US Foreign Account Tax Compliance Act

FATCA – Like it or not, it's here….

ICAC
Caribbean Accountants Conference

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Today's Agenda

Background

Draft regulations

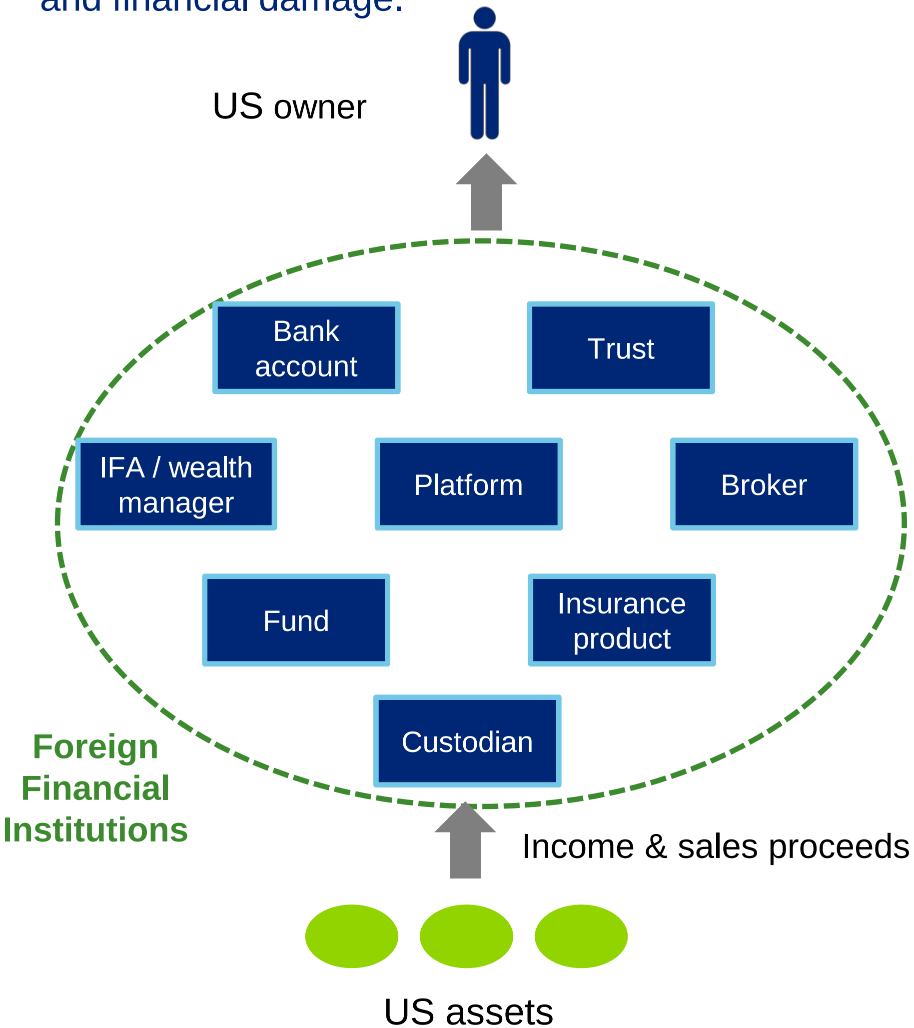
Implementation considerations

Questions

Background

What is FATCA?

- Whilst FATCA is technically voluntary, FS institutions who ignore it will find themselves frozen out of the global FS market.
- Non compliance is generally 'not' an option as this could result in significant commercial, reputational and financial damage.



IRS concern

- US persons escape their US tax obligations by holding assets through non-US structures and products

IRS response

- Non-US financial institutions designated Foreign Financial Institutions, or "FFIs"
- The default position is that FFIs will suffer 30% withholding on all income & sales proceeds from US sourced income
- Alternatively, FFIs can enter an agreement with the IRS and become "participating FFIs"

Implications of non-compliance

- Financial, commercial and reputational risks
- May be forced to comply even where no US sourced payments exist as many third parties are likely to require you to be FATCA compliant for practical business reasons

FATCA Overview

In Summary	
In Summary	▪ On February 8, 2012, the U.S. Treasury and IRS released the proposed regulations for the Foreign Account Tax Compliance Act (FATCA) ▪ Goal is to ensure U.S. persons with financial assets outside the U.S. are paying U.S. tax ▪ U.S. Financial Institutions will have to withhold 30% on U.S. sourced payments to foreign institutions/entities that do not comply – includes gross proceeds

Who Needs to Comply?

