Notre Dame University - Louaize

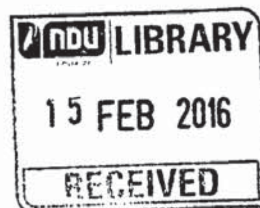
Faculty of Law and Political Science

THE EVOLUTION OF FATCA AND ITS IMPACT ON LEBANON

M.A. Thesis

by

Amani N. Mallah



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by
Amani N. Mallah

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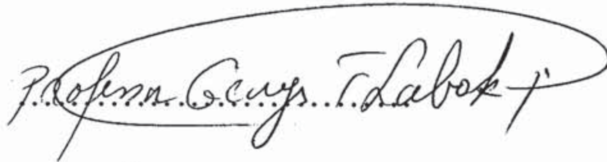
Approved by: Supervisor: 

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ABSTRACT

This thesis was conducted to examine the impact of the evolution of FATCA on Lebanon. This study discusses the evolution of the U.S tax system, and its attempt to combat U.S tax evasion beginning with the Qualified Intermediary Program and ending with the U.S. Foreign Account Tax Compliance Act (FATCA). Moreover, it entails the evolution of the FATCA regulations and analyzes this evolution with all the modification of these regulations. A detailed timeline of the evolution of the FATCA status as well as the projected timeline are highlighted.

Interviews with four head of legal compliance officers from Bank of Beirut sal, BBAC sal, Cedrus Banks sal, and Fransabank sal were conducted to collect primary data which was then analyzed and processed by a comparative study with two banks, FNB sal and Fransabank sal, in 2013.

Based on the analysis of the collected data, the conclusion reflects the great negative impact of the evolution of FATCA regulations on the Lebanese banks especially as the implementation of these procedures contradicts the Lebanese Banking Secrecy Law.

Key words: FATCA, Lebanese Banking Secrecy, Lebanese Banks, Offshore, Tax compliance, BOB, BBAC, Cedrus, Fransabank,

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INTRODUCTION

General Overview

Globalization has increased the interconnectedness of nations and individuals alike exponentially whether at the economic, political, social or legal levels. The influence of globalization on international structures, as well as national governance and legal systems has had a wide outreach on various aspects of the law, both positive and negative. While some state that globalization played a vital role in boosting the economic status of Lebanon, others agree that it has also affected negatively its legal system. One major example would be the Foreign Account Tax Compliance Act (FATCA).

Lebanon, a small Middle Eastern country, has been an attractive haven for businesses. On one hand, its banking secrecy laws have earned it the nickname of "Switzerland of the Middle East". On the other, its capital, Beirut, has become since 2008 an offshore center for many multinational enterprises. However, the country might lose parts of these perks after it declared its compliance with FATCA. The latter compels banks around the world to provide the US Treasury Department with details on the bank accounts of clients who are US citizens or holders of US Green Cards. While some argue that FATCA clearly violates Lebanon's banking secrecy laws, others argue that this secrecy will remain although modified despite FATCA's implications. The Act can place sanctions on non-compliant "recalcitrant" banks, deny them the right to use a US financial institution for representation or correspondence, and even the right to open bank accounts in US banks. The latter would make it more difficult for non-compliant banks to settle US-dollar transactions, with additional negative repercussions extending beyond

the banking sector to trade, services and other economic sectors. Therefore, FATCA affects Lebanon in all its sectors.

Rationale and Research Question

This thesis aims to analyze the underlying dynamics that led to, the requirements and procedures of FATCA and its implementation in Lebanon, and explores the impact of the evolution on the Lebanese Economic framework, by scrutinizing its effect on the Banking Sector – the economy's major activity – and its implications on the legal frameworks that are considered the backbone of this lively economic sector.

Need for the Study

FATCA regulations are continuously evolving and thus countries are being affected with this evolution. This study shall reveal the impact of the evolution of FATCA on Lebanon. Depending on the conclusion drawn in chapter 6, questions are raised whether Lebanese banks are negatively affected by FATCA? Does FATCA contradicts Lebanon's Secrecy Law?

Purpose of the Study

This thesis aims to analyze the underlying dynamics that led to, the requirements and procedures of FATCA and its implementation in Lebanon, and explores its impact on the Lebanese Economic framework, by scrutinizing its effect on the Banking Sector – the economy's major activity – and its implications on the financial and legal frameworks that are considered the backbone of this economic sector. Chapter 6 of the thesis suggests recommendations based on the conclusion drawn from the analysis of the findings in chapter 5. Moreover, these recommendations will facilitate the application of FATCA on Lebanese banks.

Brief Overview of all the Chapters

Introduction that includes a general background of the study and a statement of the need and purpose of it.

Chapter 1: Literature Review is divided into two parts; the first entails the evolution of the U.S tax system, and its attempt to combat U.S tax evasion. This part explains the Qualified Intermediary Program which was the first attempt by the U.S to combat tax evasion, and then introduces FATCA. Moreover, the second part of this chapter comprises the enactment and implementation of the updated FATCA regulations.

Chapter 2: Evolution of FATCA regulations- This chapter is divided into two parts. The first discusses and analyzes the major modifications of the updated FATCA regulations. The second is, in its turn, divided into two subdivisions: the timeline of evolution of FATCA from 2009 till 2015, and the projected timeline of evolution of FATCA from 2016 till 2018.

Chapter 3: Research Methodology of the Case Study focuses on the Research Methodology whereby the data in this chapter is explorative, qualitative, analytical and comparative aimed at assessing the impact of the evolution of FATCA regulations on Lebanon. Moreover this chapter states the questions that were asked to the Lebanese banks and the methods used as well as the limitations to the study.

Chapter 4: Data collection, Analysis, and Findings- This chapter constitutes a comparative study where the same questionnaire that was asked to both Fransabank sal and FNB sal banks, in 2013, is asked to four banks: Bank of Beirut sal, BBAC sal, Cedrus Bank sal, and Fransabank sal, in 2016. The collected data and findings were analyzed.

Conclusion and Recommendations which are drawn from the case study conducted in the previous chapter and based on the analysis of all the findings, in addition to some valuable

recommendations related to the implementation of the updated FATCA regulations in a way not to violate the local law of the Banking Secrecy.

CHAPTER 1

RESEARCH METHODOLOGY OF THE CASE STUDY

1.1 Introduction

This study investigates the impact of the evolution of FATCA on Lebanon, by analyzing the underlying dynamics that led to the updated requirements and procedures of the final FATCA regulations and their implementation in Lebanon. In order to identify the impact of this evolution, the same questionnaire that was asked to two alpha banks in 2013 by (Corbani, 2013) was asked to four banks in 2016 in this research.

1.2 The Analytical Method

It is a method of interpreting and analyzing the data collected. It has facilitated the analysis of the data collected from different sources and on different banks that are already applying FATCA. This method is comparative and qualitative.

1.3 The Comparative Method

This method helped in finding the similarities and differences between the facts compared. In order to analyze the impact of the evolution of FATCA on Lebanon, a comparative study was made between 2013 and 2016 on one hand, and between different banks on the other. It highlights the evolution trend of the application.

1.4 The Qualitative Method

The qualitative research method aimed at detecting the impact of FATCA evolution on Lebanese banking sector. This method focuses on conducting similar interview to the one done in 2013 on the Head of Compliance but in four different banks:

- Bank of Beirut
- BBAC
- Cedrus Bank
- Fransabank

The interviews include a list of questions that are directly related to the research objective and purpose. The answers collected will form the primary data of the research and will be processed and analyzed using the methods stated previously.

1.5 FATCA Questionnaire

The following questions were addressed to the Head of Compliance in four different banks:

Question 1:

What is the role of the compliance department with regards to FATCA implementation?

Question 2:

Who is impacted by FATCA?

Question 3:

What type of transactions is subject to FATCA?

Question 4:

Will U.S. Treasury or IRS publish a list of U.S. persons?

Question 5:

Do you consider FATCA currently happening?

Question 6:

How did Lebanese Banks prepare for FATCA implementation?

Question 7:

Are there any special exceptions for Lebanese Banking Sector or did BDL negotiate special terms with U.S. Treasury?

Question 8:

What would have happened if Lebanon did not permit its banks to follow the FATCA rules?

Question 9:

How do banks identify U.S. customers (individuals &/or entities) that have dual nationality?

Question 10:

What effect does FATCA have on the Lebanese banking sector and Lebanese economy?

Question 11:

What changes have the banks done with KYC in order to support FATCA implementation?

Question 12:

Has your bank already reported FATCA?

Question 13:

Did the implementation procedures of FATCA contradict with the Lebanese Banking Secrecy Law?

1.6 Difficulties of the study

The banking sector in Lebanon is a highly secretive and competitive market in Lebanon. Therefore, data collection was difficult and many banks refused to answer the requested questionnaire, while others wished to remain anonymous. As for the data provided, many of the answers were subjective and strongly dependent on the person's point of view as well as on the bank's marketing strategy.

CHAPTER 2

LITERATURE REVIEW

2.1 The Fight against Cross-Border Tax Evasion by the U.S.

2.1.1 U.S. Tax System

The U.S. federal tax system derives its supremacy from the Sixteenth Amendment in the U.S. Constitution which was ratified by the Congress on February 3, 1913, after which the U.S. Revenue Act was signed into law. Throughout its existence for more than a century, the U.S. tax system has derived several regulatory regimes which aimed at increasing the efficiency in identifying income subject to U.S. tax. The collection of tax from these kinds of income was high. The U.S system of taxation is based upon voluntary assessment and payment which is known as "voluntary compliance". (Flora Vs United States , 1960)

The system of voluntary compliance places the obligation of determining the appropriate amount of tax on each tax payer. A taxpayer's voluntary compliance is monitored by the IRS which develops the rules related to the assessment and payment of tax. In case of noncompliance, the government may then involuntary collect the proper quantity from a deficient taxpayer (Internal Revenue Code). This system is typically oppositional, because most taxpayers want to pay the least amount of tax possible, while the government's goal is to maximize federal revenue (Gravelle, 2010).

Generally, there are three means of noncompliance: (1) failure to file "non-filing", (2) underpaying the tax obligations "underpayment" and (3) underreporting the amount of tax owed

"underreporting[1]" (Internal Revenue Service, n.d.). These three types constitute the basis for the estimated tax gap, or the amount of tax that should have been paid but was not. For each type of noncompliance, the U.S. determined an approach; it imposed civil and criminal penalties for non-filing (Internal Revenue Code). Underpayment and underreporting are also subject to penalties once they are discovered, but additional mechanisms have been created to limit noncompliance. Concerning underpayment, the U.S. sought to implement a system of withholding amounts for tax at source (Twight, 1995). In so doing, the time between the taxpayer receiving the payment and having to pay the tax is removed, so there is less chance to fail to pay[2]. As for underreporting, the latter has been handled with the implementation of information reporting regimes which require employers to report certain tax information to the taxpayers, as well as the IRS (Dizdarevic, 2011). This allows the IRS to compare the amount of income stated by taxpayers against those declared by the payers of such income, thus creating a mechanism to recognize taxpayers who fail to report properly their income.

Therefore, the U.S. federal income tax system depends solely on voluntary compliance by taxpayers and third-party information reporting, to figure, report and remit the due taxes each year.

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[1] Underpayment and underreporting are also subject to penalties once they are discovered, but additional mechanisms have been created to limit noncompliance.

[2] Historically, withholding was seen as a way to assist taxpayers in paying their taxes, but it was noted in House hearings that withholding was actually a way to get payment from those having little experience in setting aside finances to meet their obligations

2.1.2 International Taxpayer Avoidance and Evasion

U.S. citizens have been attempting to discover approaches to procure income without being recognized as proprietors of that income and thus, escape from unveiling income on their U.S. tax returns. When a U.S. individual fails to give the IRS a structure reporting his/her earned revenues, there is a risk that the said revenues may not be distinguished, unless deliberately they appear on their tax return, thus, committing a type of tax evasion.

Noncompliance has been a substantial issue in global tax collection (Dizdarevic, 2011). Few reasons make offshore financial centers favorable for tax avoidance (Gordon, The use and abuse of Standards of Law: Global Governance and Offshore Financial Centers, 2010). The principle component for this is that the tax policy may differ extensively among many countries. For instance, a few countries don't force a tax on their citizens, while others force a considerably low rate. Additionally, bank secrecy laws vary among nations. This makes nations with bank secrecy laws significantly more appealing for tax avoidance, for such laws generally conceal the identity of account holders (Gordon, Tax Havens and their use by United States Taxpayers, 1981).

Consequently, local country tax authorities can't give data on citizen taxpayer to the U.S. without violating local law. These countries are alluded to as "tax havens" for this particular reason. Subsequently, these countries are frequently used by tax dodgers. As an example, a citizen could open a bank account with a foreign bank and when the latter pays interest on the deposited reserves, the interest income earned on such accounts will go untaxed by the U.S and are not subject to providing details regarding data returns. In addition, when the earning goes unreported by the taxpayer on his tax return, the U.S won't know about the extra income earned

in the foreign bank account (Gordon, Tax Havens and their use by United States Taxpayers, 1981).

