FATCA and automatic exchange of information

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FATCA and Intergovernmental Agreement (IGA) Overview

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FATCA and Intergovernmental Agreement (IGA) Overview

Michèle van der Zande
27 November 2013

KPMG Meijburg & Co

Introduction

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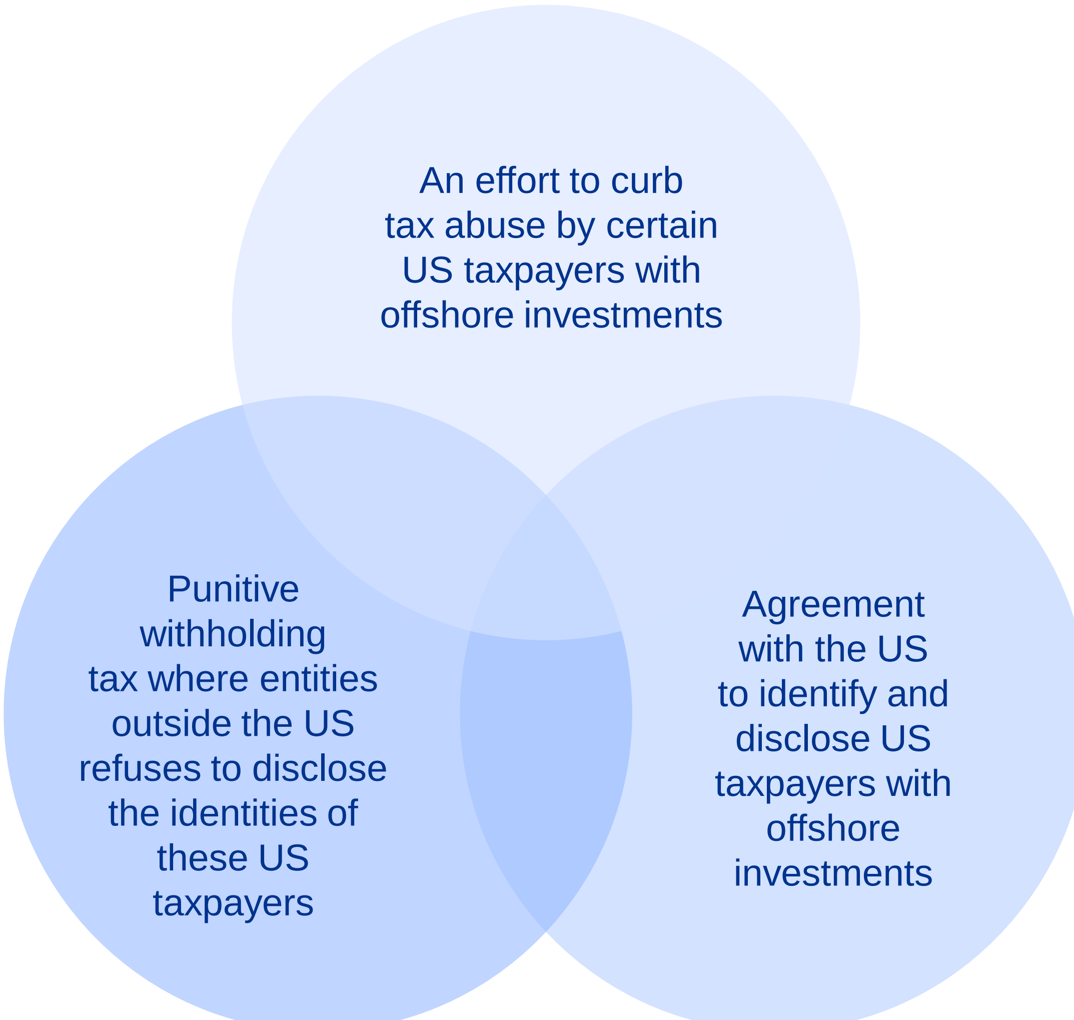
Background to FATCA

Banks outside the US conspired with wealthy Americans to hide their accounts

The US Congress estimates that it is currently **losing $100 billion annually** in tax revenue from **offshore tax abuse**

What is FATCA?



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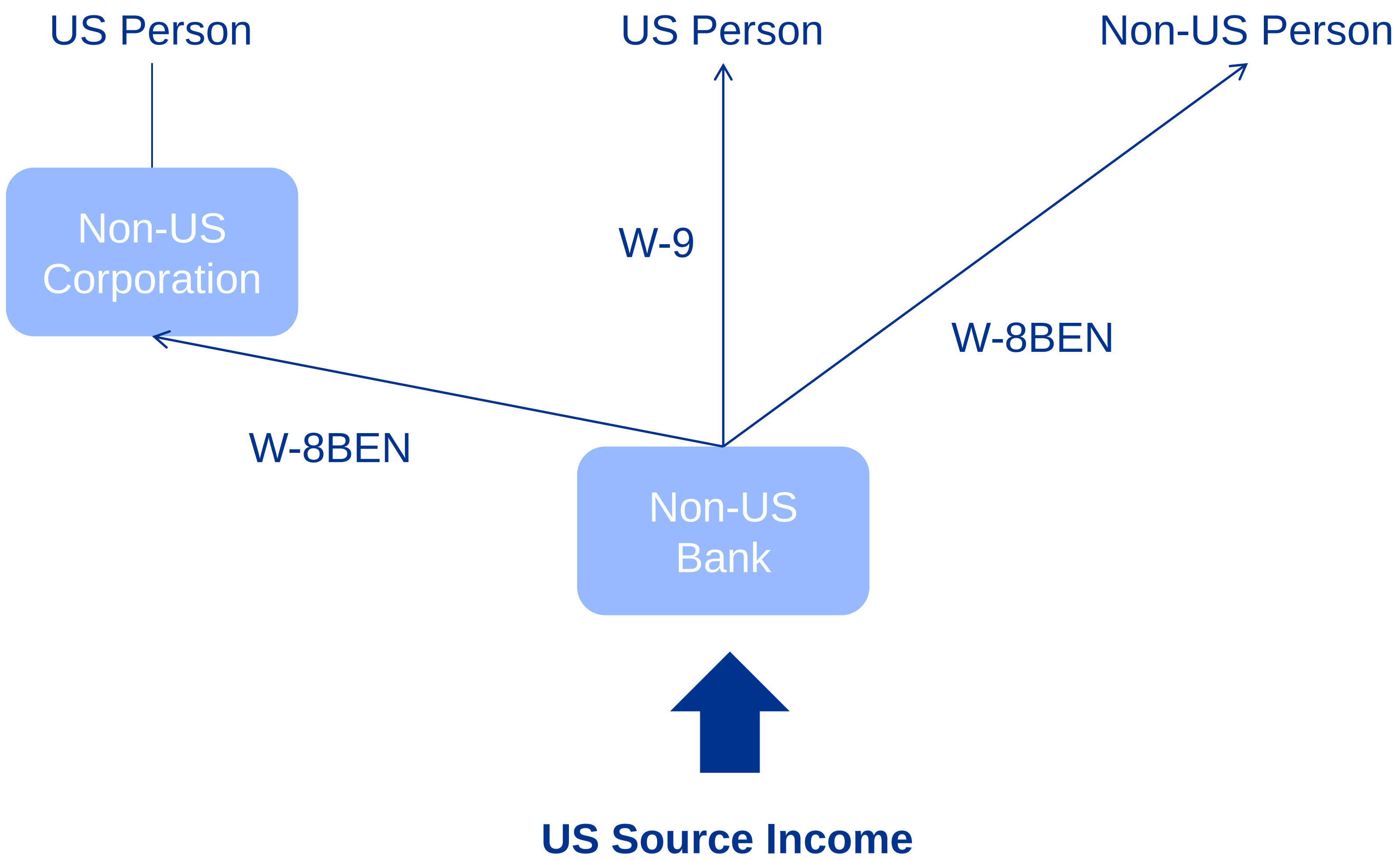
Current Withholding Rules

