

# Mastering FATCA Compliance for NFFEs: Navigating Who, What, When and How Much

THURSDAY, MARCH 1, 2018, 1:00-2:50 pm Eastern

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THURSDAY, MARCH 1, 2018

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Matthew D. Lee is a former U.S. Department of Justice trial attorney who concentrates his practice on all aspects of white collar criminal defense and federal tax controversies. He has extensive experience in advising clients on issues regarding foreign bank account reporting (FBAR) obligations, the Foreign Account Tax Compliance Act (FATCA), and the Internal Revenue Service's Offshore Voluntary Disclosure Programs. He has represented hundreds of U.S. taxpayers with undisclosed foreign financial assets. Mr. Lee has published numerous articles regarding the IRS voluntary disclosure programs and FBAR and FATCA reporting obligations and speaks frequently on these topics.

He has also represented clients in all stages of proceedings before the Internal Revenue Service, including audits, appeals, and collections, and Tax Court and district court litigation. Mr. Lee also conducts internal investigations and advises clients as to compliance issues involving the Bank Secrecy Act, the USA Patriot Act, FATCA, and anti-money laundering laws and regulations.

Mr. Lee represents companies and individuals in criminal investigations involving tax, money laundering, health care, FCPA, antitrust, securities, public corruption, and fraud offenses, and has significant experience in handling all stages of federal litigation including trials and appeals.

Mr. Lee is the author of *Foreign Account Tax Compliance Act Answer Book 2017* (Practising Law Institute) and publishes a blog entitled Tax Controversy Sentinel (<https://taxcontroversy.foxrothschild.com/>).

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Jeffrey Rosenfeld concentrates his practice in the area of business tax law. Mr. Rosenfeld has significant experience counseling corporate clients and individuals regarding undeclared foreign bank accounts, including “FBAR” reporting obligations, and has represented numerous clients in the Internal Revenue Service’s Offshore Voluntary Disclosure Program. Mr. Rosenfeld frequently writes on issues related to the FBAR and FATCA rules and regulations and international tax compliance issues.

Mr. Rosenfeld also counsels public and private corporations, partnerships, and individuals in a broad array of tax matters including:

- domestic and international tax matters;
- state and local tax planning;
- tax-efficient structuring of domestic and international mergers, acquisitions, divestitures,
- reorganizations, spin-offs, redemptions and liquidations;
- formation, operation and acquisition of Subchapter S Corporations, partnerships and limited liability companies;
- federal, state, and local criminal and civil tax controversies, including audits, administrative appeals, and litigation; and,
- issuances of equity-based compensation.

# **FATCA in Context: Historical Attempts to Regulate Conduct of U.S. Citizens and Residents Offshore**

# Obligation to Report Worldwide Income

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- United States law has always obligated U.S. citizens (including dual citizens) and U.S. residents to declare and pay taxes on all of their worldwide income, regardless of where those earnings have been derived.
- Historically, some U.S. taxpayers have attempted to avoid or evade reporting income earned outside of the U.S. because of the U.S. government's inability to identify those earnings from overseas banks and other financial institutions.



# U.S. Efforts to Combat Offshore Tax Evasion

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- To combat the perceived problem of international tax avoidance and evasion by U.S. citizens and residents, the U.S. government enacted and implemented a new law, namely FATCA.
- Under FATCA, non-U.S. banks and financial institutions are required to withhold on certain U.S. source payments and to annually disclose information regarding their U.S. accountholders to U.S. tax authorities.
- Failure to comply with FATCA requirements can subject banks and financial institutions to reputational and other consequences.

# U.S. Enforcement Efforts to Date

# Why the Focus on International Tax Compliance?

- IRS/DOJ have intense focus on curtailing offshore tax avoidance
  - U.S. Tax Gap: \$450 billion
  - U.S. Senate PSI Report (2/26/14): Offshore tax schemes cause \$150 billion in lost tax revenue per year
- How?
  - using “carrot and stick” approach

# The Carrot: Voluntary Disclosure Programs

- 2014 Offshore Voluntary Disclosure Program (OVDP) which follows highly successful 2009, 2011, and 2012 amnesty programs
  - Provides participating taxpayers with amnesty from criminal prosecution by filing of amended tax returns and payment of taxes, interest, and penalties
  - 50,000 voluntary disclosures since 2009 (versus 100 annually under traditional voluntary disclosure program)
  - Over \$10 billion in additional revenue collected to date
- Also “Expanded Streamlined Filing Compliance Procedures” for non-willful taxpayers

