



FATCA  
Regulatory Update, Q&A  
IIROC FAS 2012

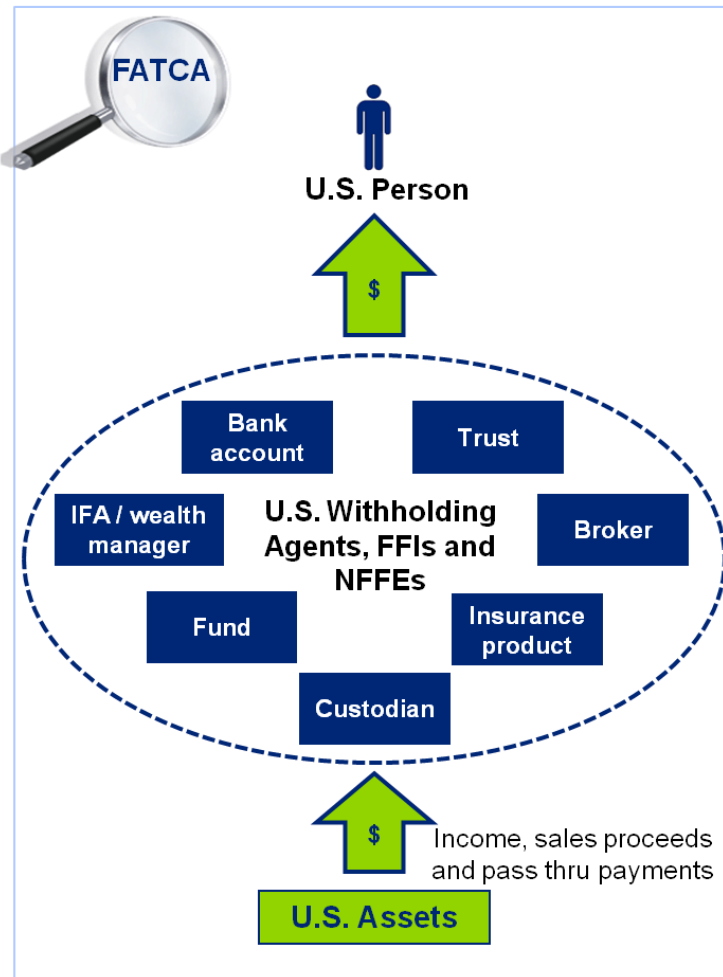
15 June 2012

# FATCA Overview

# Foreign Account Tax Compliance Act (“FATCA”)

## Overview

FATCA’s purpose is to identify US taxpayers who hold financial assets offshore accounts, so that they cannot avoid their US tax obligations.



### What is FATCA?

- Enacted in the U.S. in 2010 as a part of the Hiring Incentives to Restore Employment (HIRE) Act
- **Generally effective January 1, 2013**

### What does FATCA Involve?

- **Foreign Financial Institutions (FFIs), including Investment Dealers, are asked to enter agreements with US Treasury**
  - **Identify and report US accounts annually**
  - **Withhold on undocumented US accounts (recalcitrants) and non-participating entities**
- Other entities may only be required to report substantial US owners or certify no US ownership

### Why Comply?

- 30% withholding on US source income & gross proceeds
- **If no US source income received, affiliates and counterparties may require participation**
- Withholding QIs will be required to comply

# FATCA Updates

# FATCA Updates

## Key Modifications in the Proposed Regulations and Additional Comments from the IRS

- Responsible Officers, Certifications and Audits
  - Responsible FFI officers (RO) must certify compliance with agreement
    - Certifications due after 1<sup>st</sup> and 2<sup>nd</sup> year regarding pre-existing account searches (completion)
    - Certification no internal or informal policies to help avoid FATCA as of August 6, 2011
    - Periodically must certify continued compliance based on internal review
  - Third party audits are not mandated, but could be requested where IRS has concerns
- Applications
  - RO's must also sign FFI Applications, can delegate by POA to authorized tax professional, can list up to 5 persons as points of contact (POC)
  - RO will be required to have a US SIN, ITIN or apply for a special US ID number

