

International Tax Specialist Group  
London Conference  
October 2013

FATCA Update and the European  
Versions

Stephan Neidhardt  
Walder Wyss  
Switzerland

Email: [stephan.neidhardt@walderwyss.com](mailto:stephan.neidhardt@walderwyss.com)  
Tel: +41 44 498 98 98  
Fax: +41 44 498 98 99

# INTRODUCTORY REMARKS

# FATCA Update and the European Versions

<b>Topic</b>	<b>Presenters</b>	<b>Country</b>
Introduction & Preliminary Remarks	Stephan Neidhardt	Switzerland
Overview & US Update	Stanley C. Ruchelman	USA
FATCA: An Examples and Explanation Approach	Armin Gray	USA
EU / Belgium	Patrick Vanhaute	Belgium
United Kingdom / Germany / Singapore / Hongkong	Dean Smith	Canada
Switzerland	Stephan Neidhardt	Switzerland
France / Luxembourg	Stéphane Pellet	Luxembourg
Q&A	All	N/A

Stanley C. Ruchelman  
The Ruchelman Law Firm  
USA

Email: [ruchelman@ruchelaw.com](mailto:ruchelman@ruchelaw.com)  
Tel: +1 212 755 3333  
Fax: +1 212 755 5898

# OVERVIEW & US UPDATE

# Overview & US Update

- FATCA Overview
  - In order to curb offshore tax evasion, after a 2008 Senate report disclosing the existence of substantial tax avoidance, with the aid of foreign banks, by hiding money offshore, the US enacted the Foreign Account Tax Compliance Act (“FATCA”) in 2010.

# Overview & US Update

- FATCA Overview

- Affects:

- US and foreign individuals

- US entities

- Foreign entities:

- Foreign financial institutions (FFIs)

- » Participating v. nonparticipating

- » Certain other categories

- Non-foreign financial institutions (NFFEs)

- » Active v. passive

# Overview & US Update

- FATCA Overview

- Imposes:

- A potential penalty 30% withholding tax on the payor unless the recipient certifies it is exempt
    - FFI reporting obligations
    - Individual reporting obligations (*e.g.*, Form 8938, “Statement of Specified Foreign Financial Assets”)
      - In the case of individuals, FATCA also extends the statute of limitations with respect to undisclosed foreign financial assets, and increases penalties with respect to those undisclosed assets
    - Individual and entity certification requirements
      - Form W-9 – US individual
      - W-8BEN – foreign individual
      - W-8BEN-E – foreign entity

# Overview & US Update

- FATCA Overview
  - Penalty 30% Withholding Tax
    - Incentivizes US taxpayers to disclose their US status
    - To avoid withholding:
      - Individuals must certify their status as US or foreign on Form W-9 or W-8BEN.
      - Entities must certify their status as FFI (participating v. non-participating v. certain other categories) or NFFE (active v. passive).
      - Foreign financial institutions must agree to:
        - » Conduct due diligence in respect of existing accounts;
        - » Identify U.S. accounts;
        - » Adhere to new account opening procedures in respect of new accounts;
        - » Withhold on and close recalcitrant account holders' accounts;
        - » Withhold on other payments it makes to non-exempt recipients.
      - Non-foreign financial institutions must:
        - » Disclose their substantial U.S. owners.



# Overview & US Update

- FATCA Overview
  - Intergovernmental Agreements
    - Overrides final regulations
    - Two Models
      - Model 1 - exchange of information through local authority
      - Model 2 – exchange of information directly with the IRS
    - Relaxes rules (*e.g.*, withholding obligations or account closures) subject to an anti-abuse rule
      - Extent of relaxation depends on the Model
    - Over 80 countries in negotiations or discussions

# Overview & US Update

- FATCA Overview

- Intergovernmental Agreements

- Current country list:

- UK September 2012
      - Denmark November 2012
      - Mexico November 2012
      - Ireland January 2013
      - Switzerland February 2013
      - Norway April 2013
      - Spain May 2013
      - Germany May 2013
      - Japan June 2013

# Overview & US Update

- Recent Regulatory Announcements/Updates
  - Notice 2013-43 – Revised Timeline and Other Guidance Regarding the Implementation of FATCA (July 2013)
  - FFI Registration Portal Opened (August 2013)
  - Announcement 2013-41 – Technical Corrections (September 2013)

# Overview & US Update

- Recent Regulatory Announcements/Updates
  - Notice 2013-43 – Revised Timeline (July 2013)
    - Generally delays FATCA for another six months. See Revised Timeline.
  - FFI Registration Portal Opened (August 19, 2013)
    - FFIs may now begin their registration process but cannot finalize it until next year.
  - Announcement 2013-41 – Technical Corrections (September 2013)
    - Provides several technical corrections, including revising an example stating that merely soliciting investment advice will not cause FFI status; discretionary management of a portion of the assets is required.
    - IRS is also working on a possible re-issuance of the final regulations.