# The Stick: Unprecedented Enforcement

- “Today’s agreements reflect the Tax Division’s continued progress towards reaching appropriate resolutions with the banks that self-reported and voluntarily entered the Swiss Bank Program. The department is currently investigating accountholders, bank employees, and other facilitators and institutions based on information supplied by various sources, including the banks participating in this Program. ***Our message is clear – there is no safe haven.***” (DOJ Tax May 29, 2015)
- “These four additional bank agreements signal a change in terrain for offshore banking. No longer is it safe to hide money offshore and expect that it will not be discovered. IRS CI Special Agents will continue to follow the money to find those who circumvent the offshore disclosure laws and hold them accountable.” (IRS-CI May 29, 2015)

# Enforcement Efforts to Date

- UBS Deferred Prosecution Agreement (Feb. 2009)
- Approximately 117 individual account holders have been criminally charged to date
  - 90 guilty pleas
  - 12 convictions following trial
  - 5 fugitives from justice
- Numerous prosecutions of facilitators
  - 12 guilty pleas
  - 2 convictions following trial
  - 23 fugitives from justice

# Enforcement Actions Against Banks Post-UBS

- Bank Leumi (Israel) – December 2014; deferred prosecution agreement. \$270 million penalty and turn over of more than 1,500 names of account holders.
- Credit Suisse (Switzerland) – May 2014; guilty plea. \$2.6 billion penalty.
- LLB-Vaduz (Liechtenstein) – July 2013; non-prosecution agreement. \$23 million penalty.
- Wegelin Bank (Switzerland) – January 2013; guilty plea. \$58 penalty and \$16.2 forfeiture.

# Swiss Bank Program Resolutions (as of July 2, 2015)

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- More than 100 Swiss Banks enrolled
- BSI SA (March 30; \$211 million)
- Vadian Bank AG (May 8; \$4.3 million)
- Finter Bank Zurich AG (May 15; \$5.4 million)
- Societe Generale (May 28; \$1.4 million)
- MediBank AG (May 28; \$826,000)
- LBBW (Schweiz) AG (May 28; \$34,000)
- Scobag Privatbank AG (May 28; \$9,090)



# Swiss Bank Program Resolutions, continued (as of July 2, 2015)

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- Rothschild Bank AG (effective 6/3/15)
- Banca Credinvest SA (effective 6/3/15)
- Societe Generale Private Banking (Suisse) SA (effective 6/9/15)
- Berner Kantonalbank AG (effective 6/9/15)
- Bank Linth LLB AG (effective 6/19/15)
- Bank Sparhafen Zurich AG (effective 6/19/15)
- Ersparniskasse Schaffhausen AG (effective 6/26/15)
- Privatbank Von Graffenried AG (effective 7/2/15)



# Introduction to FATCA

# What is FATCA?

- “The Foreign Account Tax Compliance Act (FATCA) is an important development in U.S. efforts to improve tax compliance involving foreign financial assets and offshore accounts.” ([www.irs.gov](http://www.irs.gov))
- “FATCA was enacted in 2010 by Congress to target non-compliance by U.S. taxpayers using foreign accounts. FATCA requires foreign financial institutions (FFIs) to report to the IRS information about financial accounts held by U.S. taxpayers, or by foreign entities in which U.S. taxpayers hold a substantial ownership interest.” ([www.treasury.gov](http://www.treasury.gov))
- FATCA became fully effective on July 1, 2014.

# Two Primary FATCA Requirements

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- In general terms, foreign financial institutions are annually required to report to the U.S. government information about financial accounts held by U.S. taxpayers, or held by foreign entities in which U.S. taxpayers hold a substantial ownership interest.
- U.S. taxpayers with specified foreign financial assets that exceed certain thresholds must report those assets to the IRS annually on the Form 8938 information return.

# FATCA Mechanics

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- Imposes a 30% withholding tax on payments of U.S.-source FDAP income paid to:
  - Certain FFIs
  - Certain nonfinancial foreign entities (NFFEs)
- The tax is not imposed if the entity agrees to provide certain information to the U.S. government or to the person or entity making the payment.
- The goal of FATCA is not to increase tax revenues, but instead to collect information.