U.S. Withholding Agents	*U.S. entity that has control, receipt, custody disposal or payment of any withholdable payment*
Foreign Financial Institutions (FFIs)	*Non-U.S. entity that accepts deposits, holds financial assets for the account of others as a substantial part of its business, or engages primarily in the business of investing or trading securities, commodities, partnerships or any interests in such positions.*
Non Financial Foreign Entities (NFFEs)	*Includes any foreign entity that is not a FFI or is not one of the following specifically EXCEPTED entities:* ▪ *Any publicly traded corporation and its corporate affiliates (more than 50% of vote and value)* ▪ *Any entity organized under the laws of a possession of the U.S.* ▪ *Any foreign government, or any wholly owned agency of* ▪ *Any international organization or any wholly owned agency or instrumentality of such* ▪ *Any foreign central bank (unless acting as intermediary for clients)* ▪ *Any other class of persons identified by the Secretary as posing a low risk of tax evasion*
U.S. Individuals	*U.S. Citizens, U.S. residents (e.g., Green card holder) and nonresident aliens who meet the substantial presence test*

How have we gotten here?

2010		2011		2012	2013		2014
HIRE Act passed	Notice 2010-60	Notice 2011-34	Notice 2011-53		FATCA effective date	FFI Agreement	FFI withholding phase-in begins

March 18, 2010
FATCA provisions passed into law under HIRE Act.

September 13, 2010*
IRS initial guidance describing the requirements to become a participating FFI, including documentation due diligence procedures and reporting requirements.
Released 8-27-2010

May 9, 2011*
Additional and amended guidance on documentation of pre-existing accounts, pass-thru payments and reporting requirements.
Date certification by FFI Responsible Officer relates back to.
Released 4-8-2011

August 8, 2011*
Transitional relief for FATCA withholding on payments to FFIs.
Released 7-14-2011

February 8, 2012
Proposed FATCA regulations. Draft FFI Agreement and certain other matters outstanding.

Summer 2012
Expected – Final FATCA regulations.

January 1, 2013
Effective date of FATCA legislation.

Early 2013
Expected – FFI Agreements ready to be executed in early 2013.

July 1, 2013
FFI Agreements executed prior to 6-30-2013 will have a 7-1-2013 effective date and will be ensured to have the assigned FFI number published in time to prevent FATCA FFI withholding on 1-1-2014 (unless otherwise elected).

January 1, 2014
FATCA withholding on payments to FFIs and NFFEs begins on Withholdable Payments of FDAP.

January 1, 2015 and beyond
FATCA withholding on payments to FFIs and NFFEs: Withholdable Payments of FDAP <u>and</u> gross proceeds. Pass-thru Payments will become subject to FATCA withholding.

* Indicates date of official publication in the Internal Revenue Bulletin.

Can We Believe Everything We Hear?

Common FATCA myths

"FATCA only affects Private Banking"

"It is a Tax problem"

"If Obama loses the election, the Republicans will repeal it"

"If we have no US persons and/or assets, we don't have to do anything"

"FATCA is going to go away"

"This violates existing laws"

"We need a single customer view system and withholding engine"

Draft regulations

Overview of changes in the draft regulations

Due diligence on preexisting accounts for FFIs

Preexisting account population requiring due diligence limited from prior notice guidance:

- Preexisting individual account document review limited to accounts with over US$1M balances
- Document search on high net worth accounts more defined (e.g., current customer master file documents as opposed to “all available documents”).
- Preexisting entity accounts having balances under $250K are exempt from review

Client onboarding for FFIs

Accounts on boarded after the FFI agreement subject to current onboarding procedures used under AML/KYC except to the extent U.S. indicia are identified.

- If U.S. indicia are determined as a part of the AML/KYC review, additional documentation must be collected
- Certain entity accounts exempt from documenting substantial U.S. owners

Withholding

- Short-term OID and ordinary course of business payments are excluded
- Grandfathering is extended
- Withholding phased in gradually between 2014 and 2017

Overview of changes in the draft regulations (continued)

Reporting

Similar to withholding, reporting will be phased in gradually between 2014 and 2017

Other highlights

- Reporting of payments made to non-participating FFIs and recalcitrant accounts
- Reporting does not need to be performed in U.S. currency
- Starting 2015, reporting is generally required to be filed on March 31

Deemed Compliant Foreign Entities

Expanded deemed-compliant categories

- Registered: Must certify it meets requirements every 3 years to IRS and inform of any changes
- Certified: Certifies it meets requirements on Form W-8 to withholding agents

Miscellaneous

Other considerations of the proposed regulations concern:

- Definition of financial accounts for FFIs
- Affiliated group two-year transition for FFIs
- Compliance verification for FFIs