# Overview & US Update

<b>Chart</b>		
<b><u>Timeline for Implementing F.A.T.C.A., as revised by Notice 2013-43</u></b>		
<b>Type</b>	<b>Old Timeline</b>	<b>New Timeline</b>
Withholding	Payments made after December 31, 2014	Payments made after June 30, 2014
Gross Proceeds Withholding	No earlier than 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 June 30, 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	Expected to open August 19, 2013
Initial Deadline to Register to be on First I.R.S. F.F.I. List	October 25, 2013	April 25, 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

Armin Gray  
The Ruchelman Law Firm  
USA

Email: [gray@ruchelaw.com](mailto:gray@ruchelaw.com)  
Tel: +1 212 755 3333  
Fax: +1 212 755 5898

# **AN EXAMPLES AND EXPLANATION APPROACH**

# An Examples and Explanation Approach

- Example 1
  - FFI is in a non-IGA country.
  - FFI is a participating FFI and thus registered with the IRS in respect of FATCA.
  - Stanley C. Ruchelman has an existing account there. The account has a US address and phone number on file.
  - The account value is 2 million USD.
  - FFI identifies Mr. Ruchelman as a US person after conducting due diligence by the address and phone number on record.
  - Mr. Ruchelman refuses to provide a W-9 or W-8BEN certifying his status as a US or foreign person. He also refuses to waive bank secrecy laws.

# An Examples and Explanation Approach

- Example 1
  - Stanley will be identified as a recalcitrant account holder and will be subject to withholding.
  - The FFI must close his account.



# An Examples and Explanation Approach

- Example 2
  - Same facts as Example 1, but Mr. Ruchelman provides a valid Form W-9 and a waiver of bank secrecy laws.

# An Examples and Explanation Approach

- Example 2
  - The account need not be closed.
  - Mr. Ruchelman will not be subject to withholding.

# An Examples and Explanation Approach

- Example 3
  - FFI is in a non-IGA country.
  - FFI is a participating FFI and thus registered with the IRS in respect of FATCA.
  - Robert Rinnisland was appointed as trustee of a foreign trust in his capacity as an individual. The trust has four equal beneficiaries, one who is a US individual.
  - On July 1, 2014, Mr. Rinnisland is contemplating making investments in newly issued mortgage backed securities. Before making this investment strategy, recalling the financial crisis, he solicits investment advice from financial advisors in the form of memorandum. The memorandum advises that MBS securities are currently undervalued.
  - Mr. Rinnisland ultimately decides to make the investment through a new account in the name of the trust through the FFI.
  - The FFI gives him Form W-8BEN-E and asks him to verify the trust's FATCA status as FFI or NFFE.

# An Examples and Explanation Approach

- Example 3
  - The trust is not an FFI.
  - Merely soliciting investment advise does not cause “professional management” causing FFI status.
  - The trust is a passive NFFE.
  - The trust may have to disclose its substantial US owner (*i.e.*, the US beneficiary).

# An Examples and Explanation Approach

- Example 4
  - Same facts as Example 3, but Mr. Rinnisland is an employee of Big Trust Asset Management Company, an affiliate of a large financial institution. The management company is responsible for managing the trust's assets.
  - Big Trust Asset Management Company is an FFI.

# An Examples and Explanation Approach

- Example 4
  - Although Mr. Rinnisland merely solicited investment advice from outside advisors, since the trust's assets are professionally managed by an FFI, then the trust is derivatively also an FFI.

# An Examples and Explanation Approach

- Example 5
  - Andrew Mitchel is a shareholder of a privately held foreign corporation. The foreign corporation makes investments in various projects. One investment is in the equity interest of a US corporation.
  - US corporation distributes a dividend to the foreign corporation on or after July 1, 2014.

# An Examples and Explanation Approach

- Example 5
  - The US corporation is a US withholding agent and must comply with regular withholding and FATCA withholding.
  - The dividend is from US sources.
  - It must collect a form W8BEN-E from the foreign corporation which will certify:
    - Whether it is subject to a reduced treaty rate; and
    - Whether it is subject to FATCA withholding.



