

Advisory

# *FATCA: Implementing effective compliant systems*

## Is your organisation ready?

*Strictly Private  
and Confidential*

*10 July 2013*

**pwc**

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# *Agenda*

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# Section 1

## *FATCA Tasks*

## ***What does FATCA make FFI's do to avoid 30% Withholding on U.S. Source Income Starting January 1, 2014?***

<b>DATE</b>	<b>FATCA TASK</b>
<b>October 25, 2013</b>	Register through FATCA portal by filling out Form 8926 and enter into FFI agreement
<b>January 1, 2014</b>	Update new client on boarding procedures
<b>July 1, 2014</b>	Complete identification and review procedures for prima facie (obviously) FFI accounts
<b>December 31, 2014</b>	Complete identification and review on high value accounts. (Individual accounts over a million dollars in value)
<b>March 31, 2015</b>	Start reporting information on US account holders to the IRS for calendar years 2013 & 2014
<b>December 31, 2015</b>	Complete identification review procedures for all remaining pre-existing accounts

## ***What does FATCA make FFI's do to avoid 30% Withholding on U.S. Source Income Starting January 1, 2014? (Continued)***

<b>DATE</b>	<b>FATCA TASK</b>
<b>February 29, 2016</b>	Responsible officer must be able to certify completion of identification and review for all pre-existing individual and entity accounts
<b>March 15, 2016</b>	Reporting of foreign reportable amounts to NPFIs begins
<b>January 1, 2017</b>	Start Foreign pass thru withholding on payments to recalcitrant account holders and non participating FFIs and on gross proceeds of US securities sales
<b>June 30, 2017</b>	First Certification of Compliance and Effective Controls required from Responsible Officer

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## Section 2

# ***"Must do" Activities in 2013***

## ***“Must Do” Activities in 2013:***

- 1. Entity Analysis and Classification***
- 2. Registration***
- 3. Certification***
- 4. New Account Onboarding Procedures***
- 5. Review Third Party Relationships***
- 6. Review Legal Agreements***

## ***“Must Do” Activities in 2013:***

### ***1. Entity Analysis and Classification***

- Each FFI should prepare an analysis of all of the funds, general partner entities, management companies, holding companies, blockers and corporate vehicles in its group
- Once the analysis is prepared, the entities need to be categorized under FATCA, including determining their status as:
  - foreign financial institutions (FFIs)
  - non-financial foreign entities (NFFEs)
  - US withholding agents (USWAs)
- In addition, the entities should be further categorized based on:
  - Deemed compliant status
  - Location in a country with an IGA
  - Membership of an expanded affiliated group (EAG).



## What is an FFI?

Activity:	Examples:	
<p>A. Accepts deposits in the ordinary course of a banking or similar business;</p>	<ul style="list-style-type: none"> <li>• Commercial banks</li> <li>• Savings and Loan Associations</li> </ul>	<ul style="list-style-type: none"> <li>• Credit unions</li> <li>• Co-operative banking institutions</li> </ul>
<p>B. Holds financial assets for the account of others, as a substantial portion of its business;</p>	<ul style="list-style-type: none"> <li>• Broker Dealers</li> <li>• Clearing Organisations</li> <li>• Trust Companies</li> </ul>	<ul style="list-style-type: none"> <li>• Custodial banks</li> <li>• Custodian of Employee Benefit Plan</li> </ul>
<p>C. <b>“Investment Entity”</b></p> <ol style="list-style-type: none"> <li>1. An entity that primarily conducts as a business on behalf of customers, either trading in financial instruments, individual or collective portfolio management, or otherwise investing, administering or managing funds, money or other financial assets on behalf of others (i.e. Acts as an investor advisor);</li> <li>2. An entity whose gross income is primary attributable to investing, reinvesting or trading in financial assets <b>and</b> the entity is managed by an investment advisor, depository institution, custodial institution or insurance company; and</li> <li>3. An entity that functions or holds itself out as a collective investment vehicle, mutual fund, exchange traded fund, private equity fund, hedge fund, venture capital fund, leveraged buyout fund or any similar investment vehicle.</li> </ol>	<ul style="list-style-type: none"> <li>• Mutual Funds</li> <li>• Funds of Funds</li> <li>• ETF</li> <li>• Hedge Funds</li> <li>• Venture Capital Funds</li> <li>• Sovereign Wealth Funds</li> </ul>	<ul style="list-style-type: none"> <li>• Private Equity Funds</li> <li>• Commodity Pools</li> <li>• Managed Funds</li> <li>• Collective Investment Vehicles</li> </ul>