# FATCA Updates

## Key Modifications in the Proposed Regulations and Additional Comments from the IRS

- New W-8's
  - Form W-8 completion will generally follow forms required to be completed today; i.e., if a fund has provided a Form W-8IMY, it will still provide a Form W-8IMY (or version thereof) to certify FATCA classification
  - Capture of country of birth or tax residence may be considered
  - The “unofficial” draft forms to date (W-8BEN, W-8BEN-E) have been published on the IRS website ([www.irs.gov/FATCA](http://www.irs.gov/FATCA))
- Late documentation
  - Affidavits regarding status at time of payment are now officially acceptable
    - Certificates received within 15 days, no affidavit necessary
    - After 1 year, certificates, affidavit plus additional evidence must be obtained

# FATCA Updates

## Key Modifications in the Proposed Regulations and Additional Comments from the IRS

- Regulatory Coordination
  - **The Treasury and the IRS intend to conform Chapter 3 and 61 definitions to FATCA (Chapter 4) definitions**
    - The proposed FATCA regulations contain many parallels to Chapter 3 and 61 (current U.S. withholding)
    - Existing QIs and other PFFI will be able to leverage much of current documentation, due diligence, withholding, depositing and reporting policies, forms and methodologies
    - **However many specific differences will still exist** because of the additional FATCA classifications, statutory and treaty exemptions from withholding not available and additional reporting (both types of customers reported and information required for FATCA)

# FATCA Updates

## Key Modifications in the Proposed Regulations and Additional Comments from the IRS

- Pre-existing Account Searches and Identification
  - Accounts previously documented under a QI, WP or WT agreement or to fulfill obligations as a U.S. payor are excepted from electronic search and enhanced review requirements for such accounts; relationship manager inquiries still apply to high-value accounts
    - Enhanced review for “high value individual accounts” of \$1m or more only if electronic searches do not meet certain requirements
    - For pre-existing entity accounts, accounts of \$250k or less are excluded
  - Be careful – some Dealers may have only documented identified “QI Accounts” and electronic searches and enhanced review for U.S. indicia still applies to the remaining accounts



# FATCA Updates

## Key Modifications in the Proposed Regulations and Additional Comments from the IRS

- Special Issues with Regulatory Coordination
  - U.S. source bank deposit interest subject to FATCA withholding
    - Currently not subject to withholding
    - Will be subject to FATCA withholding, and now includes bank deposit interest paid by foreign branches of U.S. financial institutions (new sourcing rule)
  - Delivery vs. payment transactions may be reportable
    - Current rule, executing brokers have had no responsibility for reporting or withholding on gross proceeds paid in a DVP sale to a custodian that was not their client
    - Proposed regulations make the intervening brokers responsible for withholding on gross proceeds, will require each custodian to be a documented payee, and will require broker to maintain records on custodian recipients in DVP transactions
    - Some additional guidance on this requested

# FATCA Updates

## Key Modifications in the Proposed Regulations and Additional Comments from the IRS

- Withholding Coordination
  - Withholding on US FDAP completed only by USWA and withholding QIs (WQI)
  - Obtain FFI withholding statements from PFFIs
    - Dealer systems will have to accommodate new withholding statement information on amounts subject to FATCA withholding: allocable to recalcitrants and NP-FFIs
  - Withholding agent should be able to credit FATCA withholding against NRA withholding on same payment

# FATCA Updates

## Key Modifications in the Proposed Regulations and Additional Comments from the IRS

- Reporting
  - PFFIs report FATCA information on US accounts, recalcitrant, & NPFFI
  - USWA and WQIs report on Form 1042-S amounts withheld for FATCA purposes
    - New reporting codes will be required
  - FATCA reporting form still outstanding, could be two different forms

# Considerations

- Most of your clients will need to consider complying with FATCA (customer experience)
- All PFFIs will be required to report on U.S. Accounts: FATCA reporting may be delegated to an agent, but cannot generally delegate their obligations under the Agreement
- Withholding QI's can plan on receiving FFI withholding statements and perform FATCA withholding on PFFI accounts
- Consider updating QI amendments to IB/CB Agreements to address FATCA obligations/indemnities
- Monitor client portfolio assets for US sourced assets; acquisition of a US sourced asset in a 100% previously non-US portfolio can ***trigger FATCA as well as regular U.S. withholding liabilities***