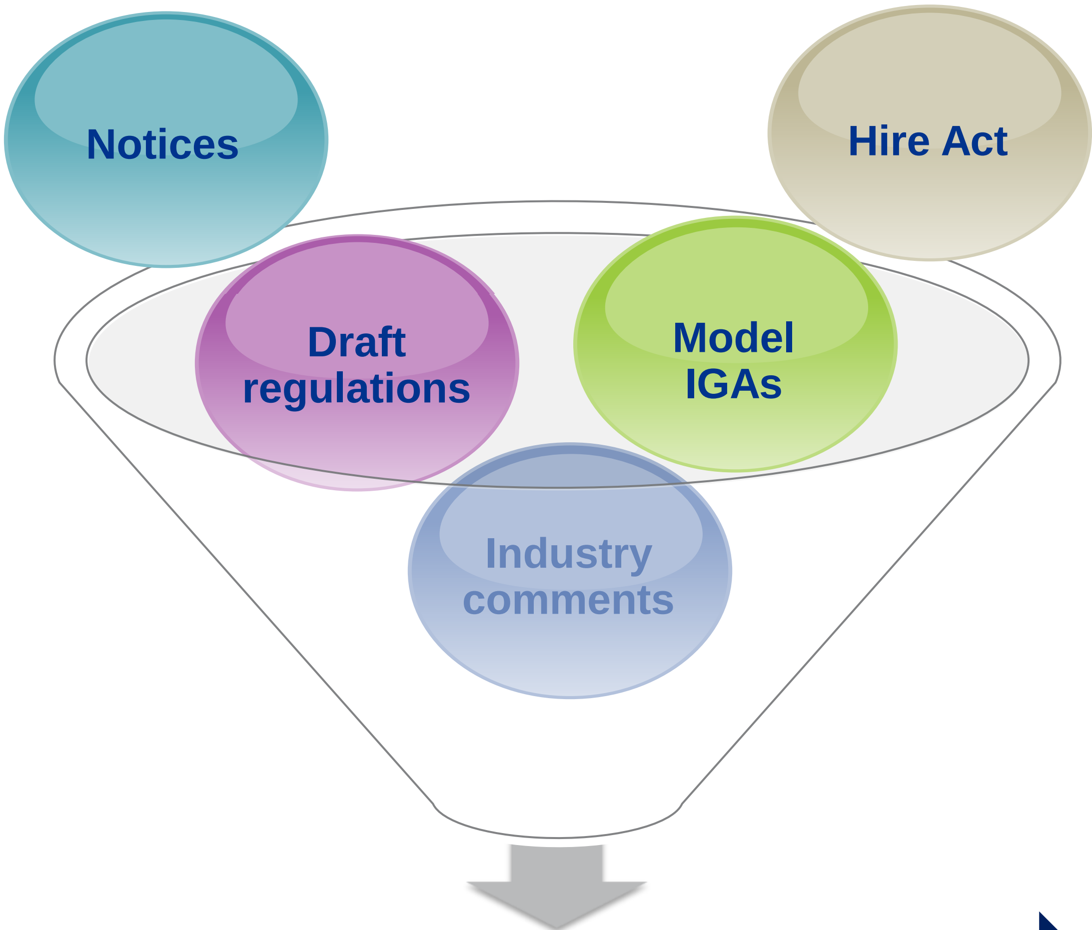
- The US withholding system relies upon the tax status of the beneficial owner of the income to determine the correct withholding and reporting for US investment income.

- Under these rules, a US person can avoid disclosure by:
- Investing in US source income through offshore corporation.
- Investing in US source income through foreign partnership as undisclosed owner.
- Investing directly in non-US assets with payment outside US.

Current withholding rules



US Final Treasury Regulations



Final Regulations
17 January 2013

US FATCA Regulations:

- Identify "Foreign Financial Institutions" (enter FFI Agreement)
- Perform Due Diligence on "Financial Account" Holders
- Report US Account Holders to US IRS
- Report "Recalcitrant" Account Holders to US IRS. US Withholding Agent to withhold on payment to these (close such accounts if they are not eventually documented as US or Non-US)
- Report Non-Participating FFI Account Holders to US IRS and US Withholding Agent Withholds on payments to these
- Ensure and maintain ongoing FATCA compliance (internal corporate governance)

Reasons for International Cooperation with respect to FATCA

New US tax law: The Foreign Account Tax Compliance enacted 18 March 2010 and signed into law by President Obama as a part of the HIRE Act

Implementation challenges: Conflicts with data protection laws, privacy laws, banking secrecy rules, complexity, high costs of implementation create impediments to compliance.

A potential solution: On 8 February 2012 the US Treasury agreed to pursue an 'intergovernmental approach' broadly intended to address the implementation challenges as governments will work together instead of Foreign Financial Institutions working directly with the US government.

- Address non-US legal restrictions that conflict with FATCA
- Simplify implementation
- Reduce cost for Foreign Financial Institutions
- Mitigate passthru payment withholding

Two intergovernmental approaches:

Model I (reciprocal and non-reciprocal) **and Model II** (non-reciprocal)

Intergovernmental Agreements (IGAs)

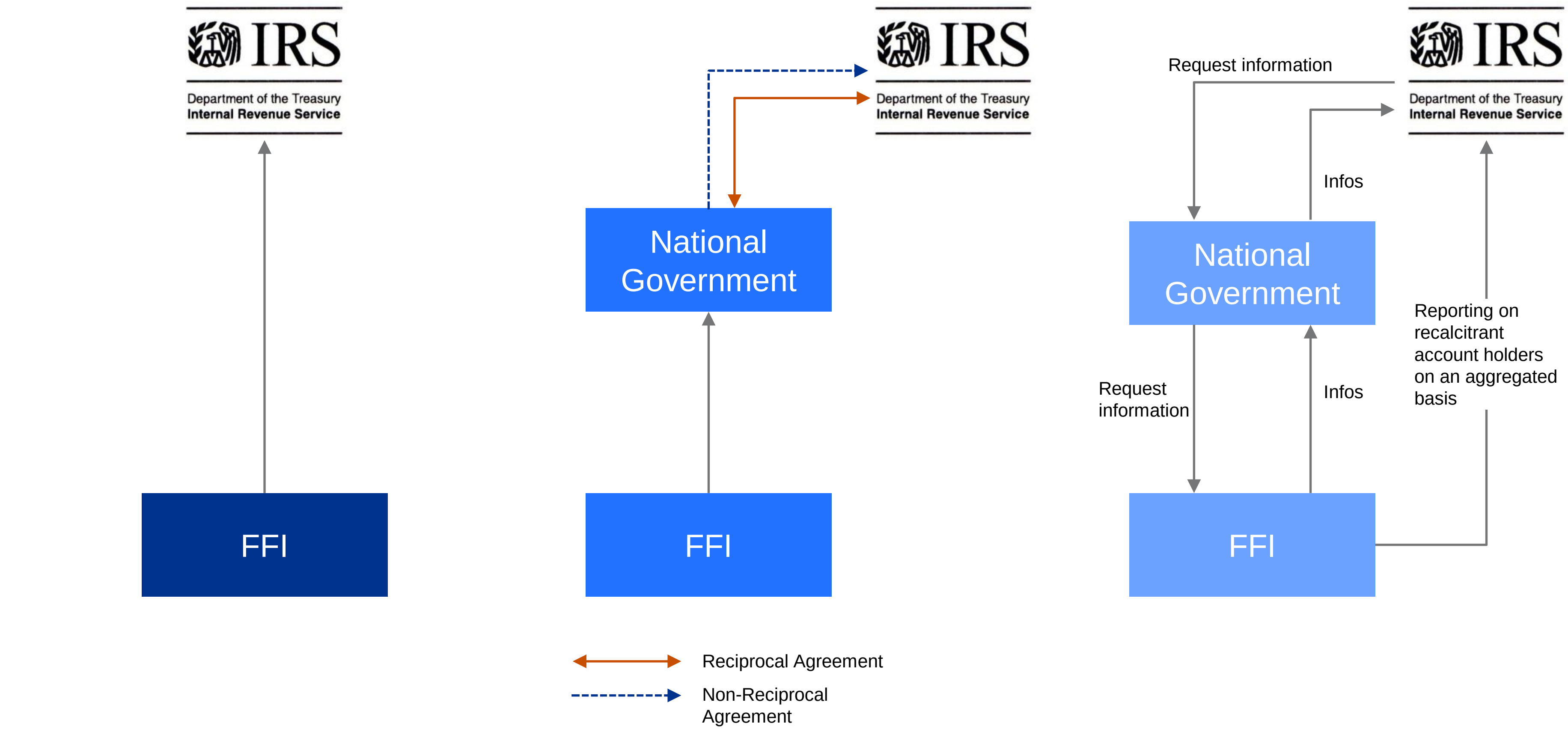
- US Treasury has engaged in discussions with more than 80 countries around the world regarding FATCA implementation through the use of Intergovernmental Agreements (IGAs)

