



American Bar Association
Section of Taxation Webinar

FATCA for Those on This Side of the Ocean/Border

April 30, 2014

Moderator: Edward Tanenbaum, Alston & Bird LLP

Panelists

Philip Hirschfeld
Ruchelman P.L.L.C.

Michelle Dávila
Franklin Templeton Investments

Tara Ferris
IRS, Off. Of Chief Counsel (International),
Senior Counsel, Branch 8

Nancy Lee
IRS, Off. Of Chief Counsel (International),
Attorney, Branch 8



Principal Topics

- Overview of FATCA
- Issues for US Withholding Agents
 - Action for Accounts with Foreign Entities
 - Action for Accounts with Foreign Intermediaries
- Practical Considerations for an Effective FATCA Compliance Program
- IRS Update & Questions

Overview of FATCA

Overview of FATCA

- Effective July 1, 2014, Chapter 4 imposes a 30% withholding tax on “withholdable payments” made to FFIs and NFFEs which are non-compliant.
 - “FFI” = Foreign Financial Institution
 - Generally, foreign banks, custodial institutions, insurance companies, investment funds (e.g., mutual funds, hedge funds, private equity funds, CDOs), certain holding companies and treasury centers.
 - “NFFE” = Non-Financial Foreign Entity
 - A foreign entity other than an FFI
- If an FFI, compliance means:
 - Entering into agreement with IRS (absent a Model I Intergovernmental Agreement) and comply with significant due diligence, reporting and withholding requirements regarding “financial accounts” held by US persons or US owned entities.

Overview of FATCA

- If an NFFE, compliance means:
 - Providing certification to withholding agent as to whether and to what extent it has “substantial US owners”.
 - Providing the name, address, TIN of each “substantial US owner”, if any.
 - More than 10% (direct or indirect) and, with respect to investment companies, any percentage.
- FATCA is not intended as a revenue raiser but to force disclosure and reporting of offshore accounts of US persons.

Issues for US Withholding Agents

- Is the payment a “withholdable payment”?
- Is the item FDAP?
- Is the item US source?
- Is the payment grandfathered?
- Is the payee an FFI and, if so, Participating? Non-participating? Deemed compliant? Excepted? IGA partner?
- Is the payee an NFFE and, if so, is it Excepted? Active? Passive?
- Are the payees exempt beneficial owners?
- What type of documentation is required?

Details of FATCA

- Withholdable Payments
 - US source FDAP, and
 - Gross proceeds from sale, exchange, disposition and redemption of assets giving rise to US source interest or dividends (after 12/31/16) (includes certain contracts producing dividend equivalent amounts which are treated as property of a type that can produce US source FDAP income, including if the dividend equivalent is part of a termination payment)
- FDAP
 - Follows rules of 1441 (on gross amount paid) and includes OID paid on redemption as well as satisfaction of a withholding liability from a withholding agent's own funds (gross up)
 - Corporate distributions can be both FDAP and gross proceeds

Details of FATCA

- Excludes:
 - Amount of interest accrued on the date of a sale of an interest bearing debt obligation if the sale occurs between two interest payment dates
 - Gains from the sale of property
- US Source
 - Follows 861-865 rules
 - Interest paid by foreign branches of domestic corporations and partnerships is treated as US source FDAP

Details of FATCA

- Chapter 3 exceptions unavailable for Chapter 4 purposes
- Exceptions – payments not treated as “withholdable payments”
 - Interest or OID on short term obligations
 - Effectively connected income
 - Non-financial payments for:
 - Services
 - Use of property
 - Office/equipment leases
 - Software licenses
 - Awards, prizes
 - Interest on accounts payable from acquisition of goods/services
 - Gross proceeds from the sale of property producing excludable US source FDAP per above is also excluded.