Questions

# Appendix

# What's Next?

**(Unless further relief or additional time is granted)**

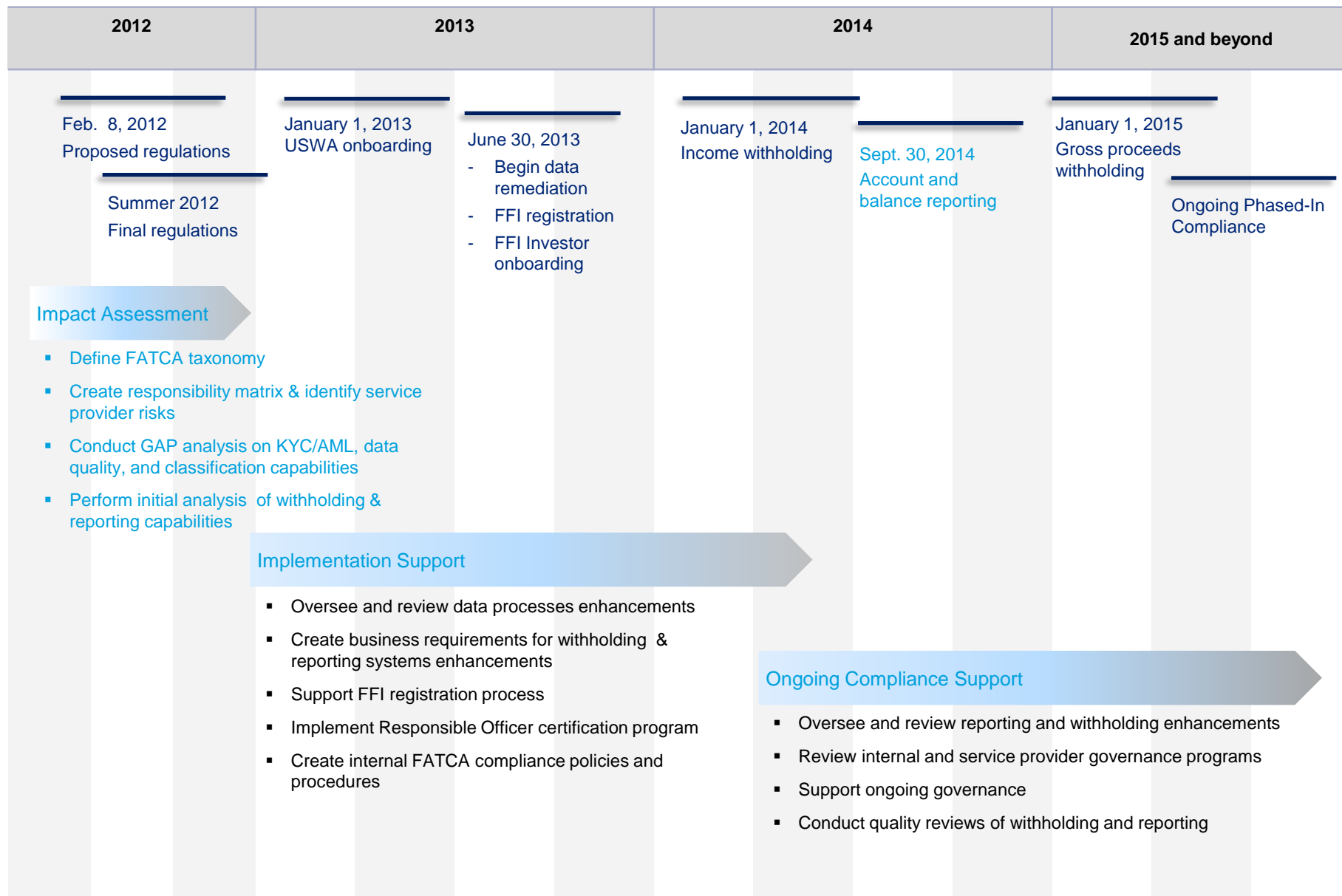
- **Draft Forms W-8, W-9** **Currently being released**
- **Draft FFI Agreement** **Summer, 2012**
- **Model Inter-Governmental Agreement** **Summer, 2012**
- **Final Regulations** **Expected October 2012**
- **Final Forms W-8, W-9 and 1042-S** **After Final Regulations Issued**
- **Online Application** **Starts January 1, 2013**