	Treated as having an IGA in Effect – Model 1: Denmark, France, Germany, Ireland, Mexico, Norway, Spain and the United Kingdom
	Treated as having an IGA in Effect – Model 2: Japan and Switzerland
	Close to finalization: Cayman Islands, Luxembourg, Canada, Finland, Guernsey, Isle of Man, Italy, Jersey, the Netherlands, Malta
	In negotiation: Argentina, Australia, Belgium, Brazil, Cyprus, Estonia, Hungary, Israel, Korea, Liechtenstein, Malaysia, New Zealand, the Slovak Republic, Singapore, Sweden, Taiwan, and Thailand
	Exploring options: Bermuda, the British Virgin Islands, Chile, the Czech Republic, Gibraltar, India, Indonesia *(No formal announcements)*, Lebanon, Romania, Russia, Seychelles, Saint Maarten, Slovenia and South Africa
	Differing opinions: China *(No formal announcements)* and Hong Kong *(Discussions with Treasury but no formal announcements)*


LA NOUVELLE FORCE - 11
Signez le référendum Stop-Fatca!
NON à la violation de notre sphère privée
NON à l'impérialisme américain
NON à l'inquisition des Etats sur les Citoyens
NON à la capitulation du Parlement suisse
NON aux menaces sur l'économie genevoise
Cela peut tous - ou presque - nous menacer.
C'est une nouvelle inquisition qui se met en place et qui va menacer les Suisses. Nous devons voter sur ce sujet capital!
Ce référendum contre FATCA, c'est l'acte de fierté d'un peuple épris de liberté, contre une loi despotique. C'est aussi un formidable message au monde du pouvoir de notre démocratie directe. Citoyens, unissons-nous pour signer ce référendum!
Référendum contre l'arrêté fédéral du 27 septembre 2013
portant approbation de l'accord FATCA entre la Suisse et les Etats-Unis
CANTON
N° postal
Commune politique
Expiration du délai référendaire: 16 janvier 2014

Comparison of IGAs (Flow of Information)

No Intergovernmental Agreement	Intergovernmental Agreement Model I	Intergovernmental Agreement Model II



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Model 1 IGA

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Major Benefits of Signing the Model 1 IGA

- Elimination of withholding on certain income received by FATCA Partner Financial Institutions
- Simplification of due diligence requirements of account holders
- Possibility of greater alignment on AML/KYC procedures, existing documentation, and public information
- Wider scope of institutions and products effectively exempted from the FATCA requirements (Annex II)

Model 1 IGA – Reciprocal v. non-Reciprocal Version

Reciprocal version

- Acknowledgment of the need for equivalent levels of exchange to improve transparency
- Available to jurisdictions where the United States has an effective income tax treaty or tax information exchange agreement
- The jurisdiction must have robust protections and practices to ensure the information remains confidential and is used solely for tax purposes – determined on a case-by-case basis

Non-Reciprocal version

- Doesn't provide for the United States to exchange information currently collected on accounts held in the United States

Structure Model 1 IGA

Model I IGA is composed of three parts:

1 *Common agreement*

- Introduction/preamble
- 10 Articles providing high level definitions and requirements

2 *Annex I*

- Due diligence obligations for identifying and reporting on
  - US Reportable Accounts and
  - Payments to certain non-participating financial institutions

3 *Annex II*

- Exempt beneficial owners
- Deemed-compliant FFIs
- Excluded accounts

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Selected Articles of Model 1 IGA

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Institutions covered by the Model 1 IGA

Model I IGA applies to the following Financial Institutions:

!

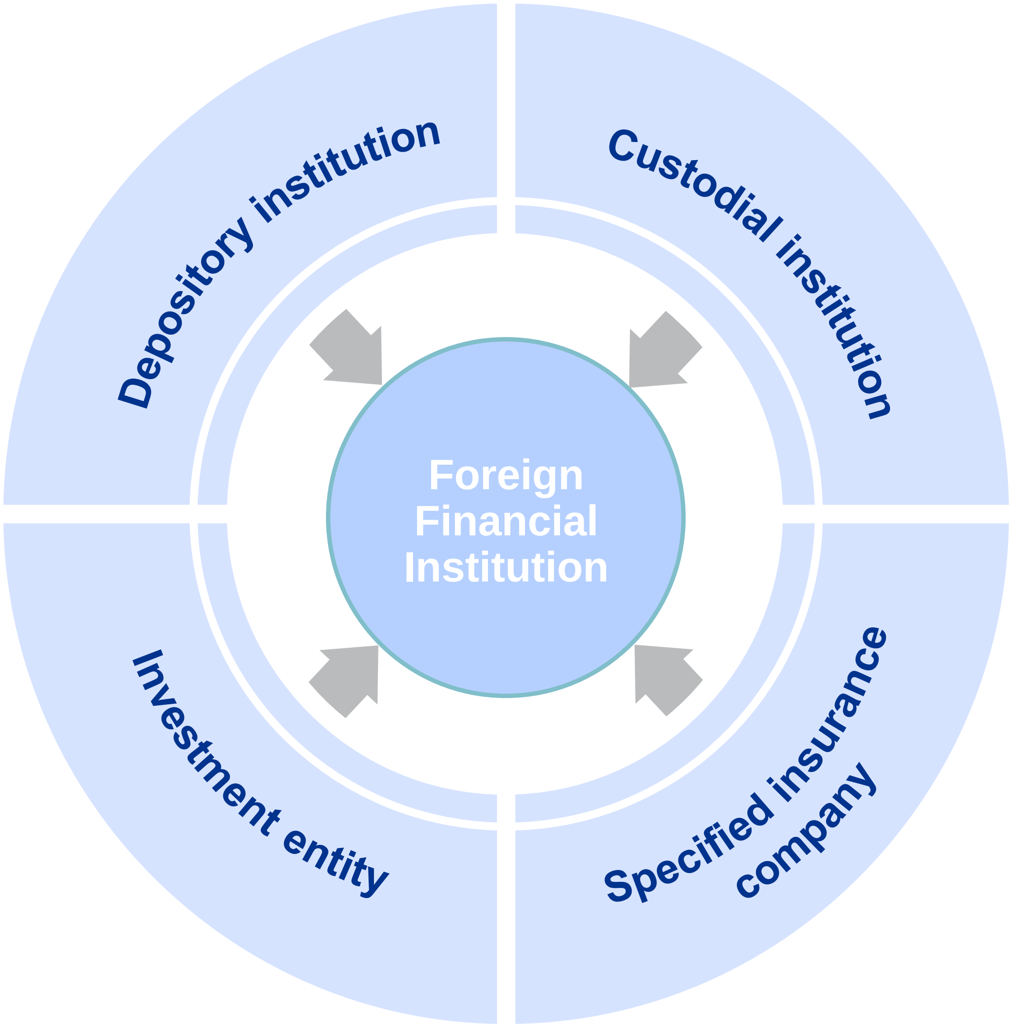
Any Financial institution **that is a resident in** the FATCA Partner

- No branches or subsidiaries that are located outside of the FATCA Partner

!