Details of FATCA

- But withholdable payments include payments in connection with:
 - A lending transaction
 - A forward, futures, option or notional principal contract or similar instrument
 - Dividends
 - Interest (including substitute interest)
 - Investment advisory fees
 - Custodial fees
 - Bank, brokerage fees

Details of FATCA

- Grandfathered obligations
 - All obligations outstanding on July 1, 2014
 - Payments made by secured party with respect to collateral securing grandfathered obligations (even if collateral not itself a grandfathered obligation)
 - If secure both grandfathered and non-grandfathered obligations, must allocate by value
 - No equity instruments or instruments lacking stated expiration or term
 - Non-debt obligation outstanding – date that legally binding agreement is executed
 - Line of credit, revolving credit facility for fixed term qualifies as of issue date if all material terms fixed (including maturity date)
 - Life insurance contract payable no later than upon death
 - Premium payments on insurance or annuity contract that is a grandfathered obligation are grandfathered

Details of FATCA

- All such obligations that may give rise to withholdable payments under Sec. 871(m) (dividend equivalent payments), or foreign passthru payments, outstanding prior to six months after such regulations are published
- Exception for material modification
- Withholding agent may rely on statement of issuer as to whether grandfathered
- Withholding agent to treat modification as material only if actual knowledge, i.e., if it receives a disclosure statement from issuer

Chart: Timeline for Implementing F.A.T.C.A.

Type	Old Timeline	New Timeline
Withholding	Payments made after December 31, 2014	Payments made after June 30, 2014
Gross Proceeds Withholding	January 1, 2017	No change
Foreign Passthru Payments	No earlier than 2017	No change
Grandfathered Obligations	Obligations outstanding on January 1, 2014	Obligations outstanding on July 1, 2014
New Account Opening Procedures	By January 1, 2014 or, in the case of a participating F.F.I., by the later of January 1, 2014 or the effective date of its F.F.I. Agreement.	By July 1, 2014, or, in the case of a participating F.F.I., by the later of July 1, 2014 or the effective date of its F.F.I. Agreement.
Expiring Withholding Certificates	Expires on December 31, 2013	Expires on December 31, 2014
Q.I., W.P., or W.T. Agreements	Expires on December 31, 2013	Expires on June 30, 2014
F.A.T.C.A. Registration Portal	Expected to open July 15, 2013	Opened August 19, 2013
Initial Deadline to Register to be on First I.R.S. F.F.I. List	October 25, 2013	May 5, 2014
First I.R.S. F.F.I. List	December 2, 2013	June 2, 2014
Information Report on U.S. Accounts by Participating F.F.I.	March 31, 2015 for both 2013 and 2014 calendar years	March 31, 2015, for only the 2014 calendar year; longer time allowed if I.G.A. applies



Withholding Agents: What needs to be done?

Withholding Agents

- U.S. withholding agents will not be able to eliminate withholding *unless*:
 - Obtain updated Form W-8 and
 - Corroborate that G.I.I.N. is correct on I.R.S. webpage
 - To ensure inclusion on the June 2014 I.R.S. F.F.I. List
 - F.F.I. will need to finalize its registration by May 5, 2014
 - may also register on paper (*i.e.*, by filing Form 8957), but slower processing times make this not a good choice.
 - But extra 6 months for F.F.I. subject to Model 1 IGA

Withholding Agents (cont.)

- Will need to file Form 1042-S, Foreign Person's Income subject to withholding
 - Draft instructions for 2014 form published Nov. 1, 2013
 - Must file electronically
 - Report
 - Payments subject to chapter 3 & chapter 4 withholding & tax withheld
 - "Applicable exemption" if no FATCA withholding
 - Recipient's foreign taxpayer identification number & date of birth
 - Optional until 2017, when must report one of these two items
 - Due date
 - March 15, 2015
- For payments to passive NFFE's, also file Form 8966 if there are any substantial US owners of the NFFE



Action for Accounts with Foreign Entities

Action for Accounts with Foreign Entities

- Action required: Must get a new Form W-8 BEN-E
 - Observations:
 - Much more complex (8 pages) than existing one page form
 - Existing Form W-8BEN is replaced by two forms:
 - Form W-8 BEN for individuals
 - Form W-8 BEN-E for entities
 - Question: If do not get the form (or the form is not complete), is there any way to not withhold?
 - Recommendation: Withhold unless get fully completed form
 - If you do not withhold then you may be personally liable for tax
 - » Exception for pre-existing accounts of a Prima Facie FFI: Only need to get a GIIN by January 1, 2015.