# Requirements for FFIs are extensive and are phased in through 2017

FATCA Compliance Action Items	Category	2012	2013	2014	2015	2016	2017
Deadline for issuance of grandfathered obligations	Program Management	Mar 18	Jan 1				
Submit FFI applications/agreements to IRS	Program Management		Jun 30				
Begin new customer on boarding and documentation remediation for existing customers	Due Diligence		Jul 1				
Begin income withholding	Withholding			Jan 1			
Complete Preexisting accounts documentation (Prima Facie & High Value)	Due Diligence			Jun 30			
Begin Account and balance reporting (Year 2013)	Reporting			Sep 30			
Begin gross proceeds withholding	Withholding				Jan 1		
Begin Account and balance reporting (Year 2014)	Reporting				Mar 31		
Complete all other account documentation	Due Diligence				Jun 30		
Complete FFI affiliated group requirement application	Program Management					Jan 1	
Begin reporting on income (Year 2015)	Reporting					Mar 31	
Begin foreign Passthru payments withholding	Withholding						Jan 1
Begin reporting on gross proceeds(Year 2016)	Reporting						Mar 31

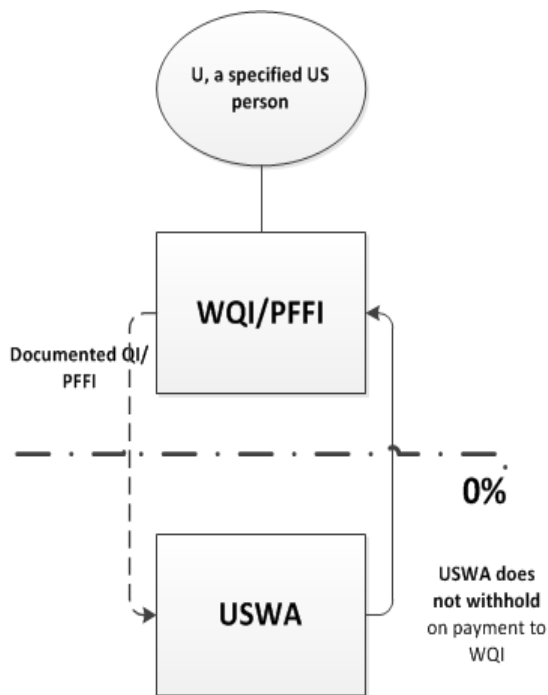