# An Examples and Explanation Approach

- Example 6
  - Same facts as Example 5, except that the foreign corporation invests in debt of the US corporation. The debt was issued in 2013. Interest was paid on or after July 1, 2014.

# An Examples and Explanation Approach

- Example 6
  - Although the interest is from US sources, the obligation will be grandfathered and thus exempt from FATCA withholding.

# An Examples and Explanation Approach

- Example 7
  - Same facts as Example 5, except that the investment is in a US partnership, which operates a US trade or business.

# An Examples and Explanation Approach

- Example 7
  - Various coordinating rules apply in respect of FATCA.
  - If it is investing in a US partnership that allocates effectively connected income to a foreign partner, regular partnership withholding rules apply under Section 1446 in lieu of FATCA withholding.

Patrick Vanhaute  
Vanhaute & Co.  
Belgium

Email: info@advanhaute.be  
Tel.: +32(0)3 293 88 46  
Fax: +32(0)3 293 88 52

# EU & BELGIUM

# EU INITIATIVES SINCE 2009

PROTOCOLS TO THE  
EXISTING DTA'S

CONCLUSION OF TAX  
INFORMATION  
EXCHANGE  
AGREEMENTS (TIEA)

NEW DIRECTIVE ON  
MUTUAL ASSISTANCE  
(DIRECTIVE  
2011/16/EU OF  
FEBRUARY 15, 2011)

ADOPTION OF THE  
PROTOCOL OF 27 MAY 2010  
TO THE MULTILATERAL  
CONVENTION ON  
ADMINISTRATIVE  
ASSISTANCE

EXCHANGE OF  
INFORMATION UNDER  
THE EU SAVING  
DIRECTIVE

# NOUVELLE DIRECTIVE SUR L'ASSISTANCE MUTUELLE



15/02/2011: THE EUROPEAN COUNCIL ADOPTS A NEW DIRECTIVE ON MUTUAL ASSISTANCE ( EU DIRECTIVE 2011/16/EU ), REPLACING THE DIRECTIVE 77/799/EEG

ART. 17.2 : BANK SECRECY CAN NOT CONSTITUTE AN OBSTACLE TO EXCHANGE OF INFORMATION

THE EU MEMBER STATES ARE REQUIRED TO INTRODUCE A SYSTEM OF AUTOMATIC EXCHANGE OF INFORMATION ON AT LEAST THREE OF THE FOLLOWING 5 CATEGORIES OF INCOME: SALARIES; DIRECTORS RENUMERATIONS; CERTAIN LIFE INSURANCE PRODUCTS; PENSIONS; REAL ESTATE INCOME

# Proposal for a council directive

amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (12 June 2013)



Art. 8.3: REMOVES THE THRESHOLD BELOW WHICH A MS MAY NOT WISH TO RECEIVE INFORMATION FROM OTHER MS

Art. 8.3 a: AUTOMATIC EXCHANGE OF INFORMATION FOR DIVIDENDS, CAPITAL GAINS, ANY OTHER INCOME GENERATED WITH RESPECT TO ASSETS HELD IN A FINANCIAL ACCOUNT, ANY AMOUNT WITH RESPECT TO WHICH THE FINANCIAL INSTITUTION IS THE OBLIGOR OR THE DEBTOR, INCLUDING ANY REDEMPTION PAYMENTS, AND ACCOUNT BALANCES,