Action for Accounts with Foreign Entities

- Alternate Forms that may be needed:
 - Form W-8IMY (Intermediary)
 - Applies to an entity that is a QI, foreign partnership, foreign grantor trust or foreign simple trust
 - In many cases, attached to this form must be forms from each of the partners, beneficiaries or grantor
 - Form W-8ECI (effectively connected income)
 - Form W-8EXP (foreign governments, tax exempt organizations)

Action for Accounts with Foreign Entities

■ W-8 BEN-E

- Chapter 3 Status: Part I, line 4, asks for the Chapter 3 status of the Owner (11 situations)
- Chapter 4 Status: Part I, line 5, is a list of possible items to be checked
 - **31 possible classifications**
 - Need to determine:
 - Whether you have all pertinent information AND
 - Whether you have to withhold since answer depends upon which box is checked
 - Withholding agents will likely have to help their clients by taking on the role of being a tax advisor (even though they may not be able to provide specific tax advice).

W-8 BEN-E

- **1st Situation: Must withhold**
 - Withholding is required if Owner checks the first box that says it is a “**Nonparticipating FFI**”
- **2nd Situation: Do not withhold if account exempt from FATCA withholding**
 - Final form eliminated this category that was in draft form: “**Not receiving withholdable/passthru payment. Must enter code:**”
 - Cases where this can occur:
 - Debt instruments issued before 7/1/2014

W-8 BEN-E

- **3rd Situation: Do not withhold if “exempt beneficial owner”**
 - Owner checks:
 - “Foreign government, Government of a U.S. possession, or foreign central bank of issue”
 - “International organization”
 - “Exempt retirement funds”
 - “Entity wholly owned by exempt beneficial owners”
 - No GIIN required



W-8 BEN-E

- 4th Situation- Do not withhold if “Certified Deemed-Compliant” & no GIIN required
 - “Non-registering local bank”
 - “FFI with only low-value accounts”
 - “Sponsored, closely held investment vehicle”
 - “Limited life debt investment company (only for payments made prior to January 1, 2017).”
 - NEW: “Certified deemed-compliant investment advisors and investment managers.”



W-8 BEN-E

- **5th Situation: Do not withhold if “exclusion” applies & no GIN is required if**
 - Owner checks:
 - “Nonprofit organization”
 - “501(c) organization”
 - “Territory financial institution”
 - “Excepted nonfinancial group entity”
 - “Excepted nonfinancial start-up company”
 - “Excepted nonfinancial entity in liquidation or bankruptcy”
 - NEW: “Excepted inter-affiliate FFI.”



W-8 BEN-E

- **6th Situation: *NFFEs* --- Do not withhold & no GIIN required *if***
 - **“Active NFFE” if:**
 - Less than 50% of entity's gross income for preceding calendar year is passive income; and
 - Less than 50% of assets held by such entity at any time during preceding calendar year are assets that produce or are held for production of passive income

W-8 BEN-E

- **6th Situation (cont):**
 - **“Passive NFFE”**
 - How do I determine if I have a Passive NFFE or an FFI?
 - A trust or family corp. owning investments could be a “passive NFFE”
 - However, that trust or family corp. becomes an FFI if:
 - » It has a professional manager that is an entity &
 - » The manager has investment discretion as to what to buy or sell
 - » If manager is only an advisor, then not a FFI
 - As a practical manner, many trusts or family corporations will be pushed into the FFI category, but some passive NFFEs will exist

W-8 BEN-E

- **6th Situation (cont):**
 - **“Passive NFFE”**
 - Must disclose Identity of substantial US owners (i.e., more than 10% owner)
 - Supply their name, address, and TIN on Form W-8BEN-E *and*
 - Withholding agent gives this list to the IRS on Form 8966
 - » Form 8966 is normally filed by a Participating FFI to disclose the names of its US owners to the IRS
 - Concerns:
 - NFFE is disclosing the names to many 3rd parties (loss of confidentiality) &
 - Burdensome for *both* NFFE *and* withholding agent who then must file Form 8966

W-8 BEN-E

- **6th Situation (cont):**
 - **“Passive NFFE”**
 - Alternative to reduce burden & preserve confidentiality
 - NFFE registers to become a:
 - “Direct Reporting” NFFE *or*
 - “Sponsored Direct Reporting” NFFE
 - Result:
 - NFFE gets a GIIN and indicates on the W-8BEN-E its status
 - » Withholding agent then must verify this GIIN
 - NFFE reports directly to IRS the names of its substantial US owners on Form 8966 (the annual PFFI Return)
 - » No reporting is made to anyone else!