# Develop a plan and mobilize

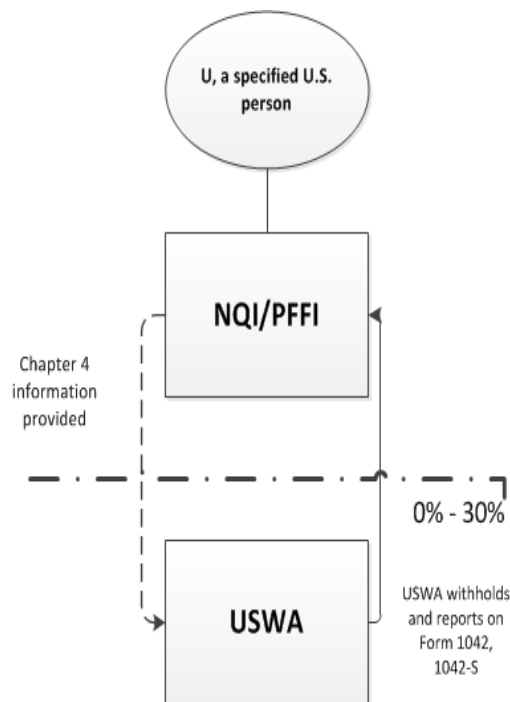


# Withholding on FDAP Distributions, Proposed Regulations

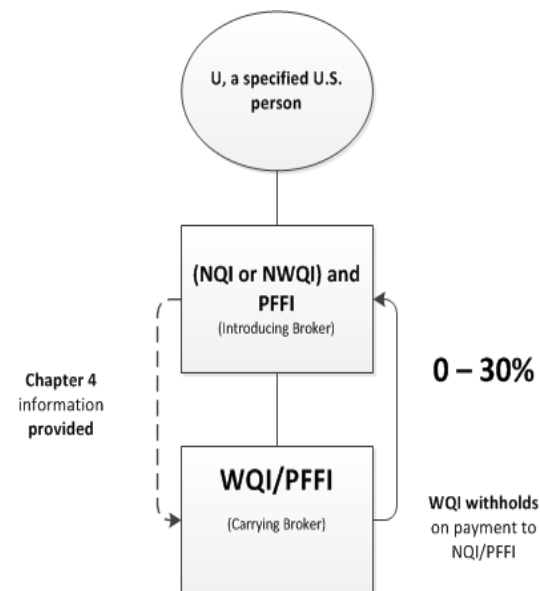
- USWA to WQI



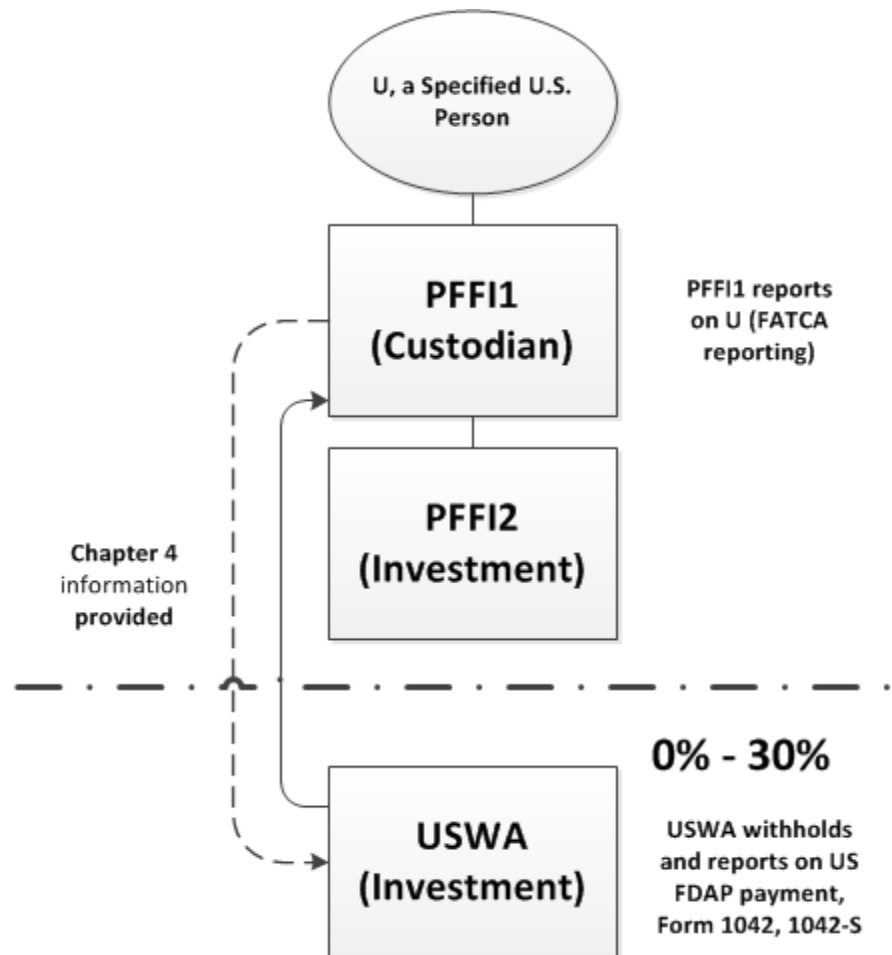
- USWA to NQI (ex: Fund)



- WQI to NQI (ex: Fund)



# Reporting Example, Proposed Regulations



# Contact information

## **Erez Seiler**

Audit Partner, Deloitte

+1 416 643 8215

[eseiler@deloitte.ca](mailto:eseiler@deloitte.ca)

## **Lisa Stanley**

Tax Senior Manager, Deloitte.

+1 416 601 6360

[listanley@deloitte.ca](mailto:listanley@deloitte.ca)

## **Denise Hintzke**

Director, Deloitte Tax LLP

+1 212 436 4792

[dhintzke@deloitte.com](mailto:dhintzke@deloitte.com)

This presentation contains general information only and the respective speakers and their firms are not, by means of this presentation, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This presentation is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. The respective speakers and their firms shall not be responsible for any loss sustained by any person who relies on this presentation.

**Deloitte.**