Any branch of a Financial Institution that is not a resident in the FATCA Partner, if such **branch is located in** the FATCA Partner

What is a Foreign Financial Institution?



Model 1 IGA Definitions – Types of FFIs

Custodial institution:

- Any entity that holds financial assets for the accounts of others as a substantial portion of its business
- ‘Substantial’ means that 20% or more of entity’s gross income is attributable to holding activity and related financial services during specified period of time

Depository institution:

- Any entity that accepts deposits in the ordinary course of banking or similar business and specifically includes interest paying client money accounts operated by insurance companies

Specified insurance company:

- Any entity that is an insurance company that issues, or is obligated to make payments with respect to a Cash Value Insurance Contract or Annuity Contract
- Also includes the holding company of an insurance company

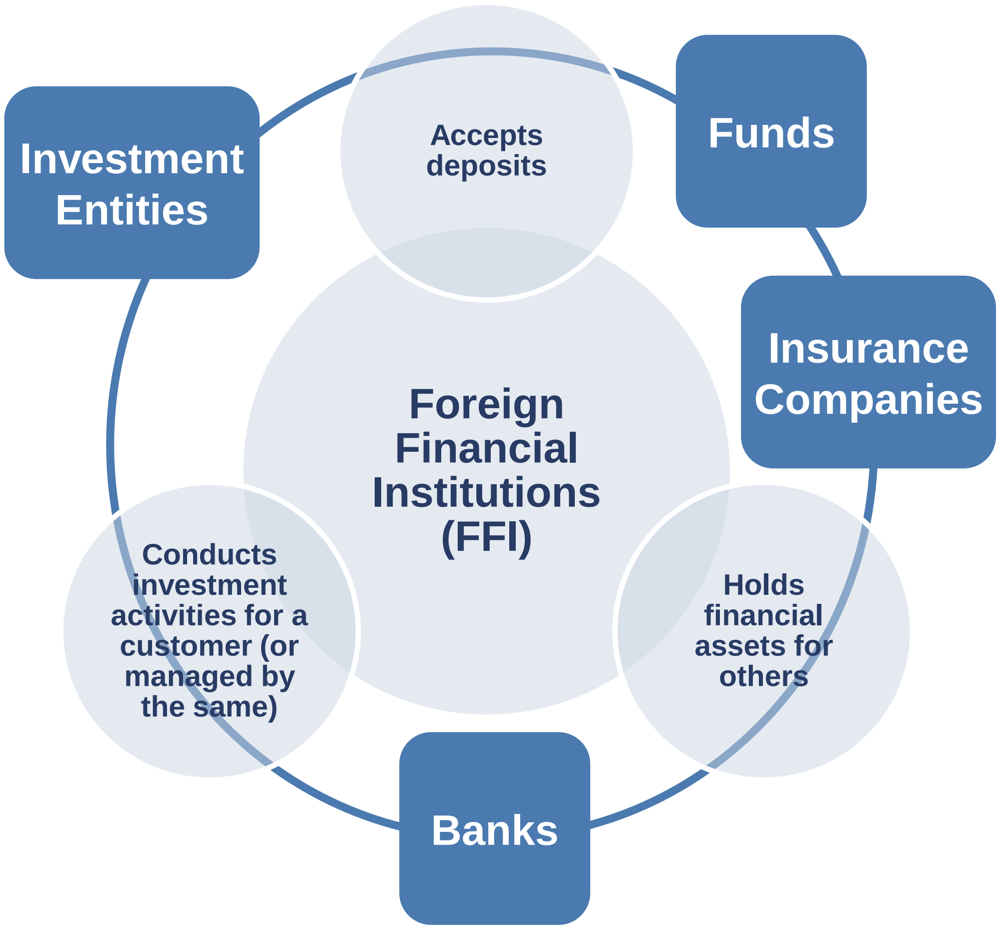
Model 1 IGA Definitions – Types of FFIs

Investment entity

- Any entity that conducts as a business for or on behalf of a customer:
  - Trading in money market instruments, foreign exchange, exchange, interest rate and index instruments, and other specified financial products
  - Managing individual and collective investment portfolio
  - Investing, administering, or managing funds or money on behalf of other persons
- Includes any entity that is managed by an Investment entity
- The definition shall be interpreted in a manner consistent with similar language in the definition of 'financial Institution' in the Financial Action Task Force Recommendations

Definition of FFI and NFFE

Foreign Financial Institution



Nonfinancial Foreign Entity

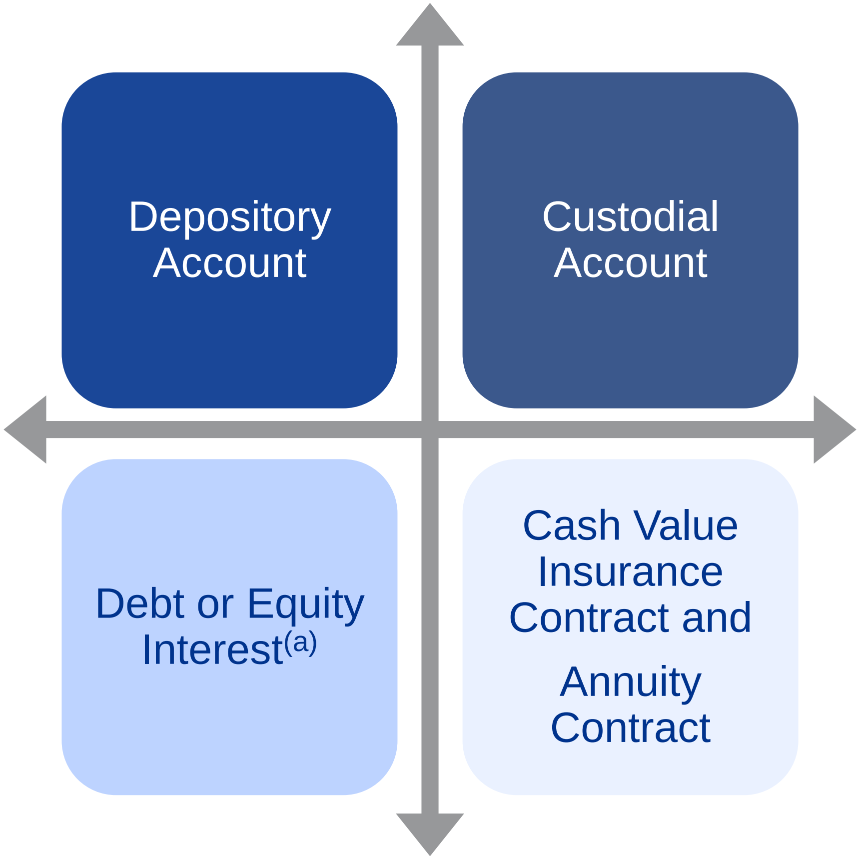
An NFFE is any foreign entity that is not an FFI

Once the determination of NFFE status is made, an entity should be further identified as:

1. Excepted NFFE
   - Publicly traded corporation or Subsidiary of foreign publicly traded corporation
   - Active: 50 & 50 test
2. Passive
   - Disclose substantial US owners (10% interest)

Obligations for FFIs: Do I Hold Financial Accounts?