W-8 BEN-E

- **6th Situation (cont.)-NFFE: Do not withhold & no GIIN required if**
 - NFFE that is “publicly traded” or affiliate of a publicly traded NFFE
 - “Excepted territory” NFFE
 - Possession of the U.S.



W-8 BEN-E

- **7th Situation: Do not withhold if the following boxes are checked & must get a GIIN**
 - “Participating FFI”
 - “Reporting Model 1 FFI”
 - Gets 6 month extension until Jan. 1, 2015 under Regulations
 - “Reporting Model 2 FFI”
 - “Registered deemed-compliant FFI (other)”



W-8 BEN-E

■ 7th Situation (cont):

- “Registered deemed-compliant FFI (other)”
 - No details given on form as to what this means so look to Reg. §1.1471-5(f)(1) for types:
 - Local FFI
 - Non-participating member of Participating FFI Group (expanded affiliated group)
 - Qualified Collective Investment Vehicle (e.g. mutual fund)
 - Restricted Fund (e.g. private equity fund)
 - Qualified Credit Card Issuer
 - Sponsored FFI

W-8 BEN-E

- **7th Situation (cont):**
 - Part I, line 9a, requires a GIIN
 - Must verify that the GIIN provided is accurate by checking it against the IRS GIIN List
 - First List of GIINs published on June 2, 2014

W-8 BEN-E

- **8th Situation:** Special cases-is a GIIN required?
 - **“Sponsored FFI”**
 - Yes, since “registered deemed compliant,” but does not need a GIIN for payment prior to January 1, 2016
 - **“Owner-documented FFI”**
 - No, but this status requires the agreement of the withholding agent
 - **“Nonreporting IGA FFI”**
 - No, as long as it is specified in Annex II to the IGA
 - **“Restricted distributor”**
 - No, but must make sure they were a party to a distribution agreement that contains a prohibition on sale to U.S. persons and other restrictions

W-8 BEN-E

- **9th Situation:** Treaty benefits
 - Certify that:
 - The Beneficial owner is a resident of a treaty country
 - Satisfies LOB Clause
 - Must specify the type of income, the article of the treaty that you are relying on and the withholding rate in the treaty
 - If subject to tax lower than 30% FATCA rate, then FATCA can still apply

Part III Claim of Tax Treaty Benefits (if applicable). (For Chapter 3 purposes only)

14 I certify that (check all that apply):

a The beneficial owner is a resident of _____ within the meaning of the income tax treaty between the United States and that country.

b The beneficial owner derives the item (or items) of income for which the treaty benefits are claimed, and, if applicable, meets the requirements of the treaty provision dealing with limitation on benefits (see instructions).

c The beneficial owner is claiming treaty benefits for dividends received from a foreign corporation or interest from a U.S. trade or business of a foreign corporation and meets qualified resident status (see instructions).

15 **Special rates and conditions** (if applicable—see instructions): The beneficial owner is claiming the provisions of Article _____ of the treaty identified on line 14a above to claim a _____ % rate of withholding on (specify type of income): _____ .
Explain the reasons the beneficial owner meets the terms of the treaty article: _____



Action for Accounts with Foreign Intermediaries

Form W-8IMY

- **Entities using this form:**
 - Intermediary: QI or non-QI
 - Person who acts as an agent, nominee, custodian or broker
 - Foreign Partnership: WP or not a WP
 - Beneficial Owners are its Partners
 - Foreign Simple Trust: WT or non-WT
 - Beneficial Owners are its Beneficiaries
 - Foreign Grantor Trust: WT or non-WT
 - Beneficial Owner is its Grantor

Form W-8IMY

- **If it is a WT, WP or QI who assumes withholding responsibility, then the withholding burden is done by the entity**
- **otherwise done by the U.S. withholding agent**
 - Withholding agent needs to look through the entity to determine the beneficial owner

Form W-8IMY

- 1st Situation: **QI assumes withholding responsibility**
 - QI:
 - Collects W-9 or W-8 forms from “beneficial owners”
 - Withhold under FATCA & chapter 3 withholding
 - Files Form 1042-S for each beneficiary
 - US Withholding agent: No withholding burden