# FATCA Entity Classification

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- Foreign Financial Institution (FFI)
  - Non-compliant FFIs are subject to FATCA withholding
- Non-Financial Foreign Entity (NFFE)
  - A legal entity that is not a FFI
  - Excepted NFFEs are not subject to FATCA withholding
  - Passive NFFEs are subject to FATCA withholding

# FFI Types

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- Depository Institution
- Custodial Institution
- Investment Entity
- Holding Company and Treasury Center
- Specified Insurance Company



## Excepted FFI

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- Even though an entity falls under the definition of an FFI, it may still be excluded if the entity is an excepted nonfinancial group entity (one that is not a depository institution or custodial institution); an excepted nonfinancial start-up or an entity entering a new line of business; an excepted nonfinancial entity in liquidation or bankruptcy; an excepted inter-affiliate FFI; a Section 501(c) entity (tax exempt U.S. entities); a non-profit organization; or an insurance company that falls under the FFI definition solely because of its reserving activities.

# Deemed-Compliant FFIs

- If an entity falls under the definition of an FFI and is not excluded from the definition, it can nevertheless fall under a deemed-compliant FFI category. Generally, deemed-compliant FFIs have less impact in terms of what they are required to do to comply with FATCA, but the impact varies depending on the category of deemed-compliant status.
- There are three categories with varying responsibilities:
  - registered deemed-compliant FFIs;
  - certified deemed-compliant FFIs; and
  - owner-documented FFIs.

# Registered Deemed-Compliant FFIs

- Registered deemed-compliant FFIs will have to register with the IRS, obtain a GIIN and comply with certain other requirements. Like participating FFIs, registered deemed-compliant FFIs must select a Responsible Officer and such officer must certify every three years that the entity remains compliant.
- Registered deemed-compliant FFIs include local FFIs, nonreporting members of participating FFI groups, qualified credit issuers, qualified collective investment vehicles, restricted funds, and sponsored investment entities and controlled foreign corporations.

# Non-Financial Foreign Entities ("NFFEs")

# FATCA Impact on NFFEs

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- Withholding obligation for certain payments to foreign payees
- Reporting obligations for certain payments to foreign payees
- Potential registration of foreign affiliates with IRS
- Documentary requirements for foreign accounts

# NFFEs

- All NFFEs must be categorized as one of the following:
  - Exempt;
  - Excepted;
  - Active;
  - Excepted Other;
  - Passive; or
  - Direct Reporting.
- *Default rule:* Passive NFFE unless an exception applies
- Depending upon this categorization, documentation must be collected and retained and reporting requirements may apply.
- The NFFE categorization is for determining whether an FFI must withhold on U.S. source funds to the NFFE.
- If the NFFE has a “Substantial U.S. Owner,” then reporting requirements *will apply* regardless of whether withholding is required.

## NFFEs, continued

- All non-U.S. entities that are any of the following are deemed to be an Excepted NFFE and not subject to FATCA withholding or reporting requirements:
  - Publicly-traded corporations;
  - NFFE affiliates;
  - territory NFFEs;
  - active NFFEs: less than 50% of gross income last year is passive income and less than 50% of the weighted average percentage of assets (tested quarterly) are held to produce passive income;
  - nonfinancial group entities (holding companies, treasury centers, captive finance companies);
  - nonfinancial start-up companies;

## NFFEs, continued

- nonfinancial entities in liquidation or bankruptcy;
- non-profit organizations;
- section 501(c) organizations (U.S. tax exempt entities); and
- direct reporting NFFEs.
  - A direct reporting NFFE is one that elects to report information about its direct or indirect Substantial U.S. Owners to the IRS. The NFFE must register on Form 8957 (“FATCA Registration”) with the IRS and obtain a GIIN. For purposes of an FFI, any direct reporting NFFE must provide a GIIN. Since direct reporting status may be revoked, an FFI should request notification from any NFFE of a change in status. In this regard, the IRS will publish monthly a list of those registered to be a GIIN and an FFI may check against this list to determine current direct reporting NFFE status.



## NFFEs, continued

- Again, it is important to note that an excepted NFFE is not subject to withholding but still may be subject to reporting if it has a Substantial U.S. Owner.
- All other non-U.S. entities are deemed to be Passive NFFEs subject to FATCA withholding and reporting if it has a Substantial United States Owner.
  - Passive NFFEs must either certify that they do not have substantial U.S. owners, or if they do, provide a withholding agent the name, address, and U.S. taxpayer identification number of each substantial U.S. owner.