Financial Accounts are defined as accounts maintained by a **Financial Institution** and include:



Note: (a) Debt or Equity interests (differences depending on Investment or other Financial Institutions)

Obligations of Reporting FATCA Partner FFI under Model 1 IGA

Reporting FATCA Partner Financial Institution is required to:

! Identify US Reportable Accounts and report annually to FATCA Partner Competent Authority required information in the prescribed time and manner

! Report annually to FATCA Partner required information on recalcitrant accounts

! Report annually to FATCA Partner Competent Authority payments made to Non-participating Financial Institutions in 2015 and 2016 (interim solution to passthru payment)

! Comply with the applicable Financial Institutions registration requirements (e.g. FATCA Portal in the US)

Non-Compliance with Reporting FATCA Partner FFI Obligations

Minor and administrative errors:

- FATCA Partner or US Competent Authority can make a direct inquiry to a Reporting Financial Institution
- Competent Authority may notify the Competent Authority of the other Party about making the inquiry to a Reporting Financial Institution

Significant non-compliance:

- Competent Authority will notify the Competent Authority of the other Party when a Reporting Financial Institution is in significant non-compliance with obligations
- Competent Authority of such Party will apply its domestic law (including penalties) to address significant non-compliance
- Reporting FATCA Partner Financial Institution has 18 months to resolve the issue
- ***Reporting FATCA Partner FI could be identified as a Nonparticipating FI by the IRS***

Types of Information a Reporting FATCA Partner FFI is Required to Report

Reporting FATCA Partner Financial Institution should report with respect to each US Reportable Account and recalcitrant account

- For **individual** accounts:
  - The name, address, and US TIN of each Specified US Person that is an Account Holder
- For **entities** that have one or more Controlling Persons that is a Specified US Person:
  - The name, address, and US TIN (if any) of such Entity
  - The name, address, and US TIN of each Specified US Person
- The account number or functional equivalent (e.g., a unique product identification number)
- The name and identifying number of Reporting FATCA Partner Financial Institution
- The account balance or value at the relevant calendar year end or as required
- Additional information for Custodial Accounts (e.g.: gross interest, dividends, other income generated with respect to asset held in account and gross proceeds on sale or redemption of certain property)
- Additional information for Depository Accounts (e.g.: gross interest)
- Gross Amount paid or credited to the Equity or Debt Interests, Cash Value Contracts or Annuity Contracts account holders including redemption payments, and
- The currency in which relevant amounts are denominated

IGAs With More Favorable Terms

More favorable terms of another Partner Jurisdiction IGA (limited to Article 4 and Annex 1):

FATCA Partner will be granted the benefit of any more favorable terms

The US will notify the FATCA Partner of any more favorable terms

The US will also automatically apply such more favorable terms of another Partner Jurisdiction

Key Dates of the IGA – Based on 4 November 2013 Draft Model 1 IGA

2013 | 2014 | 2015 | 2016 | 2017

A. 30 June 2014
Treat accounts opened on or before this date as **pre-existing** accounts

B. 1 July 2014
Treat accounts opened on or after this date as **new** accounts

C. 30 June 2015
Complete due diligence for pre-existing **high value** individual accounts

D. 30 September 2015
Competent Authority must provide required information to the IRS for 2014

E. 30 June 2016
Complete due diligence for pre-existing **lower value** accounts and pre-existing entity accounts

F. 30 September 2016
Competent Authority must provide required information to IRS for 2015

Most Important Updates of the 4 November 2013 Model 1 IGA

Regularly traded exception

The updated model defines “regularly traded” as a meaningful volume of trading with respect to the interest on an ongoing basis. Furthermore, an interest in a FFI is not regularly traded and will be treated as a Financial Account if the holder of the interest is registered on the books of the FFI.

Special rules regarding Related Entity

An FFI that is treated as deemed-compliant or as an exempt beneficial owner will not lose its status if the FFI has a Related Entity or Branch that operates in a jurisdiction that prevents such entity or branch from fulfilling the requirements of a participating or deemed compliant FFI, provided that the FFI/and the Related Entity or branch satisfy certain requirements.

Competent authority inquiries

A competent authority will notify the competent authority of the other party when the first-mentioned competent authority has reason to believe that administrative or minor errors may have led to incorrect or incomplete reporting or other infringements and that the competent authority of the other party will apply its domestic law to obtain corrected or complete information or resolve the infringements.

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Annex I: Due Diligence Obligations

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Classifying FATCA Financial Accounts

	Individuals	Entities
New	Financial Accounts	Financial Accounts
Preexisting	Financial Accounts	Financial Accounts

IGA Rules and Procedures – New Individual Accounts

Accounts not required to be Reviewed, Identified, or Reported → **Obtain self-certification** → **Confirm reasonableness of the self-certification**

- New Individual *Depository Account* unless the balance > $50,000 at the end of any calendar year or other appropriate reporting
- New Individual *Cash Value Insurance Contract unless the Cash Value* >$50,000 at the end of any calendar year or other appropriate reporting

IGA Rules and Procedures – New Entity Accounts

FATCA Partner Financial Institution is required to determine the New Entity Account status on the basis of:

Publicly available information OR **Information in possession of a Reporting FATCA Partner Financial Institution**

- An Active NFFE?
- A FATCA Partner Financial Institution?
- A Partner Jurisdiction Financial Institution?

Self-certification

- An exempt beneficial owner?
- A Specified US Person?
- A Passive NFFE?
- A Deemed-Compliant FFI?
- A Participating FFI?
- An Excepted FFI?

IGA Review Procedures – Preexisting Individual Accounts

Review procedures for	Lower value	High value
Electronic record search for any US Indicia	YES	YES
Paper record search for any US Indicia	NO	MAYBE
Relationship Manager inquiry for actual knowledge whether the account holder is a Specified US Person	NO	YES

Any account with a balance or value > $50,000 (or $250,000 for CVI Contract or Annuity Contract) **BUT** ≤$1 million