Tax havens are by all account not the only component from which tax evasion can be established. Taxpayers might frequently make separate lawful entities, and utilize these vehicles as a system for protecting U.S. taxpayers. Under the original withholding regime, U.S tax law did not require offshore enterprises to recognize and unveil any U.S possession. In this way, organizations, including remote partnerships, were dealt with as taxpayers and proprietors of their assets and income (U.S. Gov't Accountability Office). Therefore, corporate structures permitted U.S people to hide behind a foreign taxpayer[3]. Failing to uncover U.S persons, combined with the presence of bilateral treaties may accommodate circumstances in which U.S persons would pay less tax to the U.S as a foreign corporation, then they would have if the income was announced to be possessed by the U.S taxpayer[4]. Withholding agents (defined in the Appendix in p.127) did not have a prerequisite or system to "look-through" foreign enterprises in quest for U.S. persons. Since the IRS regulations grant withholding agents to accept

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[3] Noting that other than U.S. tax law, U.S securities regulation and other foreign money laundering and banking guidelines treat shareholders as owners. Therefore, U.S. persons would not be able to hide under foreign corporate structures. The existing regime was administered in a way that even if withholding agents learn the identities of the owners of the foreign corporations while carrying out their due diligence responsibilities; they did not have a responsibility of reporting the said information to the IRS. However, the rules did that in the presence of actual knowledge or reason to know that a claim for reduced withholding in the withholding certificate or other documentation is unreliable for the aim of establishing residency, new supporting documentation have to be obtained.

[4] The presence of bilateral treaties between the U.S. and foreign jurisdictions might decrease or abolish U.S. taxes on income that would otherwise be taxable to Non Resident Alien recipients, including foreign corporations, but in generally not for U.S. persons. Likewise, the U.S tax exemption for foreign recipients of portfolio interest, created to encourage foreign investors to purchase U.S. government and corporate debt, abolishes their tax on this kind of income. The exemption is not available to U.S. persons, persons who own 10 percent or more of the Debtor Corporation or partnership, or persons that fail to meet some other restrictions.

documentation proclaiming corporations' ownership of income at face value, it might be feasible for U.S. persons to set up an offshore corporation; present a withholding certificate to the withholding agent(s) and get a lessened rate of withholding, thus dodging the imposition of U.S. tax collection of a few bits of the income earned by that offshore corporation.

2.1.3 Qualified Intermediary Program; First attempt to combat U.S tax evasion.

The IRS built up a withholding framework to tax non-resident aliens on specific sorts of wage sourced inside the U.S. in an attempt to fight tax evasion. This framework is known as "Non-Resident Alien Withholding" or "Chapter 3" of the Internal Revenue Code (Internal Revenue Code). Under this regime withholding agents that pay passive income, ordinarily described as Fixed, Determinable, Annual, or Periodic (FDAP), derived from the United States are required to agree to specific tenets concerning the identification of payees, tax withholding, and tax reporting connected with such installments[5]. A withholding agent that makes an in scope installment is in charge of withholding thirty percent tax from such installment and transmitting that tax to the IRS (Allison Christians). This tax collection module appeared to be fitting on the grounds that the tax must by definition extend to a party outside U.S. jurisdiction. Without a mechanism of withholding at the time of payment, authorizing taxes forced on such sorts of income would be hard to uphold on the grounds that the indicated taxpayer is not generally within the reach of the IRS.

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[5] Under Treasury Regulations (1441 and 1442) any foreign or domestic person having "control, receipt, custody, disposal, or payment" of any item of United States source income is a withholding agent for purposes of that payment.

The Qualified Intermediary (QI) program was introduced in 2000 (U.S. Gov't Accountability Office). The program was built up to authorize the regulations of sections 1441 and 1442 of the Internal Revenue Code. Under these sections, a person that makes an installment of certain passive income to a foreign individual must normally deduct and withhold thirty percent from the installment. In any case, a lower rate of withholding may apply for specific installments under the provisions of either the Internal Revenue Code, U.S. Treasury regulations, or an income tax treaty. This system was intended to decrease tax evasion while adjusting regulatory reporting burdens on financial institutions that handle foreign income payments by U.S. citizens (Internal Revenue Service, n.d.).

Under the QI Program, foreign institutions voluntarily consented to withhold and report the suitable amount of U.S. tax they send to their offshore clients (U.S. Gov't Accountability Office). This program requires foreign institutions to subject themselves to U.S. laws and regulations in relation to payments made to U.S. persons. This includes, inspecting the customers' base to conclude customers' kinds (e.g. U.S. v Non-U.S.) and the amount income paid to every kind determining if customers are qualified for reductions in U.S. tax assessment, calculating the amount of withholding tax owed, remitting such tax to the U.S. treasury, and reporting proper amounts to IRS on Forms 1042[6].

In return for undertaking these obligations, QIs can hold the anonymity of their customer list. This is a competitive benefit to those who don't consent to intentionally agree to the IRS' QI

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[6] When clients wish to claim treaty benefits or exemptions, they should as well submit an IRS Form W-8BEN, known as a withholding certificate, or other acceptable documentation, to a QI or other withholding agent.

program. For example, Non-Qualified Intermediaries (NQI), those who don't go into an agreement with the IRS to perform the obligations discussed above, must uncover the identity of their customers to upstream withholding agents, or others in control of the payment to the client, through supplementary documentation all together for their clients to receive treaty benefits[7].

In spite of the fact that the QI program appeared to be generally well received by withholding agents, as its objective of incentivizing banks to withhold and report precise amounts was getting to be acknowledged, but it did not actually cure the misuse of the foreign privacy incentives and the persistence of the data gap (Dizdarevic, 2011).

This program while compelling, is not without imperfections. Taxpayer noncompliance was exposed in a late case where the United States charged the Union Bank of Switzerland (UBS) with planning to scam the U.S. government. UBS was charged with taking an interest in a plan to trick the United States, and particularly the IRS, by effectively helping or encouraging an individual to dodge U.S. taxes by building up records in a way to disguise the U.S. taxpayers' identities so that the latter may evade the requirements of uncovering income earned from exchange securities or other financial transactions (UBS Case, 2010). Besides, the Court found that "these private bankers and managers would actively assist or otherwise facilitate certain undeclared United States taxpayers, who these private bankers and managers knew or should

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[7] One of the main incentives for FFIs to become QIs is their ability keep their client list anonymous. QIs may report customer income and withholding information for a similar recipients group which receives similar benefits, known as "pooled reporting." NQIs, should reveal the clients' identities of to upstream withholding agents in order for their clients to receive treaty benefits as well as interest and capital gains exemptions. Income held offshore, owned by U.S. taxpayers, may not be pooled and should be reported to IRS individually, either by the QI, NQI, or the last U.S. payer in the payment chain.

have known were evading United States taxes, by meeting with these clients in the United States and communicating with them via United States jurisdictional means on a regular and recurring basis with respect to their UBS undeclared accounts." Accordingly, the U.S. government required supplementary mechanisms to fight U.S. tax evasion.

In light of the complications of international tax evasion, Congress enacted FATCA, which aims to battle the gaps left in taxation from the utilization of tax treaties and QI reporting requirements. The statute and resulting guidance issued by the U.S. Department of Treasury and the Internal Revenue Service has collective been known as FATCA.

2.1.4 Introduction of FATCA

President Obama's HIRE Act enacted the FATCA provisions. FATCA added Sections 1471 to 1474 to the Internal Revenue Code. Its main goal was to fill in the compliance gaps of the existing withholding regime. It does so by taking a more dynamic tactic towards data reporting by demanding from the withholding agents to increase detection procedures thus creating a penal system of withholding in case of noncompliance (McGill, 2013).

FATCA presented another reporting regime whose aim was to disclose U.S persons with offshore investments. This is achieved by a new withholding regime that works *in tandem* with the present withholding regime. FATCA concentrates essentially on gathering reporting from non-U.S. financial institutions (known in FATCA as foreign financial institutions, or FFIs). The purpose behind this focus is case history: It has commonly been found that U.S. tax evaders perform tax misuse by creating entity accounts at FFIs making them less noticeable that U.S. persons and proprietors of those accounts. To fight this tax misuse by U.S. persons, each FFI should classify its status under FATCA, and if required, enter into an agreement with the IRS to, in addition to other things, recognize U.S persons and report them yearly to the IRS. Chapter 4

imposes a penal withholding tax on withholdable installments made to FFIs and other foreign entities who fail to comply with the disclosure requirements (McGill, 2013).

The FATCA provisions permit foreign entities to settle on a few mechanisms for compliance. Under FATCA, each foreign institution should decide its status under FATCA or suitable IGA and is required to enter into an FFI agreement with the IRS.

At the point when the initial guidance was released, a few countries worked with the U.S. Treasury to develop another approach to deal with FATCA in order not to violate its local privacy laws. These approaches got to be known as Intergovernmental Agreements (IGAs). At the point when a jurisdiction goes into an IGA with Treasury, it recognizes that the FFIs working inside of its jurisdiction will perform the requisite account due diligence and reporting. The strategy for achieving these requirements are left to be executed by local law (Treasury Regulations, n.d.).

Jurisdictions with a Model 1 facilitate to IGA to pass their own legislation that will govern the FFI's obligations under FATCA. That Model 1 FFI will report significantly the same data as United States withholding agent, yet will report straightforwardly to its local government. The advantage of going into this agreement is that, a Model 1 FFI does not have withholding obligations as for individual accounts that have been legitimately reported. Nonetheless, it must still give withholding instructions relating to any withholdable payment allocable to an account that failed to conform to FATCA's disclosure requirements (McGill, 2013).

Conversely, Jurisdictions that enter into a Model 2 IGA concur that their FFIs plan to abide by the terms of an FFI Agreement as amended by the Model 2 FFI agreement. Model 2 FFIs must report straightforwardly to the IRS and are obliged to withhold on withholdable payments made to noncompliant entities (U.S Dept of Treasury).

FATCA affects numerous non-U.S. entities than initially predicted. This is because the meaning of a financial institution is very wide and includes entities well beyond those that fall in the traditional definition. Under FATCA, " *a financial institution contains an entity that: (1)Accepts deposits in the ordinary course of a banking or similar business; (2) Holds, as a substantial portion of its business, financial assets for the benefit of one or more other persons; (3) Is an investment entity; (4) Is an insurance company or a holding company that is a member of an expanded affiliated group that includes an insurance company, and the insurance company or holding company issues, or is obligated to make payments with respect to, a cash value insurance or annuity contract; (5) Is an entity that is a holding company or treasury center is part of an expanded affiliated group that includes a depository institution, custodial institution, specified insurance company, or investment entity or is formed in connection with or availed of by a collective investment vehicle, mutual fund, exchange traded fund, private equity fund, hedge fund, venture capital fund, leveraged buyout fund, or any similar investment vehicle established with an investment strategy of investing, reinvesting, or trading in financial assets*" (Internal Revenue Service, n.d.).

A U.S. financial institution must emphasize its efforts on all payees to whom it makes a wihtholdable payment. For non-U.S. financial institutions, each account must be audited, regardless of whether it makes a withholdable payment. Furthermore, any non-U.S. entity that doesn't fall within the definition of a FFI defaults to a nonfinancial foreign entity (NFEE). These entities are additionally be altogether affected as they will be required to certify their FATCA status to FFIs and USWAs with whom they execute business and, in specific cases, are required to disclose substantial U.S. owners (Treasury Regulations, n.d.).

FATCA depends on legitimate documentation and identification of payees and account holders. Documentation, or deficiency thereof, can trigger withholding and reporting conditions. FATCA at last is about identifying U.S. persons and reporting data, for example, account balances and installments made to certain U.S. persons and certain U.S. owned foreign entities. Payments made after July 1, 2014, are affected by FATCA. Reporting starts in 2015 for calendar year 2014. Because of different deferrals, the IRS provided transitional assistance, effectively postponing a large number of the requirements, including most withholding, until January 1, 2015. For foreign entities, noncompliance will result in penal withholding tax on entities that decline to recognize and report U.S. persons. Basically, putting non-participating organizations

out of business in terms of investing, either for themselves or their clients/investors, into the U.S. market. Noncompliance for U.S. financial institutions results in responsibility for amounts that ought to have been withheld, in addition to penalties and interest. Likewise, for FFIs operating under an IGA, failure to comply will result in an infringement under local law, which conveys outcomes that fluctuate by jurisdiction (Internal Revenue Service, n.d.).

2.1.5 Assessment

The course and parallel framework of the worldwide fiscal industry permits the United States to authorize QI and FATCA regulations on foreign financial institutions operating in the substantial US capital market. NQIs operate through accounts at different institutions to get to the US equity and debt markets so that punishments can be executed in an indirect way by means of an upstream account if the subject declines to pay directly. Basically, no implementation issues occur (McGill, 2013).

However, McGill (2013), p 105, criticizes the QI system as:

"(i) it relates only to US-sourced income;

(ii) it only works if most of the financial institutions affected are QIs.

Since there are only around 6,500 QIs in the world (ie. Most institutions are NQIs), the system, even after over a decade, doesn't meet the need."

(Gerard M. & Granelli L., 2013) also raise McGill's first point of criticism and debate that Americans can escape the QI system through non-US sourced assets and through shell entities. While the QI system focuses on US-sourced income of any investor independent of citizenship, FATCA concentrates on US citizens' worldwide income. In this way, FATCA closes the gap of the QI system.