## *What is an FFI?*

<b>Activity:</b>	<b>Examples:</b>
<b>D.</b> Is an insurance company (or the holding company of an insurance company) that issues or is obligated to make payments with respect to a “financial account” eg., insurance policies with cash value and annuities	<ul style="list-style-type: none"><li>▪ Life Insurance companies/products</li></ul>
<b>E.</b> Holding companies and treasury centers	

**A Non Financial Foreign Entity (“NFFE”) is any foreign entity which is not an FFI.**

## ***“Must Do” Activities in 2013:***

### ***2. Registration***

- FFIs will have to register each FFI it intends to qualify as participating FFIs or registered deemed compliant FFIs on the FATCA Portal.
- Participating FFIs will also need to enter into an FFI agreement with the IRS. To expedite this process, the asset manager should gather all of the necessary information prior to registration so that the process is as efficient as possible.

## ***FFI registration portal – How FFIs Register with the IRS***

### ***What is it used for?***

- Provide paperless registration of participating FFIs, registered deemed-compliant FFIs (including FFIs covered under an IGA)
- Responsible officer certifications
- Enables FFIs to interact with IRS
- IRS website – “FATCA Registration Portal”
- Get global intermediary identification number (“GIIN”)
- Expanded affiliated group can establish and maintain a consolidated compliance program using a sponsoring entity.

### **Key dates**

<b>No later than July 15, 2013</b>	Registration portal will be available online
<b>October 25, 2013</b>	Last day to register on portal to be on first IRS list of FFIs
<b>December 2, 2013</b>	IRS will post the first list of FFIs and intends to update the list monthly
<b>January 1, 2014</b>	FATCA Withholding begins

## ***What Actions Must You Take to Prepare for Registration?***

### ***To prepare for registration, businesses will need to:***

- Classify legal entities
- Identify expanded affiliated groups (“EAGs”)
- Identify Responsible Officers(s)(“RO”)
- Gather registration data to input into the IRS FATCA Registration Portal

## ***What Actions Must You Take to Prepare for Registration? (Continued)***

### ***Examples of data you need to collect?***

- FFI Type
- FFI Name
- FFI Country of Tax Residence
- FATCA Classification – PFFI (Non-IGA Country or Model 2 IGA), a registered deemed compliant FFI (including a Model 1 IGA), Limited Financial Institution
- Mailing Address
- QI/WP/WT Existing and Renewal Info
- Responsible Party and Private Arrangement Intermediary Info
- Branch and Jurisdiction Information
- Responsible Officer Name & Contact Info
- Point of Contact Name and Contact Info
- Expanded Affiliated Group Info

## ***What Actions Must You Take to Prepare for Registration? (Continued)***

### ***What steps are involved in the registration process?***

- a) The RO has completed any prerequisite required by the IRS to register/sign up in the IRS FATCA Portal
- b) The lead financial institution initiates registration process to “Create Account”
- c) RO inputs basic information about the financial institution
- d) RO sign agreements (TBD)
- e) Once registration is approved, financial institutions and branches receive a GIIN

## ***What Actions Must You Take to Prepare for Registration? (Continued)***

### ***What should we do with the FFIs in countries that are working on intergovernmental agreements (IGAs) with the US?***

The IGAs bring more complexity to the registration planning process. Knowing what to do with your FFIs will depend on the country in which the FFI is located, and whether that country is likely to have an IGA.



## ***What Actions Must You Take to Prepare for Registration? (Continued)***

### ***Are there any open items regarding the registration process?***

There are items with regards to the registration process currently pending additional guidance from the IRS. Some of the key items are:

- IRS to provide guidance in the form of a revenue procedure
- IRS to address the procedure for registering a branch of an IGA country
- IRS to provide guidance on what type of information will be required to register sponsored entities in the future
- Trinidad and Tobago FFIs will want to wait and see what the Revenue Procedure has to say about changing FFI status once registered and getting a new GIIN . Note that reporting Model 1 FFI doesn't need a GIIN until January 1, 2015 . WH agent can rely on Pre-FATCA W-8

## ***“Must Do” Activities in 2013:***

### ***3. Certification***

#### ***The final FATCA regulations require an FFI to:***

1. Appoint a responsible officer
2. Establish policies, procedures and processes sufficient to satisfy FFI agreement
3. Periodically review and certify as follows:

<b>Type of certification</b>	<b>One time or ongoing?</b>	<b>When is certification required?</b>
Due diligence on pre-existing accounts	31 December 2015 - One time	60 days after 2 <sup>nd</sup> anniversary
Compliance and effective internal controls	Starting (30 June 2017) Ongoing, every 3 years	6 months after each 3-year review period
Not assisting account holders in avoidance of chapter 4	Upon registration - One time	60 days after 2 <sup>nd</sup> anniversary

# What Due Diligence is required on Individual and Entity Accounts?

## Individual Accounts

Individual accounts market value holdings	Potential impact of exemption rules to due diligence reviews
US\$50,000 or less	No due diligence reviews required
US \$50,000 - US \$1,000,000	Electronic review required documentation for those accounts with US indicia
exceeding US \$1,000,000	Electronic and manual reviews required and inquiry with relationship managers

## Entity Accounts

Entity accounts market value holdings	Potential impact of exemption rules to due diligence reviews
US \$250,000 or less	No due diligence reviews required until the end of the calendar year in which the account balance or value exceeds \$1,000,000
Exceeding US \$250,000	Determine if W form-8 or W-9 is associated with entity. If not need to get acceptable documentation to classify as U.S or non-U.S. , FFI, NFFE, QI or other intermediary.

## ***Compliance and effective internal controls certification***

***The responsible officer must certify that the FFI has completed the following activities:***

- Established a compliance program that is in effect
- Reviewed the compliance program against the requirements of the FFI agreement

***With respect to material failures the responsible officer must certify:***

- That there were no events of default
- That there were no material failures, or
- If there were material failures, appropriate actions were taken to remediate and prevent reoccurrence

## ***Material failures***

- deliberate action by employee or agent to avoid requirements of FFI agreement
- error attributable to failure of FFI to implement sufficient internal controls
- certain criminal or civil penalties imposed on an FFI by regulators in connection with failure to properly identify account holders as part of its anti-money laundering (AML) procedures
- establishment of a tax reserve or provision related to lack of compliance with FFI agreement

*A material failure will constitute an event of default if it occurs in more than limited circumstances or when the FFI has not substantially complied with its FFI agreement*

## ***Events of default***

***Failure to perform one or more of the following are examples of events of default:***

- obtain reporting waiver when required
- significantly reduce over time account holders and payees that are recalcitrant or nonparticipating FFIs
- maintain compliance program
- take timely corrective actions to remedy material failures
- make required certifications
- cooperate with IRS on requests for additional information

***If the responsible officer is unable to make the compliance and effective internal control certification, it must make a qualified certification.***

<b><i>Conditions requiring a qualified certification</i></b>	<b><i>Contents of a qualified certification</i></b>
<ul style="list-style-type: none"><li>• responsible officer detects a material failure or event of default, and</li><li>• failure or event is not corrected as of date of certification</li></ul>	<ul style="list-style-type: none"><li>• an event or failure has been identified</li><li>• FFI will pay tax, interest and penalty and file appropriate return</li><li>• will respond to any notice of default</li><li>• if requested, will provide description of failure and plan to remediate</li></ul>

## ***Certification about policies not assisting account holders in avoidance of chapter 4***

### **Reasonable inquiry**

- written inquiry such as e-mail requests to relevant lines of business
- requires response from relevant customer on-boarding and management personnel

### **Bad practices**

- suggesting account holders:
  - split up accounts to avoid high-value
  - close or transfer accounts to avoid reporting
  - remove US indicia from records
- intentional failure to disclose US account
- manipulating account balances to avoid detection



## ***Two types of **deemed-compliant categories** do not need to sign an FFI agreement with the IRS, but still have obligations:***

### **1. Registered deemed-compliant FFIs**

Must register with the IRS, get GIIN number, agree to deemed-compliant criteria, and Registered Officer ("R.O") to certify every 3 years to its compliance

- local FFI
- non-reporting member of Participating FFI (PFFI) group
- qualified collective investment vehicle
- restricted fund
- sponsored investment entities and controlled foreign corporations (CFCs)

### **2. Certified deemed-compliant FFIs**

Must certify to a withholding agent that it meets the requirements on a Form W-8 and provide any other required documentation. (Do not register or get GIIN number).

- non-registering local bank
- FFIs with only low value accounts
- limited life debt investment vehicle
- qualified credit card issuers
- sponsored closely held investment entity
- owner documented FFI

Retirement funds, non-profit organizations, and exempt beneficial owners are re-categorized.

## ***“Must Do” Activities in 2013:***

### ***4. New Account Onboarding Procedures***

#### ***New Account Onboarding Procedures:***

FATCA requires that certain information and documentation be obtained from investors in order to document their FATCA status. FFIs should review account opening procedures and identify any gaps against the required FATCA procedures necessary for proper classification and documentation.