EFFECTIVE AS FROM 1 JANUARY 2015



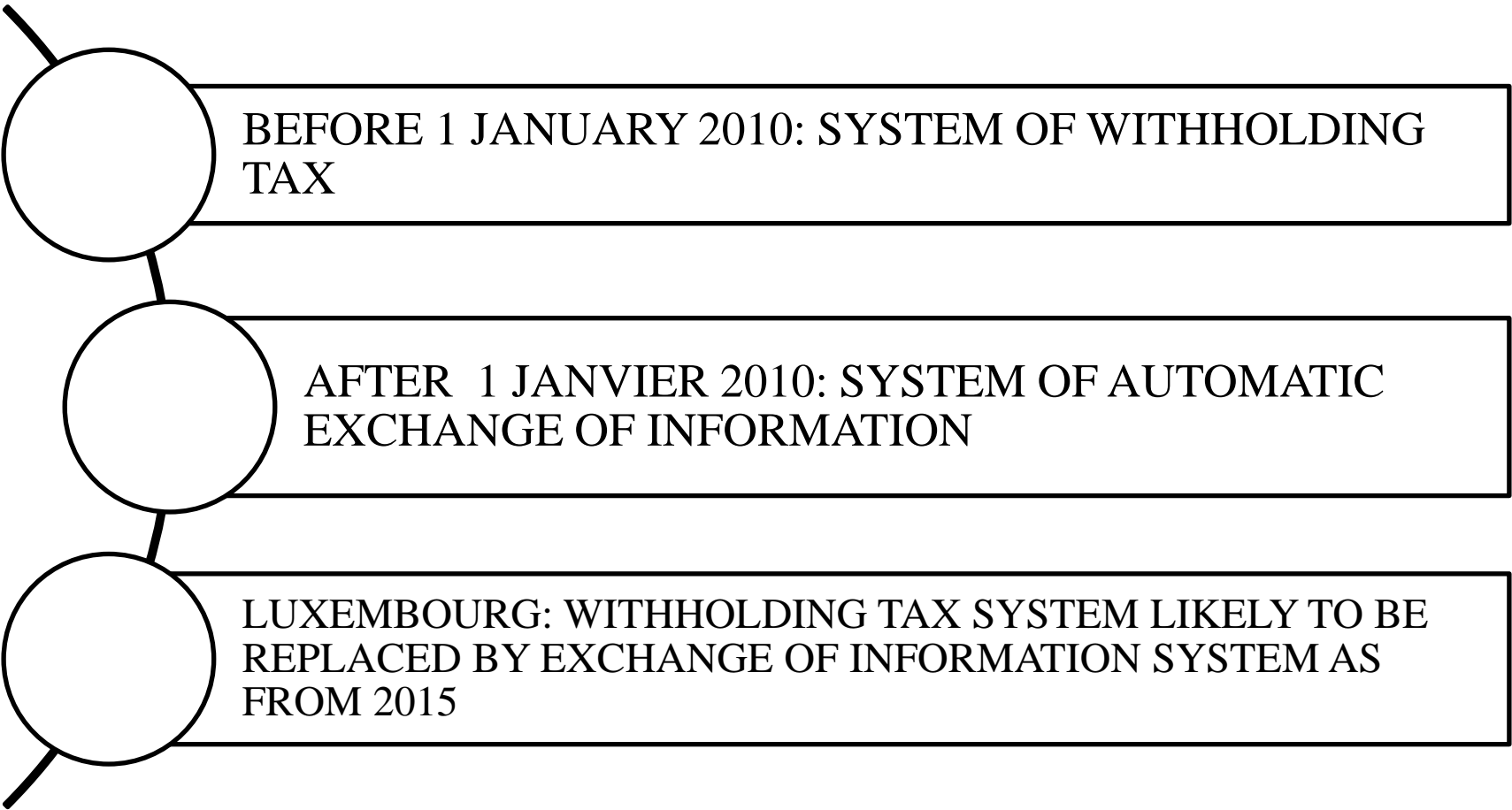
# MULTILATERAL CONVENTION ON ADMINISTRATIVE ASSISTANCE



THE PROTOCOL OF 27 MAY 2010 REPLACES ARTICLE 21 OF THE MULTILATERAL CONVENTION OF 25 JANUARY 1988 (EUROPEAN COUNCIL AND OECD),

NEW ARTICLE V PROVIDES EXPLICITLY THAT THE BANK SECRECY CAN NOT BE AN OBSTACLE TO THE EXCHANGE OF INFORMATION.