Furthermore, FATCA will induce tax compliance of foreign financial institutions as the U.S. market is vital for global banks. This is illustrated by (McGill, 2013), p. 24, who used the metaphor of a sand pit for the U.S securities market:

"It's the biggest sand pit of its type in the world, and it's pretty difficult, if not impossible in the global trading environment, not to want or need to play in this particular sand pit. So while we may not like it, many don't make the rules of the sand pit, but we have to abide by them if we want to continue to play in it."

U.S. households will not be able to avoid taxes if foreign banks collaborate with the IRS. The reaction of the U.S. residents towards FATCA is based upon their motivation to deposit their money abroad. If the U.S. residents had cross-border bank accounts only for tax purposes, they might repatriate funds, otherwise, they might keep their savings abroad for non-tax reasons.

In addition, due to the citizenship based taxation, American expatriates are also affected by FATCA. (Avi-Yonah, 2010) is critical about the U.S. citizenship principle. It also underlines the requirement of modifying the U.S. taxation principle as follows:

"The main reason we [the USA] continues to tax nonresident citizens is history- it's tradition that is 150 years old, and a significant part of American tax exceptionalism. But (...) it is time (...) to (...) update our [US] taxation to fit the globalized world of the 21st century in which more and more US citizens should be able to move overseas in pursuit of economic opportunity without being incentivized to relinquish their citizenship."

Therefore, the outdated citizenship principle is critical for the consequences of the U.S. efforts to decrease tax avoidance. The latest illustration for American tax exceptionalism is the U.S. unilateral approach of FATCA.

American expatriates reported that they were deprived of access to financial services and even their bank accounts were shut down. The costs for tax advisory services are most likely estimated to rise immensely. Accordingly, Americans might give away their citizenship not only because of the complications to receive financial services but also because of the greater tax compliance costs (The Economist, 2013).

The number of Americans who renounced their citizenship doubled in the first half of 2013 compared to 900 cases in the same period of 2012. Nonetheless, it is still a minimal ratio of expatriates who have taken this step for around 7.2 million Americans live abroad according to estimations. The increase in the number of renunciations of US citizenship in 2013 might be related to the implementation of FATCA (The Economist, 2013). The time-consuming implementation of the US FATCA program incorporates a large amount of data. (McGill, 2013) expects huge administrative costs for the US IRS. Additionally, costs arise for foreign tax authorities if an intergovernmental tax agreement is in place. Furthermore, (Birchler U. Ettlin D. Mettler A. & Zgraggen A., 2012) estimate that tax compliance costs for Swiss banks – as leading foreign wealth managers – rise mostly due to FATCA.

In conclusion, the US anti-tax evasion project increases the tax compliance costs for foreign financial institutions as well as for US citizens and other targeted individuals– especially for expatriates. The common innovative feature of the QI system and of FATCA is that foreign financial institutions are obliged to collaborate in tax issues. The US aims to influence foreign banks such that US citizens are encouraged to adopt a tax compliance norm. Similarly, pressure is put directly on the banking sector rather than on the government of the country where US citizens earn capital income. Therefore, the intergovernmental agreements serve only the purpose to facilitate the transfer of data.

2.2 Enactment and Implementation of the updated FATCA regulations (Procedures and Requirements)

2.2.1 Overview

FATCA is the result of a "perfect storm" of world events, technological changes, the economic crisis, as well as political pressure to prevent offshore tax misuse. The existing laws and administrative authorities were not sufficient in detecting and deterring offshore tax evasion.

Therefore, FATCA provisions aimed at combating tax evasion by US persons who hold offshore accounts by allowing the IRS to reach around the world and track down money that is taxable to U.S. citizens. FATCA targets the following:

- U.S. Individuals:

-US Nationals

-Holders of US Nationality besides their Native Nationality (dual Nationality)

-Green Card holder

-Resident in the United States for more than 183 days or more in the United States during the past three years, including at least 31 days in the current calendar year

- U.S. Entities (including corporations, partnerships and trusts)

-Are established in the United States

-Comprise a US Shareholder amongst the ownership/shareholding structure

- Non-U.S. Financial Entities with substantial U.S. ownership:

-receiving most types of U.S. source income, including gross proceeds from the sale or disposition of U.S. property which can produce interest or dividends

January 17, 2013, the final regulations of FATCA were issued by IRS. Afterwards, on February 20, 2014, the IRS published the long-awaited technical amendments and adjustments to the formerly issued FATCA final regulations. These temporary and final regulations comprise numerous updates and include industry commentaries. These rules are codified as Chapter 4 of the IRC and found in Treasury Regulations §1.1471–§1.1474. They characterize the Treasury Department's efforts to fight offshore tax evasion by demanding from the FFIs and other offshore vehicles to report specific data concerning the U.S. taxpayers holding financial assets in a foreign country.

So for FFIs to comply with these rules, they are required to enter into an FFI agreement with the U.S. Treasury or their local government should enter into an IGA with the IRS. U.S. withholding agents (USWAs) should document all their relations with foreign entities so as to help the implementation of the procedures, or else they will be subject to 30% withholding on withholdable payments.

Perceiving that in a few occurrences, foreign laws might keep an FFI from consenting to its reporting commitments under FATCA, the U.S. Treasury is working with foreign governments to build up an alternative approach to FATCA execution through the utilization of intergovernmental agreements (IGAs). Therefore, it has presented two alternative model IGAs to "facilitate the effective and efficient implementation of FATCA in a manner that removes domestic legal impediments to compliance, fulfills FATCA's policy objectives, and further reduces burdens on FFIs located in partner jurisdictions (U.S. Department of the Treasury Press Release, 2013).

Model 1 IGA: The initial model intergovernmental agreement was published on July 26, 2012. A partner jurisdiction signing a Model 1 IGA with the United States consents to adopt rules and regulations to identify and report data about U.S. accounts that meet the standards set out in the Model 1 IGA. FFIs covered by a Model 1 IGA must recognize U.S. accounts according to due diligence rules embraced by the partner jurisdiction and report specified data about the U.S. accounts to the partner jurisdiction. The partner jurisdiction then exchanges this data with the IRS on an automatic basis (U.S Department of the Treasury Press Release, 2012).
FFIs covered by a Model 1 IGA, in compliance with applied local laws to recognize and report U.S. accounts according to the terms of the Model 1 IGA, will be dealt with as fulfilling the due diligence and reporting requirements of FATCA. Likewise, these FFIs don't have to apply the Final Regulations for purposes of complying with and abstaining from withholding under FATCA (Final Regulations Preamble Background Part IV.B.1.)

Model 2 IGA: A second model intergovernmental agreement was announced on November 14, 2012 (Paul M. Schmidt & Michael W. Nydegger, 2013). A partner jurisdiction signing a Model 2 IGA with the United States consents to direct all FFIs that are found in the jurisdiction to register with the IRS and report specified data about U.S. accounts straightforwardly to the IRS in a way consistent with Chapter 4 and the Final Regulations, except as expressly modified by the Model 2 IGA. On account of certain recalcitrant account holders, the data reported to the IRS by FFIs covered by a Model 2 IGA is supplemented by a government-to-government exchange of data (Final Regulations Preamble Background Part IV.B.1.).

2.2.2 Timeline

The IRS released on May 2, 2014, Notice 2014-33 announcing that any implementation measures for the 2014 and 2015 calendar years under FATCA and the temporary coordination regulations under Chapter 3, Chapter 61 and Section 3406, the good faith efforts of withholding agents shall be taken into consideration, in case such withholding agents experience a compliance failure. The Notice provides as well supplementary relief under FATCA and Chapter 3, comprising relief for onboarding entity account holders from July 1, 2014 to December 31, 2014 (this relief is not applied on individual account holders). Organizations should ensure their compliance by onboarding, withholding on some kinds of payments, recognizing grandfathered obligations and entering into an FFI Agreement or registering on the IRS FFI portal, as requested by the effective date. The timeline is illustrated in the below figure.

Final FATCA Regulations Timeline – Notice 2014-33

	FATCA Compliance Action Items	2014	2015	2016	2017	2018
General Compliance	FFI: GIIN registration deadline for first 2014 List (First 2015 list for Model 1 FFIs)	May 5; Dec 22 for Model 1 FFI				
	First 2014 GIIN list	Jun 2				
	FFI: Effective date of Agreement for FFIs receiving a GIIN prior to July 1, 2014	Jun 30				
	FFI: End of transition period for affiliated group rule			Jan 1		
New / Pre-existing Accounts	USWA / FFI: Begin new account onboarding	Jul 1 Individuals	Jan 1 Entities			
	USWA / FFI: Begin GIIN Verification for Model 1 IGA FFIs		Jan 1			
	USWA: Complete documenting/classifying preexisting entity accounts*		Dec 31 Prima Facie FFIs	Jun 30 All other entity accounts		
	FFI: Complete documenting/classifying preexisting accounts		Dec 31 Prima Facie FFIs; Jun 30 High value individuals	Jun 30 All other accounts		
Withholding	USWA/FFI: Grandfathered obligation cutoff	Jul 1				
	USWA/FFI: Begin withholding on U.S. source income (excludes certain offshore payments)	Jul 1				
	USWA/FFI: Begin withholding on offshore U.S. source income payment s and gross proceeds				Jan 1	
	FFI: Begin withholding on foreign passthru payments				Jan 1	
Reporting	FFI: Begin U.S. Account/Owner information and balance reporting (for 2014 calendar year)**		Mar 31			
	FFI: Begin U.S. Account/Owner income reporting (for prior year) and Aggregate reporting on NPFFI account holder payments (only for 2015 and 2016)**			Mar 31		
	FFI: Begin U.S. Account/Owner gross proceeds reporting (for prior year)**				Mar 31	
	USWA: Begin U.S. Owner reporting**		Mar 31			
	USWA/QI FFI: Reporting on withholdable income payments made to recipients***		Mar 15			
	USWA/QI FFI: Begin reporting on gross proceeds made to recipients***					Mar 15

* $250k preexisting entity account de-minimis exception does not apply to accounts opened from July 1, 2014 to December 31, 2014 ** Form 8966 *** Form 1042-S

2.2.3 Withholding payments

2.2.3.1 Withholding Agent

Any U.S or non-U.S. person (including individuals, corporations, partnerships, trusts, associations, or other entities) that has control, custody, disposal, receipt, or payment of any withholdable payment is considered as a withholding agent (PwC 2011).

2.2.3.2 Withholdable Payment

(IRS Notice 2011-34) defines witholdable payments as:

- Any payment of U.S. source[8] FDAP (Fixed, determinable, annual, or periodic) income such as any payment of dividends, interest, salaries, wages, rents, premiums, annuities, remunerations, compensations, emoluments, and other fixed or determinable annual or periodical profits, gains, and income. According to FATCA's final regulations, the timeline to start withholding was January 1, 2014, and these regulations require the payment to be treated as U.S. source income if a withholding agent is unable to determine the payment source at the time of payment[9].

Furthermore, FATCA prohibits many of the withholding exceptions regarding U.S. source FDAP income that are explicitly granted in other Internal Revenue Code sections. The said exceptions are deliberated in detail below.

- Any gross proceeds from the sale or other disposition of any property of a type that can produce interest or dividends that are U.S. source FDAP income[10].

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[8] The term U.S. source means that the payment must be derived from sources within the United States.
[9] Treas. Reg. §1.1471-2(a)(5).
[10] Treas. Reg. §§1.1473-1(a)(1)(i) and 1.1473-1(a)(1)(ii).

Gross proceeds withholding will apply to all property that is disposed of after December 31, 2016, except proceeds from the sale of a grandfathered obligation (where the obligation was outstanding on January 1, 2014 and was disposed of after December 31, 2016)[11]. According to FATCA's final regulations, the timeline to start withholding is January 1, 2017 for offshore U.S. source income, gross proceeds and foreign passthru payments.

Moreover, the final FATCA regulations state that the gross proceeds are considered paid to the payee either when the payee's account is credited or when the payee is entitled to the funds. If the gross proceeds are directly paid to a financial institution or other entity acting as an intermediary, the proceeds will be subject to withholding when the financial institution or intermediary otherwise credits the sale to the payee's account or the payee becomes entitled to the proceeds[12]. It must be noted that the gross proceeds can result in U.S. withholding tax under FATCA irrespective of whether the FFI or NFFE has a loss on the sale or exchange (for example if an FFI purchases U.S. stock for $100, the stock depreciates to $50, and then a non-compliant FFI sells the stock for $50 the result is that the FFI will have a $15 U.S. withholding tax.)

The IRS modified its position after the announcement of the proposed regulations concerning the application of gross proceeds withholding to clearing organizations. These organizations will now be permitted to determine gross proceeds withholding based on the net amount paid or credited to the account of a member under the settlement procedures. In general, this is because clearing organizations pay or credit members' account with the net amount of sales or dispositions that occur during a certain period. Additionally, the final regulations amended the

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[11] Treas. Reg. § 1.1471-2(b)(1).

[12] Treas. Reg. § 1.1473-1(a)(3)(iii)(A).

definition of gross proceeds to dismiss proceeds from transactions not subject to recognition under Section 1058[13]. As the withholding on gross proceeds has been delayed until January 1, 2017[14], the definition of a recipient of a payment of other than U.S. source FDAP income has been reserved by the IRS.