Form W-8IMY

- 2nd Situation: **QI does not assume withholding responsibility**
 - US Withholding agent:
 - Assumes FATCA & chapter 3 withholding responsibility
 - Files Form 1042-S for beneficiaries
 - QI:
 - Collects W-9 or W-8 forms from “beneficial owners”
 - Provides information to the withholding agent in a statement attached to the W-8IMY regarding proportion of income subject to a particular **“Withholding Rate Pool”**
 - Can combine beneficiaries subject to the same withholding rate together based upon treaty benefits or FATCA status

Form W-8IMY

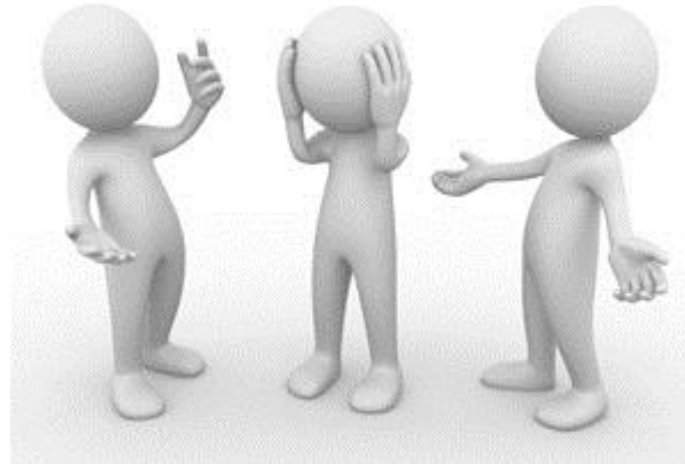
- 3rd Situation: **Withholding Foreign Partnership (“WP”)**
 - WP:
 - Collects W-9 or W-8 forms from partners
 - If a partner is itself a partnership then “look through” to find the ultimate partners
 - Withhold under FATCA & chapter 3 withholding
 - Files Form 1042-S for each partner
 - US Withholding agent: No withholding burden

Form W-8IMY

- 4th Situation: **Partnership does not assume withholding responsibility**
 - US Withholding Agent:
 - FATCA & chapter 3 withholding responsibility
 - File separate Form 1042-S for each partner
 - If the partnership is a PFFI *or* Registered Deemed Compliant FFI
 - Then can use a “Withholding Rate Pool”
 - Partnership:
 - Collects W-8 or W-9 forms from partners & supplies them to the withholding agent
 - Agent determines withholding rate that applies

Form W-8IMY

- 4th Situation (cont):
 - If partnership does not comply with FATCA, then
 - Withholding Agent must assume payment was made to an “unknown recipient” even if it has W-8s or W-9s for partners & impose 30% FATCA withholding
 - BUT if get documentation showing partner is “exempt recipient” (e.g., foreign government) then can associate payment with that person & no FATCA withholding



Form W-8IMY

- 5th Situation: **Withholding Foreign Trust ("WT")**
 - WT:
 - Collects W-9 or W-8 forms from beneficiaries or grantor
 - Withhold under FATCA & chapter 3 withholding
 - Files a separate Form 1042-S for each beneficiary or grantor
 - US Withholding agent: No withholding burden

Form W-8IMY

- 6th Situation: **Trust does not assume withholding responsibility**
 - US Withholding Agent:
 - FATCA & chapter 3 withholding responsibility
 - File separate Form 1042-S for each beneficiary if simple trust *or* grantor if grantor trust
 - Trust:
 - Collects W-8 or W-9 forms from “beneficiaries/grantor” & supplies them to withholding agent
 - Agent determines withholding rate that applies

Form W-8IMY

- 6th Situation (cont):
 - If Trust does not comply with FATCA, then
 - Withholding Agent must assume payment is made to “unknown recipient” even if it has W-8s or W-9s for beneficiaries/grantor & impose a 30% FATCA withholding

Form W-8IMY

- 7th Situation: **Intermediary that is not a QI**
 - Withholding agent:
 - Must withhold FATCA tax and report separately for each beneficiary
 - Intermediary:
 - Must collect W-8 or W-9 forms and give to the Withholding Agent