# EXCHANGE OF INFORMATION UNDER THE EU SAVING DIRECTIVE



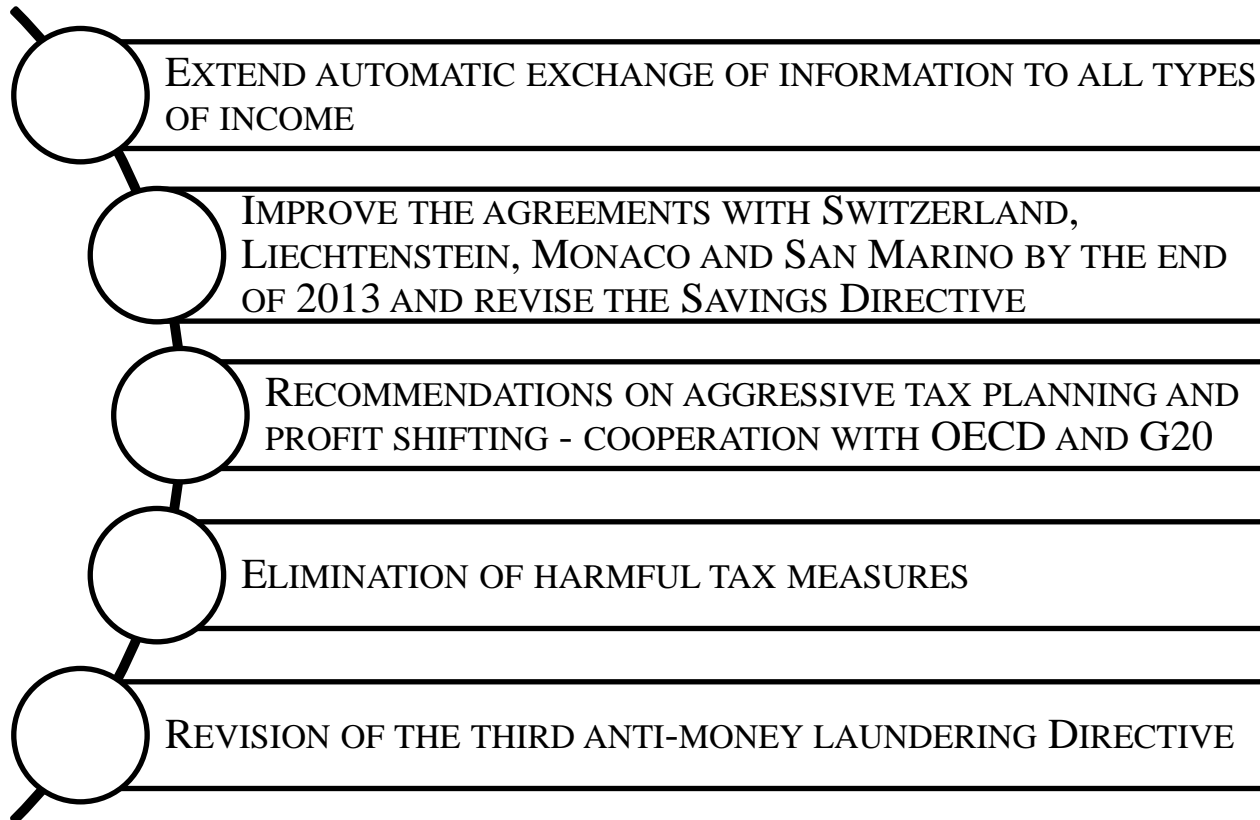
BEFORE 1 JANUARY 2010: SYSTEM OF WITHHOLDING  
TAX

AFTER 1 JANVIER 2010: SYSTEM OF AUTOMATIC  
EXCHANGE OF INFORMATION

LUXEMBOURG: WITHHOLDING TAX SYSTEM LIKELY TO BE  
REPLACED BY EXCHANGE OF INFORMATION SYSTEM AS  
FROM 2015

# European council conclusions

## 22 may 2013

- 
- EXTEND AUTOMATIC EXCHANGE OF INFORMATION TO ALL TYPES OF INCOME
  - IMPROVE THE AGREEMENTS WITH SWITZERLAND, LIECHTENSTEIN, MONACO AND SAN MARINO BY THE END OF 2013 AND REVISE THE SAVINGS DIRECTIVE
  - RECOMMENDATIONS ON AGGRESSIVE TAX PLANNING AND PROFIT SHIFTING - COOPERATION WITH OECD AND G20
  - ELIMINATION OF HARMFUL TAX MEASURES
  - REVISION OF THE THIRD ANTI-MONEY LAUNDERING DIRECTIVE

Dean Smith  
Cadesky & Associates LLP  
Canada

Email: dsmith@cadesky.com  
Tel.: +1 416 644 1182  
Fax: +1 416 594 9501

# **UK, GERMANY, SINGAPORE, & HK**

# UK

- UK wishes to conclude agreements similar to FATCA with the British Crown Dependencies (Jersey, Guernsey and the Isle of Man) and the Offshore Territories with financial centres (Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Gibraltar, Montserrat and the Turks and Caicos Islands).
- Already entered into similar agreement with Switzerland in 2012.