2.2.3.3 Passthru Payment

In the final FATCA regulations, the IRS reserved its opinion on the treatment of foreign passthru payments (FPPs). However, pursuant to the legislation and earlier guidance, "Passthru payment" is defined in Section 1471 (d) (7) as follows: any withholdable payment or any other payment to the extent attributable to a withholdable payment. This may comprise a percentage of interest paid by a foreign bank on depository accounts or a partial distribution a foreign financial corporation makes to its shareholders.

According to (IRS Notice 2010-60), the main objective of passthru payments withholding is to permit an FFI to stay in compliance with its agreement, even if some of its account holders failed to provide the necessary data to determine whether the accounts are U.S. accounts and perform the needed reporting, or, in the case of failure of account holders that are FFIs, enter into an FFI Agreement.

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[13] "Pursuant to an agreement which meets ... [certain] requirements, no gain or loss shall be recognized on the exchange of such securities by the taxpayer for an obligation under such agreement, or on the exchange of rights under such agreement by that taxpayer for securities identical to the securities transferred by that taxpayer." 26 USC § 1058(a).
[14] Treas. Reg. § 1.1473-1(a)(1)(ii).

Therefore, the principal aim of the passthru payment conception is to inhibit an FFI from being a "blocker" for U.S. persons trying to evade U.S. tax by making indirect investments in U.S. assets (PwC 2012).

2.2.3.4 Exceptions to withholding

While FATCA imposes a 30 percent withholding tax on certain payments if they don't meet the needed requirements, some payments will be exempt from withholding. They include: grandfathered obligations, certain short term obligations, effectively connected income (ECI), excluded non-financial payments, gross proceeds from the sale of excluded property, fractional shares and offshore payments of U.S. FDAP income prior to 2017 are all types of exempt payments.

Grandfathered obligations

The IRS expanded exempt payments in the final FATCA regulations due to some comments received. For instance, the final regulations extended the definition of a grandfathered obligation to "any obligation outstanding on January 1, 2014". This denotes a one year extension from the proposed regulations' date, which provided extra time to enable market transition and address implementation problems. The IRS also received comments about the scope of grandfathered obligations. Therefore, the IRS expanded the definition to include:

"any agreement that gives rise to a withholdable payment solely because the obligation is treated as giving rise to a dividend equivalent pursuant to Section 871(m)[15] *..., provided that the obligation is executed on or before the date that is six months after the date on which obligations of its type are first treated as giving rise to dividend equivalents."*

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[15] "For purposes of Subsection (a), Sections 881 and 4948 (a), and Chapters 3 and 4, a dividend equivalent shall be treated as a dividend from sources within the United States." 26 USC § 871(m).

Lastly, the final regulations expanded the definition of a grandfathered obligation to comprise any agreement that requires a second party to make a payment with respect to collateral posted to secure a grandfathered obligation. This is applied even though collateral itself is not a grandfathered obligation.

Moreover, the final FATCA regulations expanded another exemption related to the definition of grandfathered obligations to be: "any agreement requiring a secured party to make a payment with respect to, or to repay, collateral posted to secure a grandfathered obligation[16]." Despite the fact that requirements to make a payment relating to collateral posted to secure a grandfathered obligation is also exempt, pooled collateral will have to be allocated between grandfathered and non-grandfathered obligations. In order to determine the grandfathered date for FPPs, the final regulations included any obligation that is executed within six months beginning after the regulations defining an FPP are published in the Federal Register[17].

In the grandfathered obligation context, the term obligation means any legally binding agreement, including but not limited to bonds, guaranteed investment certificates, term deposits, lines of credit, revolving credit facilities, and derivatives under ISDA master agreements, life insurance contracts that are entirely payable no later than the date of death of the insured, and immediate annuities. The term obligation does not include any legal agreement that is treated as equity for U.S. tax purposes, any legal agreement that lacks a stated expiration, a brokerage or similar agreement or a master agreement[18].

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[16] Treas. Reg. § 1.1471-2(b)(2)(i)(A).
[17] Treas. Reg. § 1.1471-2(b)(2)(ii)(B).
[18] Treas. Reg. § 1.1471-2(b)(2)(ii)(B).

As a final point, it is important to clarify that any material amendment of an existing obligation will result in the obligation being treated as executed (or, in the case of a debt obligation, newly issued) as of the effective date of the amendment. In general, an amendment will be considered a material amendment if the legal rights or obligations that are altered and the degree to which they are altered are economically significant[19]. Therefore, if an instrument that would otherwise qualify as a grandfathered obligation is materially amended after January 1, 2014, it will be treated as a newly issued instrument or executed[20].

Short-term obligations

The final FATCA regulations exempt some short-term obligations from withholding by defining these obligations as "a payment of interest or original issue discount on short-term obligations…"[21] which are defined in Section 871(g)(1)(B)(i).[22] It is important to note the 183-day threshold found in Section 871 is different than the one-year threshold found in Section 1283[23].

Effectively Connected Income (ECI)

Effectively connected income (ECI) that is exempt from FATCA withholding is defined as "any payment to the extent it gives rise to an item of income that is taken into account

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[19] Treas. Reg. § 1.1001-3(e)(1).
[20] Treas. Reg. § 1.1471-2(b)(2)(ii)(B)(iv).
[21] Treas. Reg. § 1.1473-1(a)(4)(i).
[22] "Certain short-term obligations [are] [a]ny obligation[s] payable 183 days or less from the date of original issue (without regard to the period held by the taxpayer)." 26 USC § 871(g)(1)(B)(i).
[23] "The term "short-term obligation" means any bond, debenture, note, certificate, or other evidence of indebtedness which has a fixed maturity date not more than 1 year from the date of issue." 26 USC § 1283(a)(1)(A).

under Section 871(b)(1)[24] or 882(a)(1)[25] for the taxable year." Consequently, a payment will not be considered as withholdable, to the extent it gives rise to income that is (or is deemed to be) effectively connected with the conduct of a trade or business in the U.S. and is contained within the beneficial owner's gross income for the taxable year. The IRS has released a draft Form W-8ECI for foreign persons to claim that their income is effectively connected with the conduct of a trade or business in the U.S.

Furthermore, numerous comments were received concerning the treatment of ECI in the proposed regulations, requesting that the final FATCA regulations incorporate the Chapter 3 rules permitting withholding agents to presume that payments made to U.S. branches of certain banks and insurance companies are payments of income that is effectively linked to the conduct of a trade or business within the U.S.. In the final regulations, the IRS responded by allowing this presumption so long as the withholding agent obtains a GIIN (as defined in p. 117 of the Appendix) that confirms that the FFI is a participating FFI or a registered deemed-compliant FFI. The EIN for the U.S. branch needs to be collected as well so that the withholding agent can properly report the payment.

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[24] "A nonresident alien individual engaged in trade or business within the United States during the taxable year shall be taxable as provided in section 1 or 55 on his taxable income which is effectively connected with the conduct of a trade or business within the United States." 26 USC § 871(b)(1).

[25] "A foreign corporation engaged in trade or business within the United States during the taxable year shall be taxable as provided in Section 11, 55, 59A, or 1201 (a) on its taxable income which is effectively connected with the conduct of a trade or business within the United States." 26 USC § 882(a)(1).

Excluded non-financial payments

The payments that are subject to withholding under Sections 1445 or 1446[26] will not be subject to withholding under Chapter 4.

The final regulations explained and expanded the ordinary course of business payments exception to withholdable payments found in the proposed regulations. Commenters demanded that the definition of ordinary course of business payments be amended by striking the word "nonfinancial". They considered that this word may create vagueness if the services provided to a financial institution that are accounts payable type expenses are ordinary course of business payments. Additionally, commenters debated that the ordinary course of business exception imposed significant administrative burdens given the volume of cross-border payments that had to be identified and classified. Therefore, the IRS responded by replacing the ordinary course of business exception with a more comprehensive exception for excluded non-financial payments including "services (comprising wages and other forms of employee compensation), the use of property office and equipment leases, software licenses, transportation, freight, gambling winnings, awards, prizes, scholarships and interest on outstanding accounts payable arising from the acquirement of goods of services"[27]. The reviewed exclusion provides greater certainty by clearly describing payments that are excluded from the definition of withholdable payments and

[26] "If a partnership has effectively connected taxable income for any taxable year, and any portion of such income is allocable under Section 704 to a foreign partner, such partnership shall pay a withholding tax under this section at such time and in such manner as the Secretary shall by regulations prescribe." 26 USC § 1446(a).

[27] Treas. Reg. § 1.1473-1(a)(4)(iii).

by providing a list of withholdable payments. However, many payments are expressly considered withholdable payments[28].

Gross proceeds from the sale of excluded property

Gross proceeds from the sale of excluded property are not considered as withholdable payments. The excluded property is defined as "amounts received from the sale or other dispositions of any property that can produce U.S. FDAP income if all such U.S. source FDAP income would be excluded from the definition of withholdable payment under..."[29] the short-term, the ECI exception and the non-financial payments exception. For instance, gross proceeds from the sale of a short term obligation described in 871(g)(1)(B)(i) is not a withholdable payment.

Fractional Shares

Similarly, the sale of fractional shares is also exempt from FATCA withholding.[30] Fractional shares do not necessitate a "return of information... with respect to a sale of a fractional share of stock if the gross proceeds on the sale of the fractional share are less than $20."[31]

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[28] Payments in connection with a lending transaction (including loans of securities), a forward, futures, option, or notional principal contract, or a similar financial instrument; premiums for insurance contracts or annuity contracts; amounts paid under cash value insurance or annuity contracts; dividends; interest (including substitute interest described in §1.861-2(a)(7)) other than interest described in the preceding sentence; investment advisory fees; custodial fees; and bank or brokerage fees." Treas. Reg. § 1.1473-1(a)(4)(iii).
[29] Treas. Reg. § 1.1473-1(a)(4)(iv).
[30] Treas. Reg. § 1.1473-1(a)(4)(v).
[31] Treas. Reg. § 1.6045-1(c)(3)(ix).

Offshore payments of U.S. source FDAP income made prior to January 1, 2017

FATCA's final regulations provided a transitional exemption for offshore payments of U.S. source FDAP income made prior to January 1, 2017, to synchronize with the withholding obligations of a model 1 IGA. This exception to FATCA withholding is made in relation to an offshore obligation if such payment is made by a person who is not acting as an intermediary regarding the payment. Nevertheless, this exclusion is not applied in cases where a flow-through entity has a residual withholding requirement in relation to its partners, owners or beneficiaries. For purposes of this exemption, an intermediary includes a person that acts as a qualified securities lender as defined for purposes of Chapter 3[32].

2.2.4 Entities affected by FATCA

The entities that are affected by FATCA are primarily driven by their classification as either a U.S. withholding agent (USWA), a foreign financial institution (FFI), including sub-classifications, or a non-financial foreign entity (NFFE), including sub-classifications. This section defines the classifications of the various entity types under FATCA, certain exclusions to the definition of an FFI, and designates the requirements of certain entities that are not subject to the requirements of participating FFIs.

2.2.4.1 U.S. withholding agent definition

A USWA is any U.S. person that is a withholding agent and this comprises any person who has the control, receipt or custody over the disposal or payment of a withholdable payment

[32] Notice 2010-46, 2010-24 IRB 757

or foreign passthru payment. This is normally a non-individual U.S. person and contains, domestic corporations, domestic partnerships, any non-foreign estates and any trusts if a U.S. court can exercise major supervision over the trust's administration and one or more U.S. persons have authority to control all substantial decisions of the trust[33]. Additionally, a U.S. person embraces a foreign branch of a U.S. person which is not a qualified intermediary acting as an intermediary regarding a payment[34].

FATCA also treats certain entities as USWAs in terms of their responsibilities even though they are not U.S. persons. Nevertheless, these entities must use a W-8 Form (not W-9 Form) to identify themselves to other withholding agents. The said entities include U.S. branches of participating FFIs or registered deemed-compliant FFIs and territory financial institutions (financial institutions organized in American Samoa, Guam, the Northern Mariana Islands, Puerto Rico or the U.S. Virgin Islands).

Despite the fact that, in general, territory financial institutions are USWAs, if they are acting as an intermediary regarding a withholdable payment, they must pass information up to the USWA so that it may withhold on the payment. However, if the territory financial institution elects to be treated as a U.S. person regarding the payment, it must conduct any necessary withholding and inform the USWA of the election using the Form W-8IMY.

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[33] IRC § 7701(a)(30).
[34] Treas. Reg. § 1.1471-3(a)(3)(vii).

2.2.4.2 Expanded affiliated group concept

Besides the entities that are resident in an IGA country, the final FATCA regulations define an FFI as any non-U.S. entity that is a depository institution, custodial institution, investment entity, specified insurance company or designated holding company or treasury center. Under FATCA, all FFI entities that are part of an FFI's expanded affiliated group should be a participating FFI or a registered deemed-compliant FFI. In situations where legal restrictions would keep an entity in a specific jurisdiction from fulfilling all of the requirements under an FFI agreement, a special transitional rule applies.

Under FATCA's final regulations, an entity is considered as a part of an expanded affiliated group (EAG) if it is affiliated with a common parent that directly or indirectly owns more than 50 percent of the stock by vote and value of such corporation, or owns over 50 percent by value of the beneficial interest in the case of a partnership or non-corporate entity. The final regulations excluded investment entities from the membership in an expanded affiliated group if they are created or funded by an FFI group member with the intention to sell the interest in the fund to any other unrelated party. This exclusion resulting from the contribution of seed capital applies[35] if:

- the member that owns the investment entity is an FFI in the business of providing seed capital to form investment entities with the intention to sell to unrelated investors;
- the investment entity was created in the ordinary course of the member's business as described directly above;

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[35] Seed capital means initial capital contributions intended as temporary investments and is deemed by the manager necessary or appropriate.