# Substantial United States Owner

# Substantial United States Owner

- If an entity is not a U.S. Person, the FFI must determine whether the entity has an owner or an owner with family members (or related parties) that is defined as a “Substantial United States Owner.”
- A “Substantial United States Owner” includes all of the following:
  - A U. S. Person with a greater than 10 percent direct or indirect ownership interest (by vote or by value) in any non-U.S. company.
    - Note: stock in a non-U.S. corporation that is owned directly or indirectly by another entity is deemed to be owned proportionately by the entity’s owners who are United States Person(s).
  - A U. S. Person with a greater than a 10 percent direct or indirect ownership of the profits or capital in any non-U.S. partnership.

## Substantial United States Owner, continued

- A U. S. Person treated as owing a U.S. grantor trust is treated as a Substantial U. S. Owner without any threshold ownership percentage because the U. S. Person is considered the owner of the trust.
  - Note: a “grantor trust” is any trust to the extent that the trust is treated as owned by a person other than the trust under U.S. tax laws. An owner of a non-U.S. trust is the person that is treated as owning a non-U.S. trust under U.S. tax laws.
- A U.S. Person with a greater than 10 percent direct or indirect interest in a non-U.S. trust.

## Substantial United States Owner, continued

- A capital or profits interest in a partnership or an ownership or beneficial interest in a non-U.S. trust is deemed owned by the entity's shareholders, partners or in the case of a trust persons treated as owners of the trust.
- In the case of insurance companies and investment vehicles (such as a private equity fund or a hedge fund), a U. S. Person with any interest in the company.
- A U. S. owner of an owner-documented FFI.

# Special FATCA Related Party/ Attribution Rules

- In the context of determining whether someone is a Substantial United States Owner, special rules apply under FATCA which require consideration of ownership interests held by related parties, including certain family members.
- For purposes of determining whether a person has more than a 10 percent interest in a non-U.S. corporation, non-U.S. partnership, or non-U.S. trust, the person must aggregate (combine) the ownership or beneficial interests in the non-U.S. corporation, non-U.S. partnership, or non-U.S. trust that are owned or held by any person “related” to such person.
- Under these rules, a related party includes certain family members: brothers, sisters, spouse, ancestors, and lineal descendants. A related party also includes the spouses of members of the individual’s family.
- These rules also apply, in modified fashion, in the context of partnership interests.
- A person must have direct or indirect ownership in the entity before the aggregation rules apply, such that a Substantial U.S. Owner does not include an individual with *no* ownership interest other than an interest attributed to him from a related person.

## Example

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- If a U.S. Person owns five percent of a corporation but his spouse (a non-United States Person) owns fifty percent of a corporation, the United States Person is considered to own both his own interest and the fifty percent interest owned by his wife, thereby making the United States Person a fifty-five percent owner of the corporation and a Substantial U.S. Owner.
- If a U.S. Person owns none of the corporation but his spouse (a non-U.S. Person) owns fifty percent of a corporation, the U.S. Person is not considered to own any of the corporation.





# FATCA Regulatory Update

# FATCA Regulatory Recap

- Foreign Account Tax Compliance Act enacted in 2010, adding new IRC sections 1471 through 1474 (Chapter 4).
- Final Chapter 4 regulations published January 28, 2013 (corrections published September 10, 2013).
- Temporary Chapter 4 regulations published March 6, 2014 (corrections published July 1, 2014, and November 18, 2014).
- Temporary Chapter 3 (coordination) regulations published March 6, 2014.
- FATCA became fully effective as of July 1, 2014:
  - Due diligence;
  - Reporting; and
  - Withholding.

# International Coordination and Model Intergovernmental Agreements

- Because of potential foreign law impediments, Treasury is collaborating with foreign governments to develop two alternative model intergovernmental agreements that facilitate the effective and efficient implementation of FATCA.
- Model 1 IGA: FFIs in jurisdictions that have signed Model 1 IGAs report the information about U.S. accounts required by FACTA to their respective governments who then exchange this information with the IRS.
- Model 2 IGA: A partner jurisdiction signing an agreement based on the Model 2 IGA agrees to direct its FFIs to register with the IRS and report the information about U.S. accounts required by FATCA directly to the IRS.