30 June 2014

Any account with a balance or value >$1 million

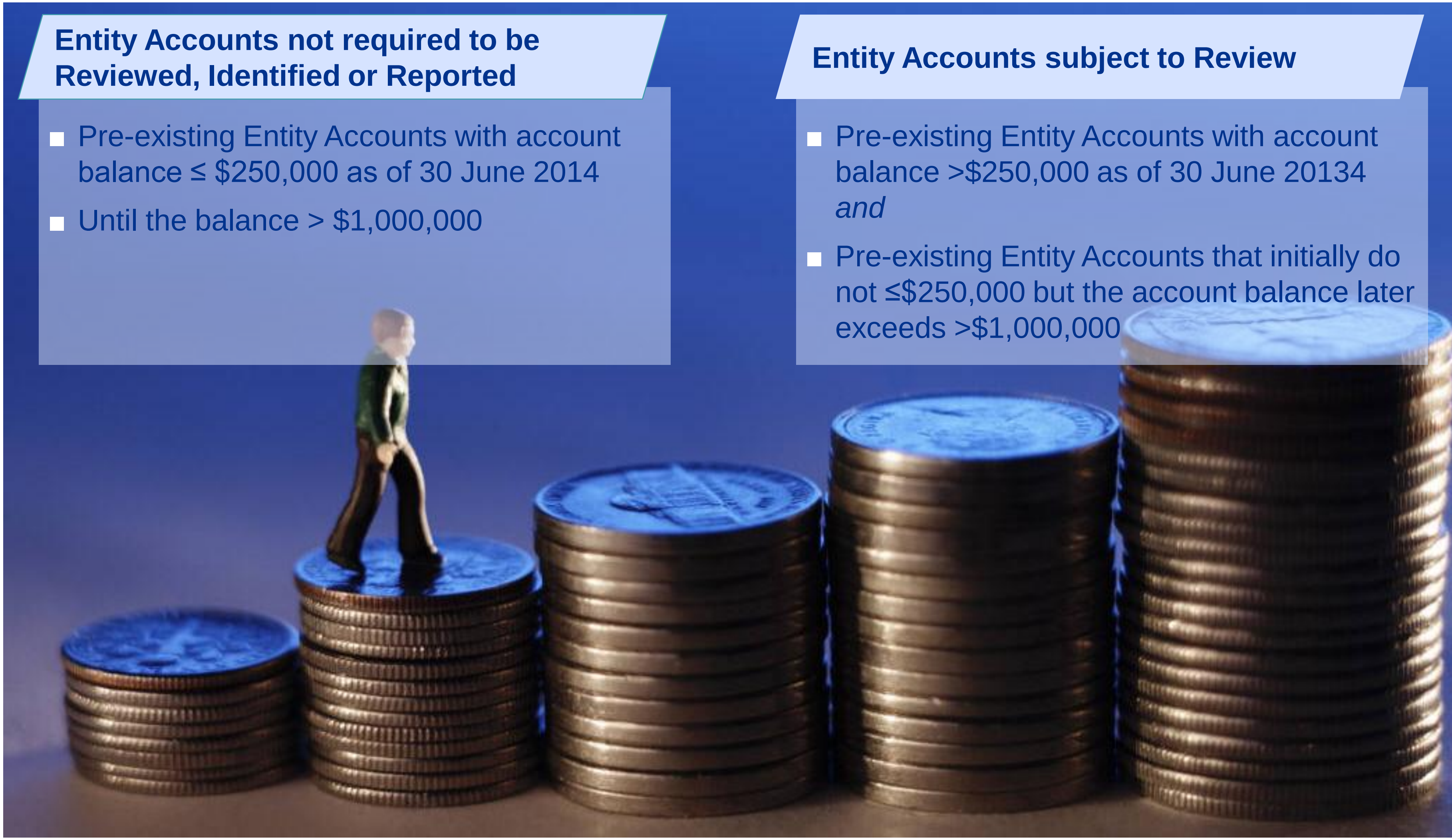
IGA Review Procedures – Preexisting Entity Accounts

Entity Accounts not required to be Reviewed, Identified or Reported

- Pre-existing Entity Accounts with account balance ≤ $250,000 as of 30 June 2014
- Until the balance > $1,000,000

Entity Accounts subject to Review

- Pre-existing Entity Accounts with account balance >$250,000 as of 30 June 20134 *and*
- Pre-existing Entity Accounts that initially do not ≤$250,000 but the account balance later exceeds >$1,000,000



IGA Review Procedures – Preexisting Entity Accounts

Determine whether the Entity is a *Specified US Person*

Determine whether a Non-US Entity is a *Financial Institution*

Determine whether a Financial Institution is *Non-participating*

Determine whether an Account held by an NFFE is a *US Reportable Account*

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Annex II: Exclusions

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Annex II of the Model 1 IGA - Overview

Annex II IGA:

Modified summary of the final US Treasury Regulation categories of certain entities and products that present a low risk of being used to evade US tax

No separate list of local entities and accounts that meet description in Annex II

BUT

- US Treasury is willing to discuss the application of Annex II to entities or accounts that do not satisfy all the requirements in Annex II
- FATCA Partner must provide written description of:
  - Requirement that are satisfied
  - Requirements that are not satisfied. Additionally, FATCA Partner must demonstrate substitute requirements that provide equal assurance that an entity or account present a low-risk of tax evasion

Annex II of the Model 1 IGA – Categories of Entities

Exempt beneficial owners

- Government Entity
- Central Bank
- International Organizations
- Retirement Funds
- Entities wholly owned by other Exempt Beneficial Owners

Deemed-compliant Financial Institutions

- Financial Institutions with Local Client Base
- Local Bank
- Financial Institution with Only Low-Value Account
- Qualified credit Card Issuer

Investment entities

- Trustee Documented Trust
- Sponsored Investment Entity and Controlled Foreign Corporation
- Sponsored Closely Held Investment Vehicle
- Investment Advisors and Investment Managers
- Collective Investment Vehicle

Annex II of the Model 1 IGA – Categories of Entities

Not treated as US reportable accounts

- Retirement and Pension Accounts
- Non-Retirement Savings Accounts
- Certain Term Life Insurance Contracts
- Accounts Held by an Estate
- Escrow Accounts
- Partner Jurisdiction Accounts

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IRS Notice 2013-43
FATCA Timelines

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FATCA Timeline for FFIs

A **17 January 2013**
Final FATCA regulations released

B **12 July 2013**
Revised Model IGAs and accompanying annexes released

C **Summer/Fall 2013**
IRS portal anticipated to open

D **Spring 2014**
25 April 2014
Last date to register with IRS to ensure inclusion on FFI List (safe harbor)
2 June 2014
FFI List published by IRS List

E **1 July 2014**
- New account due diligence/ identification begins
- Grandfathered Obligations: Payments on certain obligations outstanding on 7/1/14 are exempt from FATCA withholding[(b)]
- FATCA withholding begins on US source FDAP payments to new account holders identified as NPFFIs, recalcitrants, and Passive NFFEs with undisclosed Substantial US Owners
- FFI Agreement becomes effective

F **31 December 2014**
Deadline for FFIs to complete remediation on pre-existing entity accounts held by Prima Facie FFIs *(begin withholding)*[(a)]

G **15 March 2015**
- Tax return reporting begins (Form 1042)
- Information return reporting begins (Forms 1042-S)

31 March 2015
- Form 8966 reporting for 2014 on Substantial US Owners of Passive NFFEs and all US owners of ODFFI accounts identified by 31December 2014

H **30 June 2015**
Deadline for FFIs to complete remediation on pre-existing high-value accounts[(a)]

I **31 December 2015**
Final date for FFIs to qualify for Limited Branch and Limited FFI Status

J **15 March 2016**
- Annual tax return reporting (Form 1042)
- Annual information reporting (Forms 042-S)
- Reporting of foreign reportable amounts to NPFFIs begins

31 March 2016
Annual Form 8966 reporting

K **30 June 2016**
Deadline for FFIs to complete remediation on pre-existing accounts, other than Prima Facie FFIs and high-value accounts *(begin withholding)*[(a)]

L **31 August 2016**
Due date for Responsible Officer due diligence certifications (unless previously submitted)[(a)]

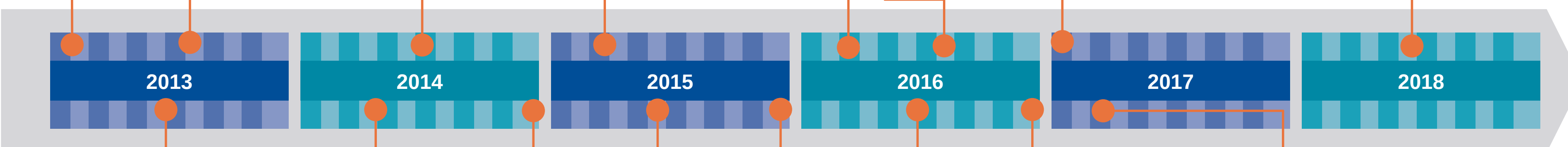
M **31 December 2016**
Final Day of Transitional Rule treating US source FDAP payment paid by non-intermediaries on offshore obligations as excluded from definition of 'withholdable payment'

N **1 January 2017**
- FATCA withholding begins on certain gross proceeds payments to noncompliant accounts
- FATCA withholding begins on foreign pass thru payment (or 6 months after publication of regulations defining term, whichever is later)
- For qualified collective investment vehicles, date by which policies aim to redeem or immobilize Bearer Interests

