpretation	FATCA Solution Design and Delivery	Global Change and Project Management	IT, Systems and Data offering	FATCA Process Design and Delivery
<p>E&Y offering: EY bring cross-disciplinary (operational and tax) teams with knowledge and expertise in FATCA who can analyse and interpret the FATCA proposed regulations.</p> <p>This enables our clients to quickly develop strategic options and also engage with the IRS.</p> <p>These teams have experience of working on several global FATCA programmes both for impact assessment and detailed planning for implementation.</p>	<p>E&Y offering: FATCA solution design will be key to ensuring FATCA compliance.</p> <p>EY have already delivered a number of FATCA impact assessments for major financial services (FS) companies and bring good experience of designing effective FATCA solutions. We also bring AML/KYC expertise so we can explore and deliver synergies for new customer on-boarding.</p> <p>Our FATCA teams are well placed to design and deliver an optimal solution for your business.</p>	<p>E&Y offering: We have a world-class change management and programme management expertise.</p> <p>FATCA compliance is a complex project requiring all local and regional businesses of a financial institution to comply. Our teams have worked on several FATCA programmes, successfully and effectively engaging local and regional branches of our clients.</p> <p>We are ready to mobilize any FATCA programme and start delivering immediately.</p>	<p>E&Y offering: EY have industry leading IT and data teams who have already worked on big FATCA engagements.</p> <p>Together with tax and operational expertise, we bring knowledge of FATCA requirements in the IT, systems and data space. We also bring tools and enablers to accelerate delivery.</p> <p>We know what needs to be delivered to ensure compliance from an IT, data and systems perspective.</p>	<p>E&Y offering: EY have in depth experience in design and delivery of process change across the FS industry.</p> <p>We have process management professionals, experienced in methodologies such as Lean, who have already worked on a number of FATCA impact assessments.</p> <p>These teams will be able to design and deliver changes to new account, existing customer review, withholding and reporting processes.</p>

Delivering FATCA compliance

E&Y approach to delivering efficient FATCA compliance



A phased approach to validate impact assessment and deliver solution for implementation.

As more FATCA
regulation surfaces, a
deeper understanding
is required

Where to find more information

Contacts

Pavel Riegger

FS Advisory Partner

Pavel.Riegger@cz.ey.com

Martin Majdloch

FS Advisory Manager

FATCA Business Advisory for CSE

Martin.Majdloch@cz.ey.com

E&Y Microsite for FATCA

www.ey.com/fatca

Ernst & Young Client Portal | EY intranet | Library | About us | Newsroom | Connect with us | Global (English)

ERNST & YOUNG
Quality In Everything We Do

Home | Insights | Industries | Services | Careers

Home > Industries > Financial Services > Banking & Capital Markets > Foreign Account Tax Compliance Act (FATCA)

FATCA knowledge center

THE FACTS ON FATCA

The Foreign Account Tax Compliance Act (FATCA) will take effect 1 January 2013. It makes substantial changes to information reporting and compliance requirements for offshore accounts. We offer guidance and resources to help your organization get prepared.

[See our FATCA timeline for what lies ahead >](#)

Contents

- FATCA home
- FATCA overview and timeline
- FATCA alerts
- FATCA tools
- How we can help

We blog as fast as video

- FATCA: discussion of proposed regulations and the business and operational impact on your company (13 March 2012)
- FATCA: impact of recent IRS guidance on the Insurance Industry (1 March 2012)
- FATCA: impact of recent IRS guidance on the Alternative Asset Management Industry (29 February 2012)

Upcoming events

- Barbara Angus, Principal, NYU School of Law and Amsterdam Centre for Tax Law & FATCA from an US and EU perspective: Where are we now? (New York, 21 June 2012)
- Stuart Chalcraft Associates Partner, EY/MEA Financial Services Tax and Derivatives Director, Financial Services Performance Improvement, Taxation of Collective Investment Schemes (London, 5 July 2012)

FATCA news

Complying with FATCA: start with the client data
To meet FATCA deadlines, financial firms should start thinking about client data priorities – classifying existing clients and enhancing systems for new customers and new counterparties. (14 March 2012)

FATCA implementation guidance for participating FFIs
Desmond Teo, Associate Director, and Duncan Edwards, Executive Director, discuss FATCA's implications for

FATCA resources

What is FATCA?
Get an overview of the provisions outlined in FATCA and use our interactive timeline to see key dates in the implementation process.

FATCA communications and alerts
Our FATCA communications and alerts keep you up-to-date with the latest FATCA developments. They are intended to provide you with background information, commentary and a discussion of the related challenges and potential opportunities.

FATCA impact

Impact of FATCA on the Insurance Industry
Read what the proposed regulations mean for life and general insurers, what concessions have been granted, and what insurers need to do to be FATCA-compliant.

Impact of FATCA regulations on global insurers
Read how the proposed FATCA regulations provide guidance to global insurers for their products and their customers.

Ernst & Young

Assurance | Tax | Transactions | Advisory

www.ey.com

© Ernst & Young 2012.
All rights reserved.

Disclaimer

Circular 230 disclaimer

Any US tax advice contained herein was not intended or written to be used, and cannot be used, for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code or applicable state or local tax law provisions.

These slides are for educational purposes only and are not intended, and should not be relied upon, as accounting advice.

Ernst & Young disclaimer

This presentation is intended to provide only a general outline of the subjects covered. It should neither be regarded as comprehensive nor sufficient for making decisions, nor should it be used in place of professional advice. Ernst & Young accepts no responsibility for any loss arising from any action taken or not taken by anyone using this material.