# UK

- The agreements that the UK is negotiating with the British Crown Dependencies will be fully reciprocal, meaning that information will flow from the UK to the Crown Dependencies and from the Crown Dependencies to the UK.
- Those with the Overseas Territories will only require one-way information sharing from those Territories to the UK.
- The agreements will require financial institutions in the Crown Dependencies and Overseas Territories to exchange information automatically on accounts held by UK residents and entities controlled by UK residents.

# UK

- Definitions are similar to those of FATCA.
- The following information must be reported annually to the UK tax authorities in respect of each Financial Account held by a Financial Institution in the overseas jurisdiction in respect of a Specified UK Person:
  - Personal details of account holder (including name, address, date of birth, National Insurance Number)
  - The account number
  - Name of the financial institution
  - The account balance or value at the end of the end of the appropriate reporting period
  - The total gross amount of interest paid or credited in respect of any depository account

# UK

- In the case of any custodial account (*i.e.*, one used to hold an investment portfolio):
  - The total gross amount of interest, dividends and other income generated with respect to the assets held within the account during the period; and
  - The total gross proceeds from the sale or redemption of property paid or credited to the account during the reporting period.



# Special Rules for Non-UK Domiciled Individuals

- Individuals who are resident but not domiciled in the UK, and who elect to be taxed on the remittance basis rather than the arising basis, may elect on an annual basis for an alternative reporting regime which has been designed specifically for this group of taxpayers.
- Rather than reporting the account balance and income and gains credited to the account during the year, it will only be necessary to report the movement of funds to and from the UK during the year in question.

# UK Implementation

- Regulations to implement the final rules is expected towards the end of year 2013.
- Timetable for implementations is broadly in line with FATCA.

# Germany

- Signed a Model 1 IGA with the US
- Germany will undertake to collect information on accounts kept for US account holders by financial institutions based in Germany and automatically disclose such information to the IRS.
- In exchange, the United States will make available to Germany information obtained by the IRS from US financial institutions relating to interest and dividend income.

# Germany

- New section 117c would be added to the *Abgabenordnung* (AO or tax law) and provide the basis for the transposition of FATCA provisions into German Law

# Germany

- Summary of process
  - Germany's Federal Ministry of Finance (*Bundesministerium für Finanzen*) would be granted authority to comply with the FATCA provisions, within the scope of a mutual assistance procedure and pursuant to an ordinance specifying and providing rules for requesting, reviewing and exchanging account information, with such authority being subject to the consent of the *Bundesrat*.

# Germany

- Summary of process (continued)
  - The federal tax office would be responsible for the form and scope of the information exchange, and for processing and securing all data
  - Affected parties (account holders) would not be provided a hearing opportunity
  - The tax office would be authorized to review and verify compliance with the rules, relating to information requests and transferred data

# Germany

- Summary of process (continued)
  - Limitations under Germany’s existing income tax treaties with respect to such information exchanges would be considered
  - There would be a “sanctionable infringement” of these rules if certain requirements with respect to requesting, reviewing, and reporting processes are not met, and such infringements would be subject to penalties.

# Germany

- First reports are to be given in respect of the years 2013 and 2014, and will be required by the IRS by September 30, 2015.
- Germany has indicated that it intends to have bilateral agreements on the automatic exchange of information with other countries as well.



# Singapore

- The Global Forum on Transparency and Exchange of Information for Tax Purposes affirmed, on April 18, 2013, that Singapore's exchange of information regime is in line with the internationally agreed Standard for exchange of information for tax purposes (EOI Standards)

# Singapore

- The following was noted in the Phase 2 Peer Review
  - Singapore has extensive laws to ensure that ownership and identity information of relevant entities are available
  - Inland Revenue Authority of Singapore has broad powers to access and obtain information from any person who holds the information, including the powers to search premises and seize information and to obtain written statements from relevant persons
  - Singapore exchanges information with its EOI partners in an effective and timely manner

# Singapore

- On July 18, 2013 the Singapore Ministry of Finance announced that it was modifying its Exchange of Information (EOI) regime
- The Minister's action is consistent with continuing efforts to move towards a more transparent EOI regime that is line with global standards.
- Singapore is a signatory to the Convention on Mutual Administrative Assistance in Tax Matters (May 29, 2013)

# Singapore

- Proposed amendments
  - In keeping with the internationally agreed Standard, Singapore will provide EOI assistance in all existing treaty partners, without having to revise the bilateral agreements individually
  - The local tax authority will be allowed access to bank and trust information from financial institutions without a Court Order
  - The Government will reach an agreement with its US counterpart to help financial institutions in Singapore comply with FATCA

# Singapore

- Tax Crimes are designated money laundering predicate offences (as of July 1, 2013)
- Financial institutions must conduct more rigorous customer due diligence and report suspicious transactions

# Singapore

- Will enter into a Model 1 IGA Agreement with the US believing that it offers stronger operational efficiencies and has lower implementation cost than Model 2.
- Also significantly increased the number of countries it will exchange information with on an 'upon request' basis (from 41 to 83).