- the member owning the investment entity as of the date of acquiring the investment entity intended to hold any equity interest over 50 percent (including ownership by other members in the member's expanded affiliated group) for no more than three years; and
- for any interest held by the creating member past the three years, the aggregate value of the equity interest held by the creating member and other members in its expanded affiliated group is 50 percent or less.

FATCA provided an anti-abuse rule that intends to comprise entities as part of an expanded affiliated group that would otherwise not be comprised in case of a change of ownership, voting rights (including a separation of voting rights and value) or form of the entity designed to evade reporting or withholding requirements under FATCA. Entities that restructure their operations for different purposes, should wisely document the purpose behind such restrictions to circumvent any lingering expanded affiliated group problems.

2.2.4.3 FFI definition

According to (IRS Notice 2010-60), an FFI is defined as any financial institution that is a foreign entity, other than a financial institution organized under the laws of a possession of the U.S:

- A "foreign" entity is any entity that is not a U.S. person.
- A "financial institution" is an entity that falls within one or more of the following categories[36]:

[36] Although many entities may be within two or more of these three categories, an entity need only satisfy the definition of one of the three categories to be considered as a financial institution.

- **Depository institution**

An institution which accepts deposits in the ordinary course of a banking or similar business. Nevertheless, an entity that only accepts deposits for collateral or security pursuant to a sale or lease of property (or similar financing arrangement) is not considered engaged in a banking or similar business. Therefore, the distinction is that the entity does not accept deposits from the public to finance the purchase of assets which are later sold or leased. Rather, the entity is taking the deposit to secure the sale or lease from damage, credit risk or other risks associated with the transaction.

- **Custodial institution**

An institution that holds financial assets for the account of others as a substantial portion of its business; this is denoted as earning over 20 percent of its gross income from certain activities during the shorter of the last three years ending on December 31 of the previous year in which the determination is made or its existence[37]. Nevertheless, if the entity is a start-up with no previous operating history, it needs to determine whether it predicts meeting the said 20 percent income test based on its projected assets and operations, including the functions or purpose for which the entity is licensed or regulated.

- **Investment entity**

Investment entities are divided into three categories; entities that are in the investment or portfolio management business for customers, investment vehicles or entities that are

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[37] For example, if an entity makes this determination in 2014, it will include income earned from January 1, 2011 through December 31, 2013 in its calculation, assuming it existed in all those years.

professionally managed by other FFIs or investment vehicles established to invest in financial assets. Whereas trusts (or similar types of entities) that are not professionally managed, are not considered to be embraced under this definition, and are rather classified as a NFFE (likely a passive NFFE).

- **Specified insurance company**

An insurance company or a holding company[38] with an insurance company in its expanded affiliated network whereby the insurance or holding company issues or is obliged to make payments with respect to cash value insurance[39] or annuity contracts[40]. If the holding company does not issue the specified contracts or has to make payments on the said contracts, it is not considered as an FFI even if it has an insurance company within its expanded affiliated group that is defined as an FFI. The reason behind expanding the definition to include holding companies is the IRS' concern that an insurance company within the group could evade its FATCA responsibilities by using a holding company to funnel withholdable payments through a holding company.

- **Holding company or treasury center**

A holding company or treasury center was initially included in the former definition of an investment entity, under the proposed FATCA regulations. Whereas the final FATCA

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[38] Entity primarily involved in directly or indirectly holding all or part of the outstanding stock of one or more members of its expanded affiliated group.
[39] Cash value includes any amount payable under a contract to a person upon surrender, termination, cancellation or withdrawal; or the amount that can be borrowed under said contract
[40] An annuity contract is a contract whereby the issuer agrees to make payments for a period of time determined by reference to the life expectancy of one or more individuals.

regulations amended the investment entity to help exclude from the revised definition the small non-professionally managed entities such as trusts, holding companies and treasury centers. As a result, a new FFI category for holding companies and treasury centers was included in the final regulations.

Under the final FATCA regulations, the new category defines a holding company as an entity primarily involved directly or indirectly in holding all or part of the outstanding stock of one or more members of its expanded affiliated group.

A treasury center is defined under the final FATCA regulations as an entity primarily involved in entering into investment, hedging and financing transactions with or for members of its expanded affiliated group to manage risk of price changes or currency fluctuations with respect to property for its expanded affiliated group; manage risk of interest rate, price or currency fluctuations of assets or liabilities for its expanded affiliated group; manage the working capital of the expanded affiliated group through investing or trading financial assets on its own account or on behalf of members in its expanded affiliated group; or act as a financing vehicle for borrowing funds for use by the expanded affiliated group.

Therefore, to be considered as an FFI, the holding company and the treasury center must either be part of an expanded affiliated group that includes an FFI; or be formed in connection with or availed by an investment vehicle to be considered an FFI. Basically, this means that any holding company or treasury center in a private equity or investment type structure will be classified as FFI, irrespective of the activities that it actually conducts.

- **Entities excluded from the FFI definition**

Despite the fact that an entity falls under the definition of an FFI, it may still be excluded due to its reserving activities, therefore, describing the resulting treatment of such

entity will not be as FFI, and will instead be treated as NFFE. Treasury and IRS exempted payments beneficially owned by these entities from FATCA withholding:

Excepted nonfinancial group entities

The main purpose of this exemption is to exclude from the definition of FFI holding companies, treasury centers and captive finance companies[41] that are in a nonfinancial group because they are unlikely vehicles for U.S. persons to shield assets.

Excepted nonfinancial start-up companies or companies entering a new line of business

This exclusion applies to certain entities that invest capital into assets with the intent to operate a business other than that of a "financial institution" or passive NFFE, but is not yet operating the business. This exclusion only applies to the first 24 months after the entity's organization or in the case of an entity starting a new line of business, 24 months after the board resolution or similar approval of the new line of business, on condition that the entity is qualified as an active NFFE for the 24 months preceding the approval date.

Excepted nonfinancial entities in liquidation or bankruptcy

This exclusion applies to non-financial entities that are liquidating or emerging from reorganization or passive NFFEs in the past five years and do not plan on recommencing operations as financial entities. This exception only applies if the entity was not a financial institution before beginning the liquidation or reorganization process.

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[41] A captive finance company is an entity whose primary activity is to enter into financing or leasing transactions with or for suppliers, distributors, dealers, franchisees or customers of such entity or any member of such entity's expanded affiliated group that is an active NFFE.

Excepted inter-affiliate FFI

This exception exempts from the definition of an FFI some entities that were formed to transact a specific deal or for tax or other regulatory purposes. Normally, they are entities that only perform activities within the group such as special purpose vehicles (SPVs) or special purpose entities (SPEs).

Section 501(c) entities

Under Section 501(c) of the U.S. Internal Revenue Code, 27 different types of entities are exempt from certain federal income taxes (generally non-profit entities). Whereas, insurance companies described in Section 501(c)(15) are not included in this exclusion.

Non-profit organizations

A non-profit organization is an entity which is incorporated and maintained in its jurisdiction solely for religious, charitable, scientific, artistic, and cultural or educational purposes if it meets the needed requirements under FATCA's final regulations (For example: exempt from income tax in its jurisdiction, or has no shareholders or members with a propriety or beneficial interest in the entity's income or assets etc..).

Reserving activities of an insurance company

Certain insurance companies are excluded from the FFI definition because their business consists solely of issuing insurance or reinsurance contracts without a cash value, therefore their reserving activities will not cause the company to be a financial institution under the depository institution, custodial institution or investment entity definitions of an FFI.

- **Deemed-compliant FFIs and exempt beneficial owners**

Deemed-compliant FFIs

The entity which falls under the definition of an FFI and is not excluded from this definition, can nevertheless fall under a deemed-compliant FFI category. In general deemed-compliant FFIs have a small impact in terms of the requirements to comply with FATCA, but the impact differs depending on the category of deemed-compliant status. There are three categories of FFI with varying responsibilities including registered deemed-compliant FFIs, certified deemed-compliant FFIs and owner-documented FFIs[42].

(a) Registered deemed-compliant FFIs

1. Local FFIs
2. Non-reporting members of participating FFI groups
3. Qualified collective investment vehicles
4. Restricted funds
5. Qualified credit card issuers
6. Sponsored investment entities and controlled foreign corporations

(b) Certified deemed compliant FFI

1. Non-registering local bank
2. FFIs with only low-value accounts
3. Sponsored, closely-held investment vehicles
4. Limited life debt investment entities (transitional)

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[42] A detailed explanation of these subdivisions can be found on https://www.irs.gov/pub/irs-drop/n-14-33.pdf

(c) Owner-documented FFI

Exempt beneficial owners

Exempt beneficial owners acting as beneficial owners of a payment are generally exempt from FATCA and consist mostly of governmental entities, international organizations and central banks. The category includes:

• Any foreign government, any political subdivision of a foreign government or any wholly owned agency or instrumentality of any one or more of the foregoing;

• Any international organization or any wholly owned agency or instrumentality;

• Any foreign central bank of issue;

• Any government of a U.S. territory; and

• Entities described that are wholly owned by one or more other exempt beneficial owners.

In addition to the above, certain retirement funds also qualify for exempt beneficial owner status. (For example: treaty-qualified retirement funds established in a country with an income tax treaty with the U.S.; participation retirement funds established to provide retirement etc...).

d) Non-financial Foreign Entities (NFFE):

Any foreign entity that is not an FFI. The rules apply to non-U.S. entities receiving certain types of U.S. source income and gross proceeds from the sale or disposition of U.S. property which can produce interest or dividends (Ernest & Young 2011).

The entity that does not fall under the definition of an FFI or is otherwise excluded from the definition, is considered as a non-financial foreign entity (NFFE). There are three types of NFFEs listed as follows:

- **Excepted NFFEs**

This type of entity is excepted since normally it will not be likely vehicle for U.S. persons to hide their assets because of the nature of its activities. Most U.S. persons tend to use passive vehicles to protect their income rather than conducting an actual business activity, which is why entities that do not qualify for an excepted NFFE status are required to provide substantial U.S. possessor certifications. Excepted NFFEs may include publicly traded corporations and affiliates, territory NFFEs that are directly or indirectly wholly owned by bona fide U.S. territory residents in the NFFE's country of organization or active NFFEs.

- **Active NFFEs**

Entities that conduct actual business activities other than holding assets that produce investment income (such as interest, dividends, rents, etc.) are considered as active NFFEs. As stated formerly, since an effort is essentially required to manage an active NFFE, they make unlikely vehicles to shield income. Any entity may be classified as an Active NFFE if:

• Less than 50 percent of its gross income for the preceding calendar year is passive income48; and

• Less than 50 percent of the weighted average percentage of assets (tested quarterly) held are assets that produce or are held for the production of passive income.

- **Passive NFFEs**

As stated here above, an NFFE that is not otherwise excepted will be considered as a passive NFFE and, therefore, should provide withholding agents with a certification regarding its substantial U.S. owners (if any). Substantial U.S. owners include any specified U.S. person

directly or indirectly owning more than 10 percent of the passive NFFE[43] .In order to make the issue more complex, the passive NFFE is required as well to aggregate the ownership values of any related parties[44] to determine if the ownership threshold is met to keep an entity in a particular jurisdiction from signing.

2.2.5 USWA requirements

As stated previously, withholdable payments made to persons who do not qualify for a FATCA withholding exemption are subject to a 30 percent withholding tax. Declared after the withholding rules of Chapter 3, FATCA withholding tasks fall mainly on USWAs to the extent they have control, receipt, custody or disposal of a withholdable payment made to an entity subject to FATCA withholding (i.e. USWAs must remit to the IRS FATCA withholding tax withheld from withholdable payments). The IRS will then collect un-withheld FATCA withholding tax from USWAs and enforce penalties and interest on the USWAs for any under withheld amounts. USWAs should report, every year, aggregate FATCA withholding on Form 1042 and file Forms 1042-S with respect to each payee for any withholdable payments. This reporting will be done in concurrence with the required reporting under Chapter 3. Additional reporting requirements apply as outlined in the reporting section here below.

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[43] For a corporation, substantial ownership means 10 percent or more stock ownership (by vote or value). For a partnership, substantial ownership means 10 percent or more direct or indirect ownership of the profit interest or capital interest in the partnership. For a trust, substantial ownership means 10 percent or more ownership of the beneficial interests of the trust, or ownership by a grantor in a grantor trust (or person having full access to the corpus of the trust).

[44] A related party means a person's family which includes: brothers and sisters, spouse, ancestors and lineal descendants. Legal adoption is also included. "Ancestors" includes parents and grandparents, and the "lineal descendants" includes children and grandchildren. Additionally, family includes spouses of any of the family members. Treas. Reg. § 1.1473-1(b)(2)(v). Reg. § 1.267(c)-1(a)(4).