Proposed regulations extended deadlines, while maintaining significant 2013 milestones that require immediate mobilization

FATCA Compliance Action Items	2012	2013	2014	2015	2016	2017
Grandfathered obligations cutoff	Mar 18	Jan 1				
U.S. withholding agents begin new customer onboarding & remediation		Jan 1				
Submit FATCA application to IRS		Jun30				
FFIs begin new customer onboarding		Jul 1				
FFIs begin remediation for existing customers meeting FATCA criteria		Jul 1				
Begin income withholding			Jan 1			
Begin account and balance reporting			Sep 30			
Begin gross proceeds withholding				Jan 1		
Application due for FFI affiliated group requirement compliance		Jul 1			Jan 1	
Begin income reporting			Sep 1		Mar 31	
Begin foreign passthru payments withholding				Jan 1		Jan 1
Begin gross proceeds reporting			Sep 1			Mar 31

Program Management | Onboarding | Withholding | Reporting | Old date | New date | Unchanged

Intergovernmental Approach

This is an ALTERNATIVE to the reporting regime

- US Treasury Department released as a joint statement concurrently with draft regulations
- Involves France, Germany, Italy, Spain and United Kingdom (FATCA partners)
- Reporting is done to the FATCA partner authorities, not to the IRS
- Every relevant FATCA partner FFI is required to participate and register with the IRS but will not have to sign an FFI agreement
- There is no withholding on FATCA partner FFIs
- Allow a reciprocal reporting arrangement of FATCA partner residents with accounts in US

Implementation considerations

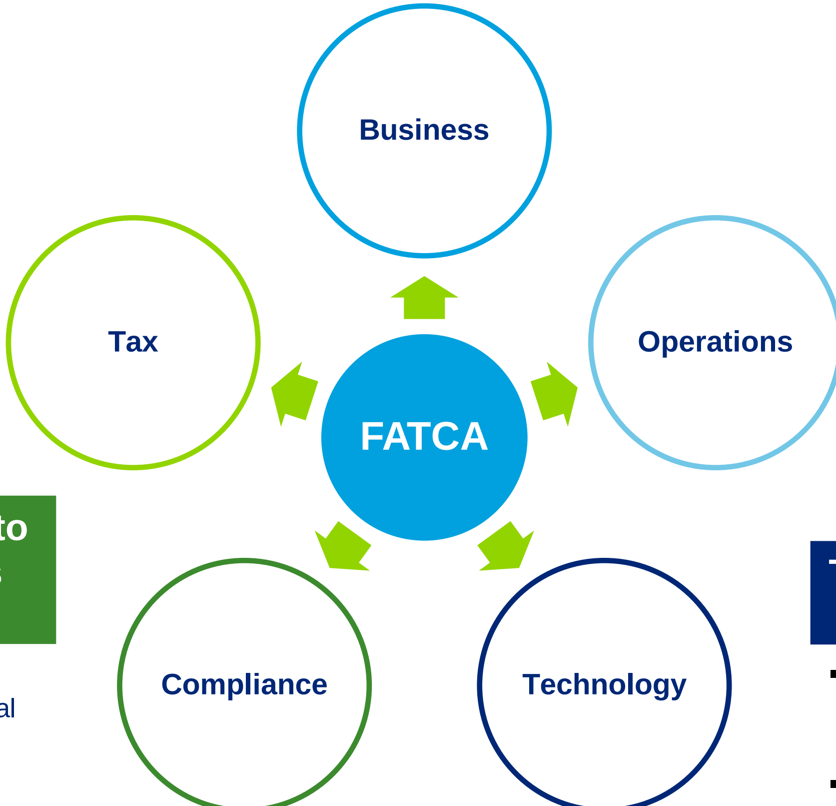
FATCA Impacts

Speed to market matters

- Opportunity to either gain market share from or lose market share to competitors
- Rigorous communication and communication strategy will be required for existing clients

Tax provisions will require interpretation

- Foreign entities will need to be classified at a much more granular level, besides just FFIs or NFFEs
- The process for identifying and documenting a foreign entity's status is still unclear, and there is potential exposure if the determination is incorrect



Operational processes will need to be augmented

- Customer Facing: New Account Processing, Account Transfers, Client Reporting Statements, Privacy and AML / KYC
- Asset Servicing: Corporate Actions Processing, Tax Reporting, Security Master, and Payments inventory & withholding
- Regulatory Reporting: New annual IRS/U.S. Treasury Reporting