O **15 March 2017**
- Annual tax return reporting (Form 1042)
- Annual information reporting (Forms 1042-S)
- Reporting of foreign reportable amounts to NPFFIs ends

31 March 2017
Annual Form 8966 reporting

P **30 June 2018**
Deadline for Responsible Officer to file certification for First Certification Period



Note:
(a) These dates assume that the PFFI's FFI agreement is approved by the IRS and effective on 1 July 2014
(b) Payments treated as dividend equivalents, under section 871(m), may be treated as Grandfathered up to 6 months after the publication of regulation implementing 871(m) Payments treated as foreign pass thru payments may be treated as Grandfathered up to 6 months after the publication of implementing regulations

Notice 2013-43 Overview (FFIs)

FFI Portal and GIINs:

The opening of the IRS' FFI registration portal is delayed from 15 July 2013 to 19 August 2013. In addition, any information submitted via the portal will not be considered final until 1 January 2014 and the IRS will not issue any Global Intermediary Identification Numbers (GIINs) until after that date

IRS FFI list:

The first list will be published by 2 June 2014 (to ensure inclusion on this list, FFIs should register by 25 April 2014)

FFI agreement effective date:

30 June 2014

New Account Opening Procedures:

FFIs are required to apply their new account opening procedures beginning the later of: 1 July 2014 or FFI Agreement's effective date

Pre-existing Obligations:

The definition of pre-existing obligation references the effective date of the FFI Agreement

Pre-existing obligations for PFFIs now mean accounts, instruments, or contracts outstanding on 30 June 2014.

- For Registered Deemed-Compliant FFIs (RDCFFIs): Pre-existing obligations are those obligations executed or issued before the later of 1 July 2014 or the date the RDCFFI registers with the IRS

Notice 2013-43 Overview (FFIs)

Pre-existing Obligation Remediation:

The following remediation deadlines now apply:

- Prima Facie FFIs: 31 December 2014
- High-value individual accounts: 30 June 2015
- Low-value individual accounts, and all other pre-existing entity obligations: 30 June 2016

Withholding:

The date after which FFIs are required to begin imposing FATCA withholding on payments of US source FDAP has been moved to 30 June 2014. Nevertheless, the timeframe for withholding on gross proceeds or foreign pass-thru payments has not been amended

Grandfathered Obligations:

The definition of Grandfathered Obligation will be amended to include those legally binding agreements issued or executed by 30 June 2014, rather than by 31 December 2013

Reporting:

Notice 2013-43 removed the requirement that FFIs report their 2013 US accounts on their 31 March 2015 filing. FFIs are now only required to report US accounts identified by 31 December 2014

Notice 2013-43 Overview (IGAs)

IGA List:

Treasury will publish, on its website, a list of jurisdictions that will be treated as having an IGA in effect (even though an IGA may not be in force by 1 July 2014)

Pre-existing Obligations:

Notice 2013-43 states that it is the intent of Treasury to modify the definition of pre-existing obligation. Accordingly, it should be expected that pre-existing obligations, for FFIs in IGAs, will mean accounts, instruments, or contracts outstanding on 30 June 2014

Pre-existing Obligation Remediation:

A six month delay for pre-existing obligation remediation is also expected to be updated by Treasury

Reporting:

Notice 2013-43 indicated that future IGAs will contain provisions requiring that only US accounts identified by 31 December 2014 will be required to be reported in 2015 (rather than the current requirement to report accounts identified in 2013 and 2014)

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Discussion

EFS Erasmus
EUROPESE FISCALE STUDIES

International developments in automatic exchange of information

Philip Kerfs

Senior advisor at the Centre for Tax Policy and Administration at the OECD

Rotterdam, Erasmus University Rotterdam, 27th of November 2013

INTERNATIONAL DEVELOPMENTS IN AUTOMATIC EXCHANGE OF INFORMATION

Philip Kerfs
OECD Centre for Tax Policy and Administration

OECD
BETTER POLICIES FOR BETTER LIVES

Overview

1. Political context
2. OECD work on development of a global standard for automatic exchange of financial account information
3. Global Forum and expected role in monitoring global standard
4. Parallel developments in EU

1. POLITICAL CONTEXT

Political Context

- A major breakthrough towards more transparency was accomplished in 2009 with information exchange on request becoming the international standard.

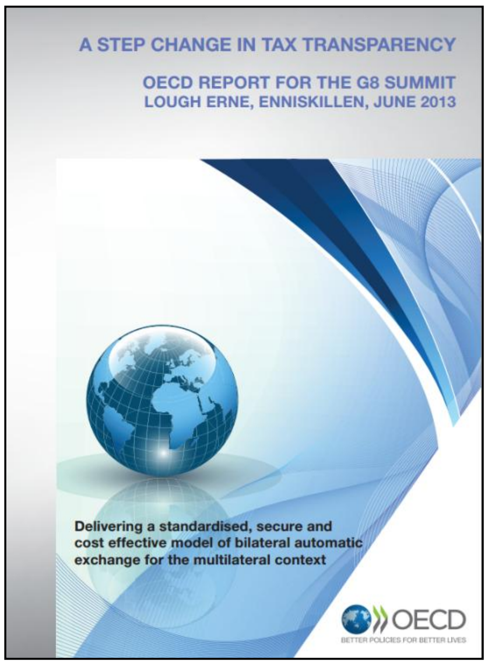
- Now, there is another step change in international tax transparency driven by developments around the globe, including in the United States and Europe, with unprecedented political support for automatic exchange of information.

Political Context

- G20 Leaders Meeting 5 September 2013 St Petersburg:
  - Committed to automatic exchange of information as the new global standard
  - Supported the OECD work with G20 countries aimed at:
    - a) presenting new single global standard for automatic exchange of information by February 2014; and
    - b) finalizing technical modalities of effective automatic exchange by mid-2014
  - Expect to begin exchanging information automatically among G20 members by the end of 2015 and called on all other jurisdictions to join by the earliest possible date
  - Requested Global Forum to establish a mechanism to monitor and review the implementation of the new global standard and, together with others, provide assistance to developing countries

Political Context

- June 2013 summit of G8 leaders:



  - *Announced that they will move to establish the automatic exchange of information between tax authorities as the new global standard.*
  - *Welcomed the OECD report "A step change in tax transparency" which sets out the concrete steps that need to be taken to put a global model of automatic exchange into practice.*
  - http://www.oecd.org/ctp/exchange-of-tax-information/taxtransparency_G8report.pdf

Political Context

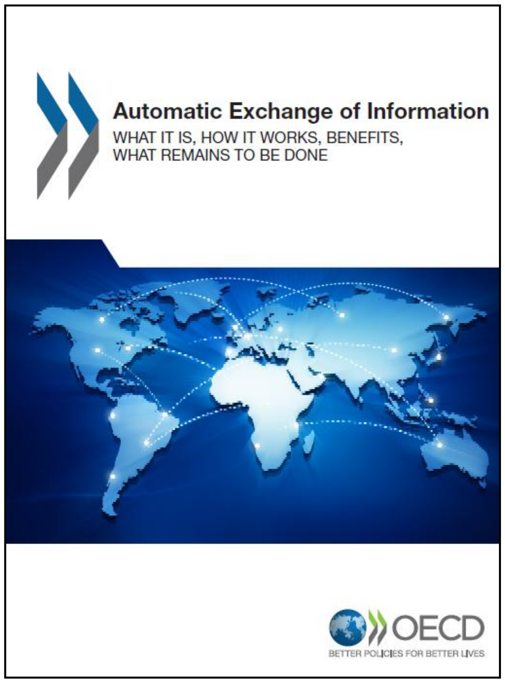
- Pilot Project
  - In April 2013 Ministers of Finance of France, Germany, Italy, Spain and the UK announced their intention to exchange FATCA-type information amongst themselves in addition to exchanging information with the United States.
  - More than 30 jurisdictions have now joined the initiative.