# Current Status of FATCA Implementation

- Intergovernmental Agreement implementation:
  - 113 jurisdictions with IGAs signed or agreed to in substance
  - 99 Model 1 jurisdictions
  - 14 Model 2 jurisdictions
  - Complete list: <https://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx>
- Over 291,000 FFIs registered on FATCA portal as participating FFIs.

# Recent FATCA Regulatory Updates

- Final and Temporary Chapter 4 Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities.
- Final and Temporary Chapter 3 Regulations Regarding Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons, Information Reporting and Backup Withholding on Payments Made to Certain U.S. Persons, and Portfolio Interest Treatment.
- Proposed Chapter 4 Regulations Relating to Verification and Certification Requirements for Certain Entities and Reporting by Foreign Financial Institutions.
- Proposed Chapter 3 Regulations Regarding Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons.

# Recent FATCA Regulatory Updates

- Revenue Procedure 2017-16, Updated FFI Agreement.
- Revenue Procedure 2017-15, Qualified Intermediary Agreement.
- Publication 5118, FATCA Online Registration User Guide.
- Draft instructions for Form 8966, FATCA Report, to reflect final and temporary regulations published in December 2016.
- Form W-8BEN, Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals) (revised July 2017).
- Form W-8BEN-E, Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities) (revised July 2017).

# Announcement 2016-27

- Published in July 2016.
- Warning to jurisdictions that had agreed to an IGA “in substance” but had not yet brought their IGA into force.
- On January 1, 2017, Treasury began updating the IGA List to provide that certain jurisdictions that have not brought their IGA into force will no longer be treated as if they have an IGA in effect.
- Each jurisdiction with an IGA that is not yet in force and that wishes to continue to be treated as having an IGA in effect was required to provide to Treasury by December 31, 2016, a detailed explanation of why the jurisdiction has not yet brought the IGA into force and a step-by-step plan that the jurisdiction intends to follow in order to sign the IGA (if it has not yet been signed) and bring the IGA into force, including expected dates for achieving each step.

# Change in IGA Status

- December 2016 temporary regulations address Announcement 2016-27.
- A withholding agent will *not* have reason to know that a change in circumstance took place solely because an entity's jurisdiction is *later treated as having an IGA in effect*. New withholding certificate is not required; instead entity may provide oral or written confirmation within 30 days of the IGA status change.
- However, regulations provide that a withholding agent *will* have reason to know of a change in an FFI's status on the date that the jurisdiction where the FFIs is located *ceases to be treated as having an IGA in effect* as set forth in Announcement 2016-27 (60-day grace period).
- Key takeaway: withholding agents should regularly monitor IGA status on Treasury's website <https://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx>.



# Obligation to Renew FFI Agreement

- Updated FFI Agreement published in late December 2016 (Rev. Proc. 2017-16), to replace original FFI Agreement (Rev. Proc. 2014-38) which expired on December 31, 2016.
- All FFIs that had an FFI Agreement in place and that wished to retain their GIIN (and thereby remain FATCA-compliant) were required to renew their FFI Agreement by July 31, 2017.
- FFIs that failed to renew by July 31, 2017, were to be treated as having terminated their FFI Agreement as of January 1, 2017 and would be removed from list of FATCA-compliant FFIs published on IRS website.

# Obligation to Renew FFI Agreement

- On June 6, 2017, IRS announced that its online FFI Registration system had been updated to allow FFIs to renew their FFI Agreements.
- IRS also published updated FATCA Registration User Guide to provide steps for FFIs to renew their FFI Agreements.
- On July 3, 2017, the IRS published a series of “Frequently Asked Questions” about the FFI Agreement renewal process on its website.

# Which FFIs Are Required to Renew?

Financial Institution's FATCA Classification in its Country/Jurisdiction of Tax Residence	Type of Entity	Renewal of FFI Agreement Required?
Participating Financial Institution not covered by an IGA; or a Reporting Financial Institution under a Model 2 IGA	Participating FFI not covered by an IGA	Yes
	Reporting Model 2 FFI	Yes
Registered Deemed-Compliant Financial Institution (including a Reporting Financial Institution under Model 1 IGA)	Reporting Model 1 FFI operating branches outside of Model 1 jurisdictions	Yes, on behalf of branches operating outside of Model 1 jurisdictions (other than related branches*)
	Reporting Model 1 FFI that is not operating branches outside of Model 1 jurisdictions	No
	Registered deemed-compliant FFI (regardless of location)	No
None of the Above	Sponsoring entity	No
	Direct reporting NFFE	No
	Trust of Trustee-Documented Trust	No

# FFI Agreement Renewal Deadline Extended

- On August 1, 2017, one day after the July 31 deadline for FFI Agreement renewals, the IRS published a new FAQ extending the deadline to October 24, 2017.