## Identifying US Indicia

Indicia	Required Documentation*
a) US citizenship or lawful permanent resident (green card holder)	<ul style="list-style-type: none"> <li>• Form W-9 and obtain waiver</li> </ul>
b) US place of birth	<ul style="list-style-type: none"> <li>• Form W-9 <b>and</b> obtain waiver (if applicable) <b>or</b></li> <li>• Form W-8BEN <b>and</b> <ul style="list-style-type: none"> <li>• Non US passport or similar government-issued document establishing client's citizenship in a country other than US (if applicable) <b>and</b></li> <li>• Written explanation regarding client's renunciation of US citizenship or reason why client did not acquire US citizenship at birth (if applicable), certificate of loss nationality or Form I-407</li> </ul> </li> </ul>
c) US Residence address or US mailing address	<ul style="list-style-type: none"> <li>• Form W-9 w and waiver or</li> <li>• Form W-8BEN <b>and</b> non US passport or similar government-issued document establishing client's citizenship in a country other than the US</li> </ul>
d) US telephone number	<ul style="list-style-type: none"> <li>• Form W-9 and waiver or</li> <li>• Form W8-BEN and Non-US passport or similar government issued document establishing clients citizenship in a country other than the US.</li> </ul>
e) Standing instructions to transfer funds to an account maintained in the US	<ul style="list-style-type: none"> <li>• Form W-9 establishing US status and waiver or</li> <li>• Form W-8BEN <b>and</b> listed documentary evidence establishing non-US status of client (if applicable)</li> </ul>
f) "In care of" or "hold mail" address that is the sole address with respect to the client	<ul style="list-style-type: none"> <li>• For W-9 establishing US status or</li> <li>• Form W-8BEN <b>or</b> listed documentary evidence establishing non-US status of individual account holder (if applicable)</li> </ul>
g) Power of attorney or signature authority granted to a person with a US address	

***\*Participating FFI is entitled to rely on the documentation received from account holder unless it knows or has reason to know that the information contained in such documentation is unreliable or incorrect.***

## ***With regard to investors that are Non-financial foreign entities (NFFEs):***

The FATCA documentation you will need will depend on the type of NFFE. There are four possible NFFE types:

1. A publicly traded corporation (or a 50% or greater owned subsidiary);
2. An active NFFE (this is a corporation in which greater than 50% of its annual income and assets are used in earning income in an active trade or business that is not a financial institution);
3. A Passive NFFE (the opposite of an Active NFFE); and
4. A non-withholding partnership that is an NFFE.

## ***With regard to investors that you believe are FFIs:***

- You will need to obtain a valid withholding certificate (W-8 or W-9) with GIIN number. The first list of GIIN numbers of FFIs will be published by the IRS on December 2, 2013 for all FFIs that have registered as FFIs on the IRS portal between July 15, 2013 and October 25, 2013. Specifically:
  - With respect to payments other than U.S. source income
    - The payee must provide its GIIN and state that it is a PFFI; **and**
    - Withholding agent verifies the GIIN within 90 days of PFFI claim.
  - With respect to payments of U.S. source income
    - A written statement that contains the payee's GIIN and states that the payee is the beneficial owner of the payment and a PFFI; **and**
    - Documentary evidence supporting the payee's claim of foreign status (i.e., an official document issued by an authorized government body, e.g., government or agency thereof, or a municipality); **and**
    - Withholding agent must verify GIIN within 90 days of PFFI claim.

## ***“Must Do” Activities in 2013:***

### ***5. Review Third Party Relationships***

#### ***Review Third Party Relationships:***

FFI's should review their relationships with custodians, transfer agents, brokers, counterparties and any other third party to determine the allocation of FATCA-relevant activities and FATCA withholding tax risk.

## ***“Must Do” Activities in 2013:*** ***6. Review Legal Agreements***

### *Review Legal Agreements:*

Organisations should assess which legal documentation is affected by FATCA and amend it where necessary in order to take all steps necessary to comply with FATCA and ensure that the burden of any withholding falls on the appropriate party.

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## Section 3

# *Next steps for compliance managers*



## ***Assess the impact of FATCA on the organisation***

*There are 6 baseline capabilities which should be considered within each Business Area:*



## ***FATCA presents specific challenges***

- *Potentially significant impact to existing operational processes*
- *FATCA is more than just a technology and tax topic*
- *The penalties for non-compliance are severe*
- *The timeline for compliance with FATCA is aggressive*
- *FATCA is a US tax law*

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# *Thank You*

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