- **Documentation and due diligence**

When a USWA makes a withholdable payment, the 30 percent withholding to the payment is applied depending on the FATCA classification of the payee.[45] First, the withholding agent needs to determine who the payee is, and then to perform due diligence with respect to the documentation and other information collected from or about the payee to verify the payee's FATCA classification and if any FATCA withholding exemptions apply. This due diligence includes determining if the payee provided adequate and valid documentation and withholding certificates to establish his status, along with searching the USWA's other records to confirm that the USWA does not have other data in its possession that opposes the payee's claim of a foreign status on the withholding certificate.

- **Withholding requirements**

Beginning January 1, 2015, for new entity account holders, a USWA should withhold 30 percent on any withholdable payment made to persons if the withholding agent does not obtain the required documentation allowing it to treat the payee as exempt from FATCA withholding, precisely including payments to nonparticipating FFIs, passive NFFEs that do not disclose their substantial U.S. owners, or payments to other foreign entities who have not established their FATCA withholding exemption status through adequate documentation and are subject to withholding under the presumption rules. Furthermore, some foreign entities may elect to have the USWA perform and remit any required withholding to make on passthru payments of U.S.

[45] Or, if the entity receiving the payment has elected to be withheld upon under FATCA, the withholding agent must withhold an amount that satisfies the withholding instructions of the entity that has made the election based on documentation provided by that entity.

Source FDAP income to their payees. Therefore, to be in compliance with FATCA, USWAs must generally be able to identify withholdable payments to payees, determine each payee's FATCA exemption status or elective withholding requirements, and withhold accordingly. Withholding on gross proceeds will begin on or after January 1, 2017, along with withholding on any passthru payments pushed down to the USWAs.

- **Reporting**

USWAs should report on any FATCA withholdable payments made during 2014 by March 15, 2015, and then begin reporting such payments yearly afterwards, meaning that while no FATCA reporting obligations exist until March 15, 2015, USWAs must be able to track and report on FATCA withholdable payments beginning July 1, 2014 even though most payments would not be subject to withholding until 2015.

- **Use of agents for reporting and withholding obligations**

FATCA regulations allow a USWA to empower an agent to fulfill their obligations under Chapter 4 including the receipt of withholding certificates, the payment of amounts subject to withholding, withholding and deposit of tax withheld, and the reporting required on the related form. An agent is authorized only if pursuant to a written agreement and a Form 8655 "Reporting Agent Authorization" is filed with the IRS if the agent is acting as a reporting agent for filing Form 1042 or making tax deposits and payments. The USWA, nevertheless, stays responsible for any withholding liabilities or acts of its agents.

Reporting will be accomplished on Forms 1042 filed with the IRS, aggregating each USWA's withholdable payments made yearly, and on Forms 1042-S recording each payment to a payee. The Forms 1042-S must be filed with the IRS and a copy sent to the recipients. The Form 1042 used to report FATCA payments will recapitulate all payments made by a USWA for both

FATCA and Chapter 3 purposes, meaning USWAs will in general only be required to file one Form 1042 each year to report FATCA and Chapter 3 payments. Likewise, the USWA will report FATCA withholdable payments on Forms 1042-S for each payee. Each Form 1042-S will report the FATCA and Chapter 3 withholding for each payee for each kind of income paid to the payee in a given year. Correction and amendments procedures for FATCA reporting on Forms 1042 and 1042-S are similar to those under Chapter 3.

The final FATCA regulations announced a new Form 8966 (FATCA Report), that will be used mainly by FFIs and some USWAs to report specified U.S. persons. A USWA will file a Form 8966 in limited circumstances. For example, a USWA would be required to file a Form 8966 for each specified U.S. person with a direct or indirect debt or equity interest in an owner-documented FFI. Correspondingly, USWAs will be required to file a Form 8966 to report any substantial U.S. owners of a passive NFFE. The Form 8966 must be filed on or before March 31 of the subsequent year after the payments are made and will be subject to similar filing requirements as the Form 1042.

2.2.6 FFI requirements

- **FFI agreement overview and expanded affiliated group registration requirement**

Other than Model 1 FFIs, entities that meet the definition of an FFI (that are not otherwise excluded from the definition, deemed-compliant or exempt), must go into an FFI agreement with the U.S. Treasury to abstain from withholding under FATCA. Additionally, for an FFI to be qualified to go into a FFI agreement, all FFIs inside of the FFI's expanded affiliated group must register to become participating or registered deemed-compliant FFIs. On the other hand, before January 1, 2016, the EAG is allowed to have certain entities or branches that are not ready to completely fulfill the requirements of the FFI agreement insofar as they acquire a limited branch

of a participating FFI or limited FFI status for every single entity. Furthermore, an FFI must have no less than one branch that can conform to the requirements of a participating FFI, regardless of the possibility that the branch is a U.S. branch. Tragically, the limited FFI or branch will in any case be subject to withholding regardless of the fact that it should comply with all the requirements of a participating FFI to the degree reasonable in the entity's jurisdiction. In general, this implies it would be ideal from an FFI's perspective to not be in an EAG in the event that it can't be completely FATCA compliant.

Limited branches and limited FFIs

FATCA characterizes a branch as a unit, business or office of an FFI that is dealt with as a branch under the laws of its jurisdiction or is generally regulated under the laws of such jurisdiction as separate from other offices, units or branches of the FFI and that independently maintains books and records from different branches of the FFI. A branch includes areas inside of the country where the FFI is organized and all units, businesses. Offices of the FFI situated in the same country are considered as one branch. Moreover, accounts are maintained by a specific branch if the accountholder's rights and commitments are governed by the laws of the branch's jurisdiction.

To qualify as a limited FFI or limited branch, under the laws of its jurisdiction the FFI or branch can't: finish the required U.S. account reporting as provided in the FFI agreement; close the account; or transfer such account to a U.S. financial institution, a participating FFI or a reporting Model 1 FFI. Moreover for recalcitrant account holders and accounts held by nonparticipating FFIs, the limited FFI or limited branch must not have the capacity to withhold when required on

such accounts, block[46] such accounts, close such accounts or transfer such accounts to a U.S. financial institution, a participating FFI or a reporting Model 1 FFI.[47]

Limited FFIs and limited branches will lose their limited status in the event that they become participating or deemed-compliant FFIs or if the restrictions limited status as of the beginning of the third quarter following the date the restrictions were removed. All limited FFIs will cease to be limited after December 31, 2015.

- **Requirements under the FFI agreement**

Definition of a financial account

A significant number of the requirements under an FFI agreement apply to accounts or account holders. The term account or financial account are utilized reciprocally and have a particular definition under FATCA. Accordingly, not all accounts maintained by an FFI are subject to FATCA. Withholdable payments that are made to payees that are not account holders (i.e., not the proprietor of a financial account) are in general still subject to FATCA, in any case they won't be subject to the regulations that are only applicable to account holders. FATCA defines a financial account as depository accounts, custodial accounts, certain equity or debt interests in another entity or insurance and annuity contracts.

[46] Blocked means the FFI prohibits the account from conducting any transactions with respect to the account until the account is closed, transferred or the account holder provides the required documentation under FATCA.

[47] FFIs seeking to become limited FFIs must register with its expanded affiliated group as a limited FFI; and agree to its conditions.

Exceptions to the definition of a financial account

Although an account is considered a financial account if it falls under the above categorizes, the account may be excluded from the definition of a financial account if it falls under one of the following exceptions[48]:

1. Certain savings accounts

a. Certain retirement and pension accounts

b. Certain non-retirement savings accounts

c. Certain tax-favored accounts

2. Certain term life insurance contracts

3. Account held by an estate

4. Certain escrow accounts

5. Certain annuity contracts

6. Account or product excluded under an IGA (i.e., Annex II of the IGA)

Documentation and due diligence

Unless otherwise provided in an applicable Model 2 IGA, starting July 1, 2014 for new individual accounts and January 1, 2015 for new entity accounts, participating FFIs must follow specific procedures to recognize and report the FATCA status of each of its account holders to figure out if the account is a U.S. account, non-U.S. account or an account held by a recalcitrant account holder or nonparticipating FFI. Moreover, the participating FFI is required to gather and maintain

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[48] Complete details for the requirements of each of these exceptions are available in the final regulations §1.1471-5(b)(2).

certain documentation regarding payees (other than an account holder) while making certain installments.

The final FATCA regulations go into more details about the necessary requirements for documenting entity and individual account holders, including preexisting accounts (accounts existing starting July 1, 2014 for individuals and December 31, 2014 for entities).

Withholding

Under the FFI agreement, a participating FFI approves to withhold 30 percent on any withholdable payment made to a recalcitrant account holder or nonparticipating FFI. The withholding must occur at the time of payment. Satisfying this requirement also satisfies the requirement to withhold on nonparticipating FFI account holders and payees under Sections 1.1471(a) and 1472. Nevertheless, the rules under 1.1472 as discussed in the U.S. withholding section above will still be applicable to payees that are NFFEs and are not account holders.
U.S. branches of participating FFIs that are treated as a U.S. person and that fulfill their backup withholding obligations will in general follow the withholding rules that are applied to USWAs. A participating FFI that acts as a nonqualified intermediary (NQI), non-withholding foreign partnership or non-withholding foreign trust may delegate its withholding responsibility to its withholding agent by providing the requested data for that withholding agent to withhold and report on any payments (for example: providing a Form W-8IMY, withholding statement, etc.). However, participating FFIs are required to withhold to the extent the withholding agent fails to withhold the correct amount. Consequently, most participating FFIs will not have to perform withholding until 2017, the effective date for withholding gross proceeds and foreign passthru payments. Thus, the major withholding concern is the residual withholding requirement of a participating FFI if the upstream U.S. withholding agent fails to perform the proper withholding.

Participating FFIs must then put controls in place to guarantee proper withholding is performed by the upstream withholding agent. If withholding is not done correctly, the participating FFI should have procedures in place to solve this matter and avoid having to conduct the withholding itself.

The payments to limited FFIs and limited branches including those within the participating FFI's expanded affiliated group are obliged as well to fulfill the requirement of withholding. If the participating FFI must withhold on a dormant account[49] per the rules stated above, it may choose to set aside the withheld amount in escrow until the account is not dormant anymore. Once the account ceases[50] to be dormant, the participating FFI will then have to deposit the withheld amount within 90 days if the account holder does not provide valid documentation for the account. If the dormant account escheats to a foreign government under local laws, the participating FFI will then not be required to deposit the amount in escrow.

Reporting

Under the FFI agreement, a participating FFI approves to report on specified U.S. individuals, specified U.S. owners of accounts held by owner-documented FFIs, and substantial U.S. owners of accounts held by passive NFFEs. As for aggregate payments made to nonparticipating FFIs in 2015 and 2016, and aggregate payment information on payments made to recalcitrant account holders, reporting is also required. Information needs to be reported on the new Form 8966

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[49] A dormant account is an inactive account as defined by the participating FFI's jurisdiction or the participating FFI's normal operating procedures. Treas. Reg. § 1.1471-4(d)(6)(ii).

[50] A dormant account ceases to be dormant when the account holder initiates a transaction on any account, communicates with the participating FFI on any account, or ceases to be inactive as defined by the participating FFI's jurisdiction or the participating FFI's normal operating procedures. Treas. Reg. § 1.1471-4(d)(6)(iii).

(FATCA Report) and is in general due by March 31 of the year for the previous year's information (a 90-day automatic extension can be requested along with an additional 90-day extension for certain hardship reasons), except for aggregate payments made to nonparticipating FFIs. In the latter case, the participating FFI will use the Form 1042-S which will be due by March 15 of the year for the previous year's information.

For accounts held by specified U.S. persons (U.S. accounts), by U.S. owned foreign entities (i.e., passive NFFE), or by owner-documented FFIs, the participating FFI is generally required to report the following information:

- For passive NFFEs or owner-documented FFIs, the name of the entity;
- The name, address and TIN of each specified U.S. person, substantial U.S. owner of a passive NFFE or specified U.S. owner of an owner-documented FFI;
- The account number;
- The account balance or value of the account;
- Payments with respect to the account (i.e., FDAP income and gross proceeds); and
- Any other information as required on the applicable reporting form and instructions.

For recalcitrant account holders, the participating FFI is required to report the aggregate number and aggregate balance or value of accounts held by:

- Recalcitrant account holders classified as passive NFFEs that have not provided information or certifications regarding substantial U.S. owners;
- Recalcitrant account holders classified as U.S. persons that have not provided a Form W-9 and/or privacy waiver when required;
- Recalcitrant account holders that have U.S. indicia other than the above two categories and dormant accounts;

- Recalcitrant account holders that do not have U.S. indicia other than passive NFFEs or dormant accounts; and
- Recalcitrant account holders that are dormant accounts.

Finally, as the IRS anticipates that many FFIs may face challenges in satisfying these new requirements, it declared that tax years 2014 and 2015 will serve as transition years (IRS Notice 2014-33) for purposes of IRS enforcement and administration of the due diligence, reporting, and withholding provisions under Chapter 4 (FATCA), as well as the provisions under Chapters 3 and 61, and section 3406, to the extent those rules were modified by the temporary coordination regulations (Coordination Rules). Regarding this transition period, the IRS will take into consideration the extent to which a participating or deemed-compliant FFI, direct reporting NFFE, sponsoring entity, sponsored FFI, sponsored direct reporting NFFE, or withholding agent has made good faith efforts in order to comply with the requirements of the regulations of Chapter 4 and the temporary coordination regulations. Therefore, it is essential for the above mentioned entities to develop policies and procedures that show a "best efforts" approach to compliance.