# Singapore

- In September 2013, the G20 endorsed the development of a new global tax standard: automatic exchange of information.
- The new standard for the exchange of information will be presented at the G20 meeting in February 2014. The G20 aims to begin to exchange of information automatically on tax matters among G20 members by the end of 2015.

# Hong Kong / China

- Hong Kong has confirmed that it is exploring the possibility of signing an IGA but has yet to move in a direction where it is developing its own type of FATCA.
- For China, no public announcement to support FATCA which could pose to be an issue since it a major player in the Asian markets.



Stephan Neidhardt  
Walder Wyss  
Switzerland

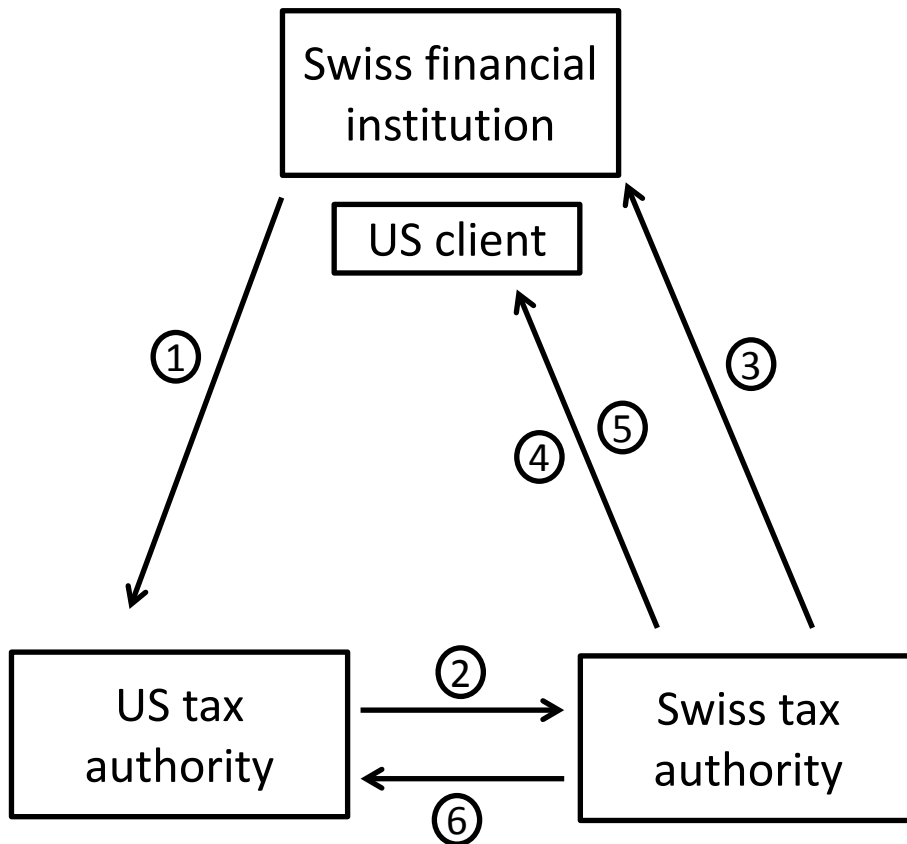
Email: [stephan.neidhardt@walderwyss.com](mailto:stephan.neidhardt@walderwyss.com)  
Tel: +41 44 498 98 98  
Fax: +41 44 498 98 99

# SWITZERLAND

# FATCA IGA US-CH

- FATCA US-CH was initialed on December 3, 2012 and signed on February 14, 2013
- The Swiss parliament has approved FATCA and adopted the implementing act in the final vote on 27 September 2013
- September 30, 2013 Switzerland and the US have amended the FATCA agreement in line with the new timetable for FATCA
  - → Implementation of FACTA now from July 1, 2014 rather than from January 1, 2014
- As Switzerland rejects the automatic exchange of information, Switzerland and the US agreed on Model Agreement II
- FATCA-Agreement and the implementing federal act are subject to an facultative referendum, means a popular vote is held if 50,000 citizens so request
- Referendum committee has been established