Practical Considerations for an Effective FATCA Compliance Program

STEP ONE: Engage a Cross Functional Core FATCA Compliance Team

- **Role of Senior Executive Leadership**
 - Need for expedited decision making;
 - Sets “tone at the top”;
- **Core Members**
 - Operations; IT; legal; tax; compliance; finance; accounting; procurement; Sales and Client facing representatives (front and middle office)
- **Not so “Usual Suspects”**
 - Often over-looked key members:
 - HR – for training;
 - Internal Audit – ensure process and procedures are “auditable”;
 - Accounts Payable – ensure you haven’t missed relevant payments and payees;
 - Corporate Communications– will be key to delivering a positive message to both internal staff and clients.

STEP TWO: BEYOND KYC is KYP and KYS

- **Know Your Payments-Payees/Know Your Systems**
- KYP – Importance of understanding the universe of “withholdable” payments beyond those identified by your customer account system.
- Initial identification projects should be enhanced by review of financial statements. Goal is to “follow the money and work backwards”.
- Engage accounts payable; treasury; back office and technology group to understand each system in your institution that generates a payment in your organization.

Payees

- Review account checklist form to identify where additional data will be required
- Biggest challenge is implementation of new forms (W-8s)
 - Option 1 – Train client facing employees on how to handle questions;
 - Option 2 – If your organization doesn't have the internal resources or if independence of consultation is key – enter into an arrangement with law firm or tax advisors to provide advice to your clients. (Pro: your records will be correct; Con: costs)
 - Option 3 – do nothing - leave clients on their own; you don't get forms and are forced to withhold – NOT A GOOD OPTION so revisit 1 &2!!

Know Your Systems

- Perform an inventory of systems and understand functionality:
 - Vendor payment system
 - Client Account System
 - Non-Customer related payments
- How will you handle the outliers -- like “exempt beneficial owner” –
- Coding of “outliers” – to avoid unnecessary withholding by traditional client systems.

Changes to Legal Documentation

- Client Account Documentation
 - Individuals: client account agreement and application forms
 - Institutions: institutional application and operating agreements
 - FATCA requirements/ disclosure re: implications of non-compliance for foreign institutions
- Notification/Amendment mechanisms
- Investment Product Distribution Agreements
 - Addition of FATCA compliance representations
 - Mechanisms for amending distribution agreements;
- Service Provider Agreements

Practical Solution: Create a matrix of your institution's standard language to assist your legal/contract management teams with appropriate contractual provisions. See example on next slide.

Sample Contractual Language

For Illustration Purposes Only – Not Intended as Legal or Tax Advice

<p>Common Definition of FATCA for all Contracts</p>	<p>“FATCA” means (a) Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended from time to time, the regulations promulgated from time to time by the U.S. Department of Treasury thereunder, and administrative guidance issued by the U.S. Internal Revenue Service with respect thereto; (b) any law, regulation or other official guidance enacted in or issued by any relevant foreign jurisdiction, or any intergovernmental agreement between the U.S. and any other jurisdiction, that facilitates the implementation of any of the authorities listed in clause (a); (c) any agreement entered into with the U.S. Internal Revenue Service, the U.S. government, or any governmental or taxation authority in any other jurisdiction that facilitates the implementation of any of the authorities listed in clauses (a) and (b); and (d) any similar provisions of law that may be applicable to the [Name of Institution] from time to time under the laws of other jurisdictions.</p>	
<p>Type of Relationship</p>	<p>IGA Country</p> <p>You represent, confirm and agree that, in connection with your activities contemplated under this Agreement, You i) are a Financial Institution as defined by FATCA and the IGA; ii) will satisfy all applicable requirements under FATCA and the relevant IGA; iii) will report any information that is required to be reported pursuant to FATC and the relevant IGA; iv) will implement any procedures to ensure Your compliance with FATCA; and v) will provide any certifications that We may need for FATCA compliance.</p>	<p>Non IGA Country</p>
<p>Foreign Financial Institution/Intermediary</p>	<p>You represent, confirm and agree that, in connection with your activities contemplated under this Agreement, You i) are a Financial Institution as defined by FATCA; ii) will satisfy all applicable requirements under FATCA, including, if applicable, the execution of an agreement with the US Internal Revenue Service; iii) will report any information that is required pursuant to FATCA; iv) will implement any procedures to ensure Your compliance with FATCA; v) will execute and provide any forms, certifications, or verifications, or such other valid documentation and information that We may need to evidence Your compliance with FATCA, including without limitation, if applicable, providing Us with your valid Global Intermediary Identification Number. You further agree to provide the documents in item v upon the execution of this Agreement, promptly upon reasonable request by Us and promptly upon learning that any information contained in any form and/or document has become obsolete or incorrect.</p>	
<p>Clients – Individuals</p>	<p>“You represent, confirm and agree that You will promptly provide Us, upon Our reasonable request, with such information and documentation as may be necessary for Us to provide U.S. federal income tax reporting and perform all applicable U.S. federal income tax withholding, including any withholding or other compliance required by FATCA.”</p>	