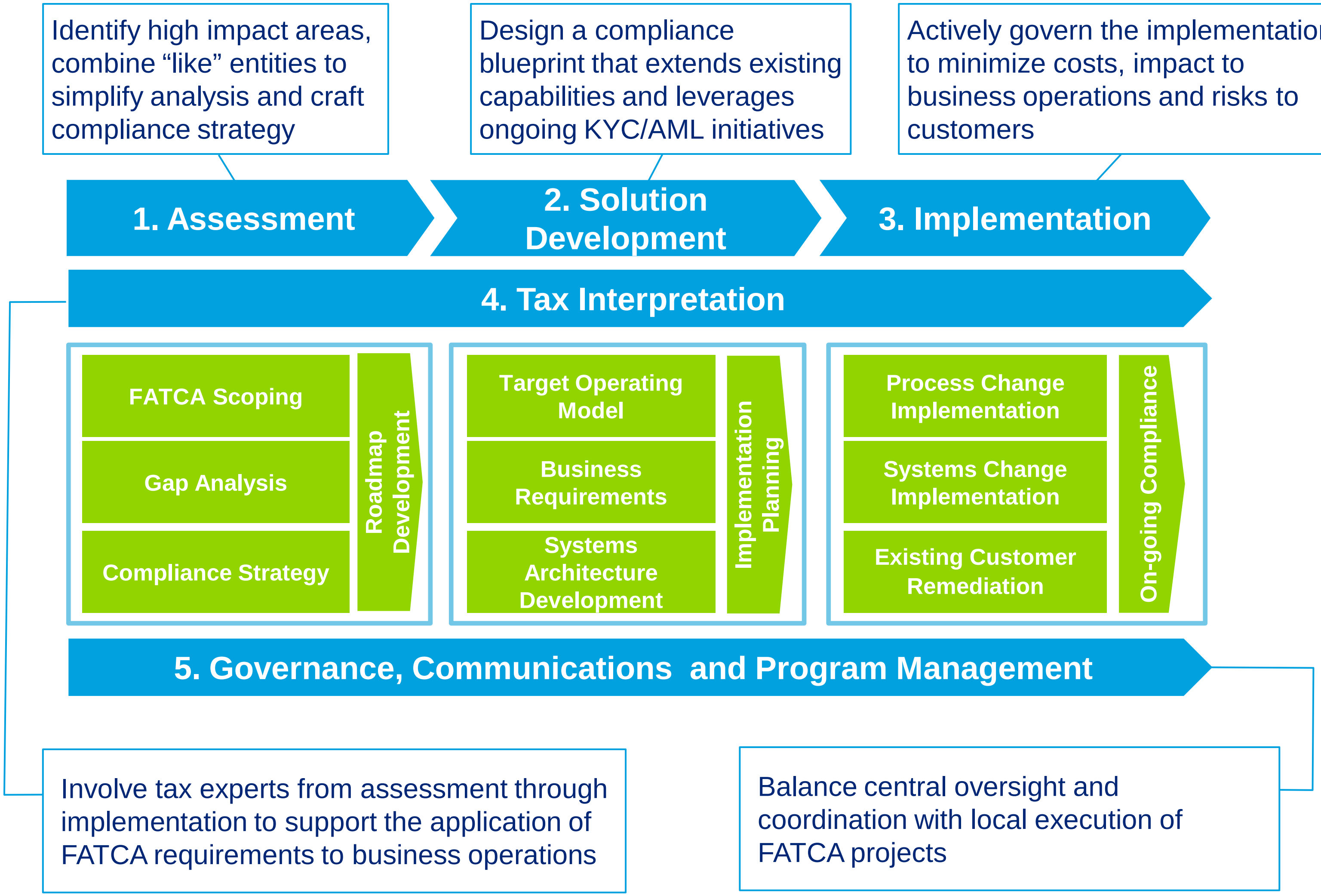
Compliance will have to be addressed across countries

- Compliance with FATCA's due diligence, verification and annual reporting may result in conflicts with local privacy laws
- With presence in many countries, institutions need to launch an orchestrated compliance monitoring effort to meet the deadline

Technology investments will need to be made

- Potential new systems to continuously track FFI agreements, as well as FFI and NFFE ownership data
- Existing systems and processes are likely to struggle with the additional data elements, withholding calculations and reporting changes

FATCA Implementation Framework



FATCA challenges faced by organizations

Assessment

- Proper and efficient scoping and legal entity classification
- Streamline system / process / data gap assessment
- Project planning / business strategy

Solution development

- Interpretation of FATCA regulations
- Awareness of local laws conflicting with FATCA
- Customer data aggregation and analytics
- Classification of existing clients as per FATCA taxonomy

Implementation

- Communication and remediation of existing account
- IT strategy and implementation of system and process changes
- Managing projects which span multiple jurisdictions

Questions

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