# Model Agreement II



- ① Swiss financial institutions deliver information on US accounts directly to the IRS according to **FACTA**
    - full disclosure with the client's approval
    - aggregated disclosure without the client's approval
  - ② Group requests based on aggregated data
  - ③ Data procurement from the CH financial institution
  - ④ Client information
  - ⑤ Decree (with possibility of appeal with the Federal Administration Court)
  - ⑥ Data delivery
- } According to **DTA**

# Current Developments in Switzerland

## 1. Revision of the Federal Anti-Money Laundering Act

Consultation period ended on June 15, 2013, so far no report has been published

Key points of the amendment are the following:

- Enhanced due diligence requirements on a risk-based assessment for financial intermediaries (FI) to prevent the acceptance of untaxed assets
- Existing Accounts: If the FI has reasons to believe that an existing customer is not tax compliant, and if the Customer is unable to prove that he is compliant, the FI has to rescind the relationship with such customer
- New Accounts: If the FI has reasons to believe that the customer is not compliant, he must refuse to enter into a business relation with said customer

# Current Developments in Switzerland

## 2. Implementation of revised recommendations of the Financial Action Task Force (FATF)

Consultation period ended July 1, 2013 and the dispatch is expected by the end of 2013

Key points of the amendment are the following:

- Introduction of a disclosure obligation for holders of bearer and registered shares of unlisted companies in order to enhance the transparency of legal entities, and extension of the due diligence requirement for establishing the identity of beneficial owners
- Duty to verify identity and risk-based due diligence requirements for politically exposed persons
- Extension of the existing predicate offense in the area of indirect taxation
- Introduction of new predicate offense to money laundering in the form of qualified tax fraud in the area of direct taxation  
→ should not interfere with the revision of criminal law

# Current Developments in Switzerland

## 3. Revision of the Federal Criminal Law Act

Consultation period ended September 30, 2013, so far no report has been published

Key points of the amendment are the following:

- Harmonised procedure and definition of offenses for direct and indirect taxation.
- Introduction of new predicate offense to money laundering in the form of qualified tax fraud in the area of direct taxation
  - Qualified tax fraud: undeclared but tax relevant facts and circumstances («nicht deklarierte Steuerfaktoren») amounting at least CHF 600'000
  - Penalty: up to five years prison

Stéphane Pellet  
Felten & Associates  
Luxembourg

Email: [spellet@feltenlawyers.com](mailto:spellet@feltenlawyers.com)  
Tel: +352 45 77 45 1  
Fax: +352 45 75 05

# FRANCE & LUXEMBOURG

# France (I)

- G5 Protocol dated 5 Feb. 2012
- Target population : US nationals resident in France (est. 100,000), French nationals resident in the US (est. 200,000) + all bi-nationals and green-card holders
- Choice of IGA Model I. Main features which are known as of today:
  - Transmission of account balances until 2015, income and proceeds from sales in 2016 (new Article 1649 AC French tax Code)
  - Reference to national legislation when item is not defined by the IGA or possibility to deviate from certain definitions
  - Most favored nation clause
  - Procedures to be established by the French Treasury
  - Exclusion of certain savings plans (Livret A but not PEA), pension funds and certain mutual funds (FCPE)
  - Exemption of certain establishments with mostly local customers
  - Confirmation of the ability to transmit FATCA data to the French tax authorities



# France (II)

- France pushing hard at EU and OECD level to implement the automatic exchange of information
- Recent legislative attempt to qualify as « *non-cooperative* » all States refusing an automatic exchange of information as from 1 Jan. 2016 => 50/55% WHT on dividends / interest / royalties and 50% on capital gains

# Luxembourg

- 2<sup>nd</sup> Investment Fund industry worldwide (after the US)
- Investment funds fall within the definition of FFI.
- IGA's will affect obligations on FFI.
  - Choice of IGA Model 1 announced last 21 May 2013
  - Negotiations in progress.
  - Main issues affect the funds themselves (with or without US accounts), the management companies, nominee shareholders and the holding companies
- Consistency with automatic exchange of information within the scope of the EU Savings Directive as from 1 Jan. 2015 (Announcement 10 Apr.)
- Proposed extension of the scope of the Directive if the worldwide level-playing field is secured

-- END --