2.2.7 Administrative

- **FATCA registration portal**

The FATCA Registration Portal is web-based tool implemented by the IRS to manage all the requested registrations, agreements and certifications between the IRS and the institutions subject to FATCA requirements. As soon as the said institutions are effectively registered within the FATCA registration portal, they will be able to approve to comply with their obligations associated with FATCA, along with signing their FFI agreement, if required.

The following types of entities will be expected to register on the FATCA registration portal:

- Participating FFIs

- Registered deemed-compliant FFIs

- Reporting Model 1 FFIs

- Sponsored FFIs

- (QIs)

- Withholding foreign partnerships (WPs) and withholding foreign trusts (WTs)

- Foreign branches of U.S. financial institutions

Along with the web based portal, the IRS has released Form 8957, titled "Foreign Account Tax Compliance Act (FATCA) Registration." The said form will permit an alternative method for a FFI or sponsoring entity to register as a participating FFI, reporting IGA financial institution, limited financial institution, or sponsoring entity in lieu of electronically registering through the FATCA Registration Portal. Form 8957 collects data that is required for FFIs to register and obtain a GIIN.

Form 8957 is divided into four parts:

1. Part 1 requests information on the financial institution, including:

a. Basic entity information;

b. Whether or not the entity is and intends to remain a QI, WP or WT;

c. Information on any branches outside the entity's tax residence country;

d. Identification of a Responsible Officer; and

e. Point of contact information.

2. Part 2 covers information on the members of the EAG, if any, including name, country of residence for tax purposes, and member type;

3. Part 3 allows for renewal information of QIs, WPs & WT agreements, if applicable; and

4. Part 4 is the Responsible Officer signature and certification section.

Once the institution is effectively registered with the FATCA Registration Portal (whether directly or indirectly through the Form 8957), it will be issued a GIIN. This GIIN will be used as the institution's identifying number for reporting requirements and for identifying its status to withholding agents. The portal was opened on August 19, 2013 and the IRS published the first list of participating FFIs and registered deemed-compliant FFIs (including Model 1 FFIs) on June 2, 2014 containing the list of FFIs that registered prior to May 5, 2014.

- **Responsible Officer and FFI compliance program**

A Responsible Officer must be appointed by each participating FFI, and the said officer will personally (or through designated persons) oversee compliance with the FFI agreement through an established compliance program. The Responsible Officer will be an officer of the institution or the institution's EAG with adequate authority to officially state compliance with the FFI agreement to the IRS. The compliance program established should consist of policies, procedures and processes sufficient for the FFI to fulfill the requirements of its agreement. The Responsible Officer will from time to time review compliance with the requirements of the agreement, as well as the sufficiency of the established compliance program, throughout each certification period. Within six months of the end of each certification period, the responsible officer should provide certification to the IRS that the FFI maintained effective internal controls during the certification period. However, in the event of a material failure[51] during a certification period

[51] A material failure is a failure of the participating FFI to fulfill the requirements of the FFI agreement as define in §1.1471-5(f)(3)(iv)

and is not remediated by the date of certification, the responsible officer must issue a qualified certification to the IRS.

- **FFI enforcement: Compliance verification and event of default**

As stated above, based on the information included in submitted compliance certifications, the IRS may detect concerns of substantial non-compliance with the requirements of the FFI agreement. Therefore, it may then request additional information to verify compliance. On the other hand, the IRS may request from an external auditor or third party consultant to conduct specific review procedures.

Based on the above procedures, the institution may be notified of an event of default if the IRS concludes that this institution failed to establish or maintain a compliance program that fulfills the requirements of the FFI agreement or failed to perform a periodic review.

Therefore, an event of default takes place if the IRS recognizes that the participating FFI failed to perform material obligations required regarding due diligence, withholding or reporting requirements of the FFI agreement, or failed to substantially comply with the requirements of the FFI agreement.

An event of default may also include the occurrence of any of the following:

- Failure to make the required initial compliance program certification or to make the periodic certifications required within the specified time period;

- Failure to take timely corrective actions to remedy a material failure after making a qualified certification;

- Failure to obtain valid waivers from holders of U.S. accounts or failure to otherwise close or transfer such U.S. accounts as required;

- Failure to significantly reduce, over a period of time, the number of account holders or payees that the participating FFI is required to treat as recalcitrant account holders or nonparticipating FFIs;

- Making incorrect claims for refund under the collective refund procedures;

- Failure to cooperate with an IRS request for additional information or making any fraudulent statement or misrepresentation of material fact to the IRS; or

- Any transaction relating to sponsorship, promotion or noncustodial distribution for or on behalf of any local FFI that is an investment entity.

In case the IRS detects the default, it will then deliver a notice of default to the participating FFI specifying the event of default and requesting from the participating FFI to remediate the default within a specified time period. The FFI should respond to the notice by providing the requested data, or state the reason why it disagrees that an event of default has occurred. The IRS may deliver a notice terminating the FFI's participating FFI status if the FFI does not respond within the given timeframe. A participating FFI will be allowed to remediate an event of default to the extent that it agrees with the IRS on a remediation plan.

- **Refunds**

The withholding under Chapter 4 may result in overpayment of tax for an account holder or payee during a calendar year, therefore, a participating FFI or reporting Model 1 FFI may request a credit or refund from the IRS for this overpayment on behalf of the account holder or payee. Otherwise, the participating FFI or Model 1 FFI (or its withholding agent) must, within a reasonable period, file and furnish a Form 1042-S and Form 1042 (or amended forms) to report to any account holder or payee that has requested such form regarding the tax withheld by the participating FFI or Model 1 FFI or its withholding agent.

The participating FFI or reporting Model 1 FFI must as well submit a proclamation including the reason for overpayment and certain representations about the overpayment, including confirmation that the participating FFI or reporting Model 1 FFI will not issue a Form 1042-S to any account holder or payee for which a refund is being sought.

Finally, collective refunds are not allowed for payments made to an account holder or payee that is a nonparticipating FFI, a participating FFI or reporting Model 1 FFI that is a flow-through entity or acting as an intermediary, a U.S. person or a passive NFFE that is a flow-through entity with respect to taxes allocated to its substantial U.S. owners. It is important to note that no credit or refund will be permitted after the expiry of the statutory period of limitation for refunds.

CHAPTER 3

EVOLUTION OF FATCA

3.1 Analysis of the Updated FATCA Regulations

On February 20, 2014, the U.S. Treasury and IRS released 565 pages consisting of two packages of regulations under FATCA. First, the "coordination regulations" which aim was to bridge the existing regulations under Chapters 3 and 61 and Section 3406 of the Internal Revenue Code (U.S. tax documentation, withholding and information reporting practices etc.) with the new FATCA rules. Second, a package of technical corrections and revisions which made numerous changes to the final FATCA regulations.

This part will analyze the most significant modifications to the final FATCA regulations.

- **Nonfinancial group exception — holding companies, treasury centers, or captive finance entities availed by an investment vehicle**

The nonfinancial group exception was amended in the case of a holding company, treasury center, or captive finance entity that has been newly acquired by an investment entity or similar arrangement. Under the previous regulations, such entities would not qualify for the nonfinancial group exception if possessed by an investment vehicle or similar arrangement because the latter could be considered availed by such entity. Whereas the revised regulations stated that if the entity existed for 6 months preceding the acquisition and conducted activities on a regular basis in the ordinary course of business, it will still qualify for the nonfinancial group exception in the absence of an investment strategy.

Nonfinancial groups should reconsider this exception in light of new rule aimed at reducing FFIs in private equity structures

This modification to the definition of nonfinancial group exception is a welcome adjustment that may aid in further reducing the number of FFIs for many entities, mainly for holding companies, treasury centers or captive finance entities that could benefit from the said exception if they were acquired by a private equity fund, venture capital fund, or similar investment vehicle. This is mainly vital due to the rise of private equity and other investment funds acquiring considerable majority interests in existing operating establishments.

Nonfinancial groups that have been purchased by an investment vehicle or have such a vehicle in their expanded affiliated group should reconsider whether their holding companies, treasury centers, or captive finance centers can qualify for the nonfinancial group exception.

- **Insurance companies**

The term "U.S. person" was amended to include a foreign insurance company that has made an election under Code section 953(d), on condition that either the foreign insurance company is not a specified insurance company or the foreign insurance company is a specified insurance company and is licensed to do business in any state. A specified insurance company that is not licensed to conduct its business in any state will continue to be considered as a foreign person under the final regulations.

U.S. withholding agents may need to revisit documentation for non-U.S. insurance companies.

Despite the fact that this is in general good news for insurance companies outside of the U.S., those withholding agents in the U.S. having to document the insurance companies to which they pay premiums may have a hard time identifying whether the documentation received from such entities is valid. Generally, a U.S. withholding agent may know if an insurance company outside of the U.S. (particularly one offering life insurance or annuities) is an FFI. Nevertheless, the U.S. withholding agent may not be able to identify if it can accept a Form W-9 from such an entity

because it will not be obvious whether the insurance company has made a section 953(d) election. In fact, this information gap requires a careful U.S withholding agent to separately ask the insurance company if it made such an election and provide proof of such election in some complex matters.

- **Expanded affiliated group also redefined**

The definition of an expanded affiliated group (EAG) was expanded to allow a partnership or other non-corporate entity to choose to be considered as the common parent entity of an EAG. These updated regulations propose new rules for establishing the ownership requirements to identify if an entity is a member of an EAG. Therefore, a partnership or other non-corporate entity that possesses a corporation can now be included in that corporation's chain of entities that is part of the same EAG.

The expanded affiliated group rule changes may help certain entities but further complicate these rules

The main purpose behind the EAG concept was to enable the IRS to enforce compliance to a wide-ranging group of entities. The enabling factor behind this concept is the rule that an FFI cannot be considered a participating FFI or otherwise deemed compliant if there is a member in the EAG that is not compliant or otherwise exempt from the rules. The original regulations relied on a set of rules (the Code section 1504(b) rules) that involuntarily left entities outside an EAG given that the common parent of the group was not a corporation. In some cases, this may lead to no EAG if there was no corporate entity in the affiliated structure or created mini-EAGs within the structure if there were corporations within the structure but no common corporate parent. This inconsistency was not what the IRS initially planned and thus it complicated the implementation of the EAG rules.

Unfortunately, the change in the updated regulations did not provide certainty. The regulations instead made the election to treat a non-corporate common parent as a corporation for EAG determination an optional election.

On one hand, the advantage of this election is that it may make the registration for affiliated groups easier and permit some entities to depend on the nonfinancial group exception that requires the entity to be part of an EAG. On the other hand, the disadvantage could be a more complex compliance program structure and, for groups containing FFIs that will not be compliant, may cause an issue with the rule that all FFIs in the EAG should be compliant or exempt. In addition, the election decision cannot be easily modified without the IRS approval. Clients should now cautiously weigh the advantages and disadvantages of the election before making a decision.

- **Treatment of disregarded entities**

Branches

Regarding an FFI, the definition of a branch has been amended to embrace an entity that is a disregarded entity separate from the FFI. The GIIN verification processes that apply in relating to a branch of an FFI apply as well to a disregarded entity that is owned by an FFI. Furthermore, a disregarded entity of an FFI can be a limited branch. Lastly, all units, businesses, offices and all disregarded entities of participating FFIs located in a single country are treated as a single branch and may use the same GIIN.

Although the adjustment of the branch definition to comprise a disregarded entity of an FFI helps those entities specifically, the updated regulations did not explain other issues related to the disregarded entities

The IRS provided explaining on how disregarded entities should be treated under the updated regulations. Yet, the modifications leave certain issues unclear. On one hand, the rules designate that a disregarded entity is only dealt with as a branch if it is a disregarded entity of an FFI, meaning that disregarded entities of a USFI should be treated as separate legal entities for registration objectives. Even though this is not a major impact, it does further complicate the rules.

Modifications to events of default — generally no longer required to close accounts

Events of default

The updated regulations explain that an event of default for failing to considerably decrease, over a period of time, the number of account holders or payees of a Participating Foreign Financial Institution (PFFI) that must be dealt with as recalcitrant account holders or nonparticipating FFIs, takes place only if the PFFI failed to truly comply with the due diligence procedures to identify and document account holders and payees as stated in the FFI Agreement.

Relief was provided with respect to closing accounts of recalcitrant account holders or non-participating FFIs, but participating FFIs ought to examine whether they should implement policies to close accounts when not doing otherwise may trigger withholding liabilities

Before the updated regulations, participating FFIs were obliged to close accounts of recalcitrant account holders and nonparticipating FFIs within a reasonable period of time. Following the updated regulations, account closure is not required anymore on condition that the participating FFI is able to withhold on payments to the non-compliant account under the laws of its jurisdiction. Furthermore in many cases, the participating FFI is not subject to withholding before 2017 because only U.S. source payments are withholdable, and in general the

participating FFI accepts such payments as an intermediary and the immediate payer of the income is subject to the withholding responsibility.

Therefore, it is not clear what would happen if the jurisdiction does not allow the participating FFI to withhold, but the participating FFI provides the immediate payer with the information required for the payer to perform withholding. Hence, this issue must be examined in order to identify if a participating FFI should adopt a policy to close certain recalcitrant or non-participating FFI accounts.