Sample Contractual Language (cont'd)

FOR ALL CONTRACTS	_____ understands and accepts that its failure to comply with this Section ___ may result in withholding on payments to it by [Name of Institution] for which no gross up or additional amounts will be payable; and [Name of Institution] shall have the right to immediately terminate this Agreement .
UNACCEPTABLE PROVISIONS	Ensure that amounts withheld under FATCA are specifically excluded from amounts that may be set-off by counterparties. We are not the beneficiary of FATCA withholding payments!
INDEMNITY PROVISIONS	If _____'s failure to comply with FATCA results in any loss, expense, damages, withholding, taxes or in [Name of Your Institution]'s non-compliance with its obligations under FATCA, _____ shall indemnify [Name of Your Institution] to the maximum extent permitted by applicable law.

For Illustration Purposes Only – Not Intended as Legal or Tax Advice

Changes to Internal Procedures

- Leverage current on-boarding process and supplement with new form collection and validation procedures.
- Use of Flow Charts, Checklists and FAQs to identify NGO (Not in Good Order) accounts.
- Identify accessible subject matter experts and create a working group to answer customer documentation questions on a timely basis. Create an intranet site to make a running list of recurring questions and document answers for consistency.

Engage your Marketing and Corporate Communications Departments

- Develop a positive message of communicating changes to customers;
- Consider publishing FAQs and periodic news update;
- Develop talking points for sales and customer servicing teams;
- Acknowledge need to keep moral up within internal working teams
 - Celebrate project milestones: successful systems tests; completion of documentation remediation; sales force training.
 - Next slide illustrates a pictorial training tool – Challenge => keep it simple but useful.

UNDERSTANDING FATCA'S KEY PROVISIONS –AT A GLANCE

April 1, 2014

CLASSIFICATIONS

Are you a foreign financial institution (FFI)?	Do you accept deposits? Hold financial assets for accounts of others? Are you primarily engaged in investing, reinvesting, trading in securities?; Are you an insurance company?
Are you an exempt beneficial owner?	Found in IGA – Annex II Regulations define certain entities that qualify as exempt beneficial owners.

REGISTRATION

Deadlines:	May 5, 2014* *FFI's in Model 1 countries have additional time.
GIIN	After registration is complete you will receive a Global Intermediary Identification Number (GIIN) from the IRS.

Intergovernmental Agreements (IGAs) are central to understanding reporting obligations.

Model 1*	Model 2*
Canada, Cayman Islands, Costa Rica, Denmark, Finland, France, Germany, Guernsey, Honduras, Hungary, Ireland, Isle of Man, Italy, Jersey, Luxembourg, Malta, Mauritius, Mexico, Netherlands, Norway, Spain, UK	Bermuda Chile Japan Switzerland *As of 4/1/2014



FFIs must adopt written policies and procedures regarding due diligence processes for both pre-existing and new accounts.

Must review customer information for indicia, or indicators, of US status and request certain documentation from an individual account holder if one or more indicia of US ownership are found.

Type of Income	Withholding Deadline
US source FDAP income (interest, dividends, royalties, etc.)	Starting July 1, 2014
Gross proceeds (plus accrued interest) from sale / redemption of securities that produce, or could produce, US source interest or dividends	Starting January 1, 2017
Foreign pass-thru payments paid by PFFIs	Starting no earlier than January 1, 2017

IRS Update & Questions