Political Context

- EU Council meeting of 22 May 2013:
  - agreement to give priority to efforts to extend automatic exchange of information at the EU and global level;
  - welcomed the on-going efforts made in the G8, G20 and OECD to develop a global standard.

2. OECD WORK ON AEOI

OECD work on AEOI



- OECD Report published 24 July 2012: *Automatic Exchange of Information: What it is, How it works, Benefits, What remains to be done*
  - Summarizes key features of an effective model for automatic exchange of financial account information
    - Common standard on information reporting and due diligence
    - Legal and operational basis for the exchange
    - Common or compatible technical solutions

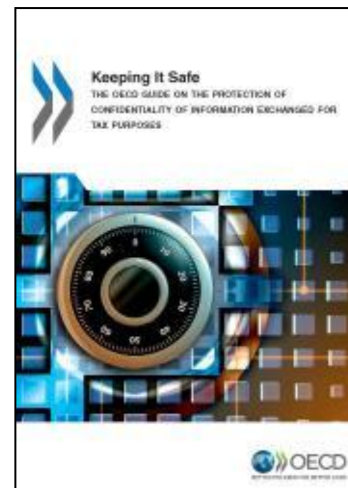
  http://www.oecd.org/ctp/exchange-of-tax-information/automaticexchangeofinformationreport.htm

Key features of effective model of AEOI

- **Common reporting and due diligence standards**
  - Ensures that reporting by financial institutions is aligned with interests of residence country
  - Enhances compliance (automatic matching with domestic compliance information and data analysis)
  - Requires a broad scope across 3 dimensions: (i) financial information reported, (ii) accountholders subject to reporting and (iii) financial institutions required to report
  - Robust due diligence procedures increase the quality of the information
  - Standardisation will reduce costs for governments and financial institutions

Key features of effective model of AEOI

- **Legal and operational basis for exchange of information**
  - Different legal basis already exist
    - Article 26 of the OECD Model Tax Convention
    - Multilateral Convention on Mutual Administrative Assistance in Tax Matters
  - Strict rules on confidentiality and proper use of information
  - See also OECD Report: *Keeping it Safe:* http://www.oecd.org/ctp/exchange-of-tax information/keepingitsafe.htm
  - Competent authority agreement to activate and “operationalise” automatic exchange between partners



Key features of effective model of AEOI

- **Common or compatible technical solutions**
  - Standardised technical reporting format allows information to be captured, exchanged and processed quickly in a cost efficient manner
  - Standardisation will reduce costs for governments and financial institutions
  - Compatible methods of transmission and encryption of data

Status of work on global model of AEOI

- OECD, working with G20 countries, is making very good progress in developing a global model of AEOI
- Key products under development include:
  - **Common Reporting Standard (CRS)**
    - Defines reporting and due diligence rules to be translated into domestic law by participating jurisdictions
  - **Model Competent Authority Agreement (Model CAA)**
    - To activate the exchange of information collected under the CRS pursuant to existing legal instruments
  - **Common guidance on CRS and Model CAA**
    - To ensure consistent implementation
  - **XML CRS Schema**
    - To be used for the reporting and exchange of information under the CRS

Draft CRS

- General approach followed in Secretariat draft:
  - Based on Model 1 IGA to leverage investments made by governments and financial institutions;
  - Amendments made to:
    - Adapt to multilateral context and remove US specificities (e.g. taxation on the basis of residency, not citizenship; generic categories of account holders)
    - Take into account other existing requirements (e.g. EU Savings Directive & AML/KYC)

Draft CRS

- Definitions of Reporting FIs and Financial Accounts: essentially the same as Model 1 IGA, except:
  - Certain Non-Reporting Financial Institutions not included because they are either not appropriate or irrelevant in a multilateral context (e.g. Financial Institutions with a Local Client Base)
  - Open definition added allowing domestic law to treat similar, low-risk accounts and FIs as Excluded Accounts/Non-Reporting FIs.
- Financial information to be reported: same as Model 1 IGA (but no aggregate reporting of payments to non Participating FIs)

Draft CRS

- Definition of Reportable Accounts:
  - Accounts held by Reportable Person or Passive NFE with Controlling Persons that are Reportable Person
  - Definition of Reportable Person:
    - Includes individuals and entities
    - based on residence for tax purposes in Reportable Jurisdiction (exception partnerships)
    - Does not include the U.S.-specific exclusions provided in the definition of Specified U.S. Person. Instead it excludes listed companies, governmental entities, Central Banks and Financial Institutions
  - Definition of Passive NFE, based on Model 1 IGA but adjusted to:
    - cover all NFEs irrespective of their residence (as opposed to the Model 1 IGA which only covers Non-Financial Foreign Entities); and
    - include certain FIs that are not Participating Jurisdiction FIs (trusts, foundations,…)

Draft CRS

- Due diligence:
  - Pre-existing Individual Accounts:
    - No de minimis threshold
    - Lower Value Accounts: two options
      - rely on permanent residence address based on documentary evidence (similar to EUSD); or
      - indicia search in electronically searchable records (indicia slightly adapted to multilateral context)
    - Higher Value Accounts: enhanced due diligence procedures including paper records search and actual knowledge test by relationship manager
  - New Individual Accounts:
    - Self-certification (and confirmation of reasonableness)

Draft CRS

- Pre-existing Entity Accounts: Essentially the same as Model 1 IGA except that:
  - Accounts that exceed 250,000 USD are subject to review, even if they do not exceed 1,000,000 USD
  - Certain FIs that are not Participating Jurisdiction Financial Institutions, are treated as passive NFEs
- New Entity Accounts: same as above but no threshold

Next Steps and Timescale

- February 2014
  - CRS and Model CAA to be presented to the G20
- mid-2014
  - Finalisation of CRS XML schema and other technical modalities
  - Common guidance to ensure consistency in implementation
- Ensure all countries, including developing countries, can benefit from the new standard
- Related work in 2014: synergies with TRACE

3. GLOBAL FORUM

GLOBAL FORUM

- Set up in its present form after G20 London Summit in 2009 called for a peer review process to ensure all jurisdictions met international standards to tackle tax evasion.
- Now comprises **121 members**. All committed to the international standard based on exchange of information on request.
- All members undergo two-phase peer review process:
  - Review of each jurisdiction's legal and regulatory framework (Phase 1); and
  - Practical implementation (Phase 2) of the standards on transparency and the exchange of information for tax purposes

GLOBAL FORUM

- Jakarta meeting 21-22 November 2013: Establishment of a new AEOI Group
  - open to all interested countries and jurisdictions;
  - main responsibilities
    - Propose terms of reference and methodology for monitoring AEOI going forward
    - Helping developing countries identify their needs for technical assistance.

EU Developments

- Provisions on AEOI already in place:
  - EUSD
  - Administrative Cooperation Directive
    - automatic exchange of available information on five categories of income from 1 January 2015: income from employment, director's fees, life insurance products, pensions, and immovable property.
- Pending proposals:
  - 2008 Commission proposal to revise EUSD
    - Mainly intended to close loopholes (payments to non EU intermediate structures, instruments similar to debt instruments)
  - June 2013 Commission proposal to amend ACD
    - Intended to align scope of AEOI to FATCA
    - expands scope of AEOI so that it covers dividends, capital gains, any other financial income and account balances

QUESTIONS?

Discussion

Foundation European Fiscal Studies thanks you for your presence and wishes a good journey home

Closure and drinks

More information about our activities can be found at our website:

www.europesefiscalestudies.nl