Q.12. I am an entity that must renew the FFI agreement, but I missed the July 31, 2017, renewal deadline. Can I still renew the FFI agreement and be treated as having the current FFI agreement in effect as of January 1, 2017?

Yes, participating FFIs (including Reporting Model 2 FFIs) that have otherwise complied with the terms of the FFI agreement (including, since January 1, 2017, the current FFI Agreement) have until October 24, 2017, to renew the FFI agreement and continue to be treated as a participating FFI.

If an entity that is required to renew the FFI agreement does not renew the FFI agreement by October 24, 2017, the registration status of the entity will be changed to “incomplete,” the entity’s GIIN will no longer appear on the monthly FFI List beginning in November, and the entity will be considered a nonparticipating FFI as of January 1, 2017, as provided in section 3.02 of Revenue Procedure 2017-16.

# FATCA Responsible Officers and Compliance Obligations

# FATCA Responsible Officers and Compliance Obligations

- Each participating FFI is required to adopt a compliance program under the authority of a responsible corporate officer (known as a “FATCA Responsible Officer”).
- Compliance program must include policies, procedures, and processes sufficient for the participating FFI to satisfy the due diligence, reporting, and withholding requirements of FATCA.
- Each participating FFI must undertake periodic reviews of its compliance and must certify such compliance to the IRS.

# Compliance Certifications and New Deadlines

- Due diligence certification:
  - Addresses whether FFI had any formal or informal practices to assist account holders in avoidance of Chapter 4 reporting.
  - Originally due no later than 60 days following the date at least two years after the effective date of the FFI agreement.
  - In most cases, this would have been August 29, 2016 (assuming effective date of June 30, 2014).
  - However, Notice 2016-08 changed this deadline to July 1, 2018; final regulations and updated FFI agreement confirm this change.
- Certification of effective internal controls:
  - Each certification period is three years.
  - Due by July 1 following conclusion of each certification period.
  - In most cases, first certification will be due by July 1, 2018 (assuming FFI agreement effective date of June 30, 2014).
- Future IRS guidance will explain manner of making such certifications.

# Due Diligence Certification

- The RO must also certify to the best of the RO's knowledge, after conducting a reasonable inquiry, that the participating FFI did not have any formal or informal practices or procedures in place from August 6, 2011, through the date of such certification to assist account holders in the avoidance of FATCA.
- A reasonable inquiry for this purpose is a review of the participating FFI's procedures and a written inquiry, such as email requests to relevant lines of business, that requires responses from relevant customer on-boarding and management personnel as to whether they engaged in any such practices during that period.



# Due Diligence Certification

- Practices or procedures that assist account holders in the avoidance of chapter 4 include, for example, any of the following:
  - Suggesting that account holders split up accounts to avoid classification as a high-value account;
  - Suggesting that account holders of U.S. accounts close, transfer, or withdraw from their account to avoid reporting;
  - Intentional failures to disclose a known U.S. account;
  - Suggesting that an account holder remove U.S. indicia from its account information; or
  - Facilitating the manipulation of account balances or values to avoid thresholds.

# Certification of Effective Internal Controls

- The FATCA Responsible Officer must certify:
  - The RO (or designee) has established a compliance program that is in effect as of the date of the certification and that has been subjected to periodic review by the RO (or designee);
  - With respect to material failures: (a) there are no material failures for the certification period; or (b) if there are any material failures, appropriate actions were taken to remediate such failures and to prevent such failures from reoccurring; and
  - With respect to any failure to withhold, deposit, or report to the extent required under the FFI agreement, the FFI has corrected such failure by paying any taxes due (including interest and penalties) and filing the appropriate return (or amended return).

# IRS Review of Compliance

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- Updated FFI agreement and final regulations provide that IRS may request information from an FFI even if such FFI has not filed any FATCA information reporting forms.

# Compliance Certifications

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- Proposed regulations state that in the future, changes may be made to the compliance certifications required to be submitted by participating FFIs.
- Any such changes will be announced at least 90 days in advance to afford time for public comment.

# Questions?

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