Due diligence

Identification of U.S. persons — presumption rules for pre-existing obligations:

The updated regulations amended the rule concerning the identification of U.S. persons to allow U.S. withholding agents to consider a payee as a U.S. person on condition that the withholding agent has formerly established, that the payee is an exempt recipient for purposes of Chapter 61. This rule applies only on pre-existing obligations. U.S. withholding agents should collect Forms W-9 or other documentation to establish the exempt recipient status of new account holders.

This relieved the existing accounts, but the withholding agents should still be wary.

Luckily the IRS altered its position and permitted pre-existing obligations that were properly treated as exempt recipients under Chapter 61 to be exempt from documentation requirements. Yet, withholding agents should be alert that the exception only applies if the entity is properly treated as an exempt recipient under Chapter 61. It is not uncommon for withholding agents to mistakenly apply the rule to entities such as partnerships or limited liability corporations, which led the IRS to change the rule. The new exception may give withholding agents an incorrect sense of safety with respect to payees formerly treated as exempt recipients. As a result,

withholding agents should confirm that previous procedures were comprehensive enough to avoid misapplication of the exemption.

Reporting

Transitional reporting to nonparticipating FFIs

The updated regulations integrate the modifications declared in Notice 2013-69 and the final FFI Agreement with respect to the transitional reporting of foreign reportable amounts paid to nonparticipating FFIs. The transitional reporting is applicable only regarding payments made to nonparticipating FFIs that maintain an account with the PFFI, and allow the PFFI to report all payments made concerning an account, and not payments of foreign reportable amounts only.

The new regulations limit reporting to financial accounts but contradictions exist in IGA countries and the definition of a financial account in the derivative contract context is vague

The limitation of reporting only payments made to financial accounts held by nonparticipating FFIs as opposed to any payments made to a nonparticipating FFI is a major modification to a participating FFI's reporting responsibilities. If a derivative contract itself is a financial account is still debatable by many in industry. Many financial institutions take the traditional approach that if it must create an account in its records to manage duties under a derivative contract, it will consider such account as a custodial account. However, for contracts where collateral is not posted and where the financial institution has taken a more modern approach of the financial account definition, the new rule will help improve this temporary reporting obligation.

To conclude, while the updated regulations discussed above brought welcome relief and closure in some aspects, it brought as well many complexes. In reality, many of the rules are still impermanent and subject to modification. FATCA is in an ongoing evolution and will continue

to evolve over the subsequent numerous years. Everyone impacted by FATCA should remain cautious as supplementary guidance is released and problems arise. Thus, better information will lead to better preparation for the evolving worldwide data reporting era.

3.2 Timeline of Evolution of FATCA

3.2.1 From 2009 till 2015

- May 11, 2009:

The first "Green Book" is issued containing budget proposals for 2010. The Green Book recommends some methods to fight tax evasion by U.S. investors who operate through non U.S. financial institutions and investment structures. The first proposal was to treat qualified intermediaries ("QI") as U.S. payers for Form 1099 purposes, significantly expanding their tax reporting obligations. The second proposal required 30% withholding on all payments of U.S. source income paid to nonqualified intermediaries ("NQIs") in order to drive investors toward QIs. NQIs in non-treaty jurisdictions would be subjected to an additional 20% withholding tax on gross proceeds from the sales of securities.

- October 27, 2009:

The Foreign Account Tax Compliance Act ("FATCA") was introduced concurrently in the House (H.R. 3933) and Senate (S. 1934). FATCA introduced a new 30% withholding tax on "foreign financial institutions" ("FFIs") and "nonfinancial foreign entities" ("NFFEs") enforcing the disclosure of U.S. account holders and investors to the IRS. Taking a cue from the QI program, FATCA obliged FFIs to enter with the IRS into an agreement to disclose their U.S. account holders and follow due diligence procedures to avoid the 30% withholding tax. NFFEs are required to disclose any U.S. owners with more than 10% interest or they will be subject as

well to the 30% withholding. Withholding applies to "withholdable payments," defined as U.S. source income and gross proceeds from the sale of securities that could generate U.S. source income. FATCA's original effective date was January 1, 2011.

- December 9, 2009:

The Tax Extenders Act of 2009 ("Extenders"), which included the regulations that originated in FATCA, passes the House of Representatives. Extenders made several minor but important changes to FATCA, including the modification of the effective date to the beginning of 2013, expanding the ability of IRS regulation writers to exempt some types of payments and entities, and introducing the idea of a "recalcitrant account holder," an account holder who declines to cooperate with requests for information. Withholdable payments by an FFI to a recalcitrant account holder are subject to 30% withholding, and the FFI may choose to push the withholding obligation upstream to a withholding agent that it receives the withholdable payment from.

- February 1, 2010:

The 2011 Green Book by the Obama Administration was issued and it included suggestions that mirror FATCA, signaling that the Administration is abandoning the proposals in its previous Green Book and validating FATCA.

- February 24, 2010:

The Hiring Incentives to Restore Employment ("HIRE") Act passes the Senate, integrating and refining the FATCA provisions. HIRE gave the IRS more discretion to describe what type of information is required from FFIs and what constitutes a "financial account" that may be subject to the disclosure rules.

- March 4, 2010:

The House agrees to the Senate FATCA language and passes HIRE, amending some other parts of the bill. The bill goes back to the Senate.

- March 17, 2010:

The Senate concurs with the House amendment and sends HIRE to the president.

- March 18, 2010:

President Obama signs the FATCA provisions into law as part of the Hiring Incentives to Restore Employment (HIRE) Act.

- April 7, 2010:

The IRS releases Announcement 2010-22, requesting comments regarding "guidance projects and issues concerning the interpretation and implementation" of FATCA.

- May 20, 2010:

The IRS releases Notice 2010-46, "Prevention of over Withholding and U.S. Tax Avoidance with Respect to Certain Substitute Dividend Payments," to address provisions in IRC § 871(l) included in HIRE. The notice amends Notice 9766 on an interim basis and revokes it entirely effective September 14, 2010. The notice states that regulations will be issued generally providing withholding relief for securities lending transactions conducted through a "Qualified Securities Lender" ("QSL") subject to IRS or QI audit. Transactions not conducted through a QSL would be subject to a more cumbersome "credit forward" system to allow relief for withholding earlier in a chain of securities lending transactions.

- August 27, 2010:

The IRS releases Notice 2010-60, its first round of published guidance which includes the definition of a foreign financial institution (FFI), certain FATCA exemptions, and account documentation and reporting requirements.

- April 8, 2011:

The IRS releases Notice 2011-34, which revises certain requirements introduced in Notice 2010-60 and provides further guidance on "priority concerns," including passthru payments.

- July 15, 2011:

The IRS issues Notice 2011-53, which provides additional time for participating FFIs to enter into FFI agreements and to meet FATCA requirements associated with account identification, information reporting, and withholding.

- July 25, 2011:

The IRS releases a revised Notice 2011-53 which clarifies that the revised withholding timeline in Notice 2011-53 applies to payments made by all withholding agents to both FFIs and Non-Financial Foreign Entities (NFFEs).

- January 19, 2012:

The IRS issues temporary and proposed regulations under IRC § 871(m) regarding "dividend equivalent" payments. Payments under "specified notional principal contracts" ("SNPCs") that are tied to U.S. source dividends are subject to U.S. tax and withholding. The temporary regulations maintain the status quo in the statute, which otherwise would have expired on March 18, 2012, through the end of 2012. The proposed regulations list seven new or amended types of SNPCs starting in 2013, and provide as well that similar payments under other "equity linked instruments," such as futures and forward contracts, are subject to the same rules.

- February 8, 2012:

The IRS issues approximately 400 pages of proposed regulations under FATCA. The proposed regulations follow up on guidance formerly issued in Notice's 2010-60,

2011-34 and 2011-53. IRS also issues combined statement indicating that it is pursuing FATCA partnerships with France, Germany, Italy, Spain and the United Kingdom. FATCA partnerships will help reduce or avoid local law restrictions on an FFI's ability to comply with FATCA.

- May 15, 2012:

The IRS holds a hearing on the proposed FATCA regulations. Twenty speakers give testimony mainly about the implementation timeline and proposed FATCA partnership agreements to a mostly silent panel of IRS and Treasury personnel.

- June 6, 2012:

The IRS releases two unofficial drafts of forms to replace the current Form W–8BEN when FATCA is effective – concrete proof on how dramatically the client onboarding process will be modified under FATCA. The two forms would be used to certify that the recipient of a payment of income is a non U.S. person who is the beneficial owner of the payment. One of the forms is a slimmed down Form W–8BEN designed exclusively for individuals. The other is new Form W–8BEN–E for entities.

- July 26, 2012:

The U.S. and five countries issue two versions of "Model 1" intergovernmental agreement ("IGA") under FATCA. The main objective of the IGA is to simplify conflicts between FATCA and the local laws. Model 1 is anticipated to be used for IGAs with France, Germany, Italy, Spain, and the United Kingdom, and other countries. One version of Model 1 demands reciprocal information exchange between the U.S. and the partner country; The other version is nonreciprocal, and requires only the partner country to share information with the U.S.

- August 14, 2012:

The IRS issues a revised draft of Form W-8IMY. Even though the draft was approximately as expected, the IMY form contains some new features and as yet unexplained items – and no instructions.

- August 16, 2012:

The IRS issues a revised draft of Form W-8ECI. The utmost evident feature of the new ECI form is that the line for the signer's "capacity," which often caused arguments on audit over whether a particular title was sufficient, was removed and replaced by a simple checkbox where the signer certifies that he/she has the capacity to sign the form.

- August 18, 2012:

The IRS releases a draft Form W-8EXP, with some minor modifications like the incorporation of the "checkbox" approach to capacity first seen on the draft Form W-8ECI.

- September 14, 2012:

The first signed FATCA IGA is declared with the United Kingdom. The agreement in general follows the reciprocal Model 1 agreement published on July 26. The UK IGA establish some new articles and the first example of a completed Annex II, listing entities and products that are exempt from FATCA.

- October 24, 2012:

The IRS publishes Announcement 2012-42, which which revises certain timelines under the proposed FATCA regulations, bringing those dates into line with the dates in the FATCA IGA. U.S. financial institutions, PFFI and reporting financial institutions in IGA countries should now have new account procedures in place by January 1, 2014, should review preexisting high value individual accounts by December 31, 2014, and should review other preexisting accounts by December 31, 2015. The announcement also previews important guidance in relation to how the grandfathering rules work for foreign pass thru payments, derivatives and collateral.

- November 8, 2012:

The U.S. Treasury declares that more than 50 countries are in discussions regarding IGAs. However, only 17 are anticipated to have signed IGAs by the end of 2012.

- November 14, 2012:

Treasury issues Model 2 of the FATCA IGA. Unlike Model 1, Model 2 demands from the financial institutions to report directly to the IRS, rather than their home countries. While Model 2 is largely consistent with Model 1 and the IGA concluded with the United Kingdom, it contains some novel features, mainly for collective investment vehicles. Treasury also puts revised Model 1 agreements on its website, but does not make any public announcement regarding the update. The update to Model 1 reflects most of the new features found in Model 2.

- November 19, 2012:

Denmark reveals that it signed a FATCA IGA. The agreement is similar to the UK IGA and is a Model 1 reciprocal agreement also. The Danish agreement is accompanied by a Memorandum of Understanding ("MOU") that reporting with respect to securities registered with the Danish Central Securities Depository ("DCSD") should be done by the custodians who hold the securities on behalf of customers, and not the DCSD (although the DCSD may do that reporting on behalf of the custodians if it wishes to do so). This is the first instance of an MOU to accompany an IGA.

- November 19, 2012:

Mexico signs a Model 1 Reciprocal FATCA IGA. This agreement is the first from its kind to go into effect without the need for ratification by the other government. The effective date is January 1, 2013.

- December 5, 2012:

Treasury informally explains in a press report about the modifications of the grandfathering rules that will appear in the final regulations. These modifications go even beyond what Announcement 2012-42 provided.

On one hand, the general grandfathering rule sunset date will be extended to December 31, 2013, meaning that the December 31, 2012, date in the proposed regulations will become December 31, 2013, in the final regulations. Consequently, all definite tenure obligations entered into in 2013 will be grandfathered.

On the other hand, the rule in Announcement 2012-42 regarding the collateral posted to secure obligations under notional principal contracts ("NPCs") will be extended to all transactions (not just NPCs) where collateral is posted. Hence, if the secured obligation is entered into before the end of 2013, payments regarding the collateral would be grandfathered, even if the collateral is an obligation entered into or materially modified after 2013. Collateral substituted after 2013 would fall into this classification.

Lastly, in the "opposite" case where the secured obligation is entered into after 2013 (and therefore is not grandfathered) but the collateral is a grandfathered obligation, payments regarding the collateral itself will still be grandfathered due to the status of the collateral. The non-grandfathered status of the secured obligation is not relevant. The special rule for collateral is intended to extend grandfathering relief —not carve back the grandfathering rule for the collateral itself.

Treasury chooses to keep these changes un-announced formally.

- <u>December 18, 2012:</u>

The UK releases draft FATCA regulations and guidance notes under its IGA with the U.S. Although the draft regulations are a fairly straightforward translation of the US-UK IGA into British regulatory form, the draft guidance notes cover much more comprehension into how HMRC expects FATCA to be executed. The UK issues as well a summary of replies to its public consultation and a "frequently asked questions" document regarding privacy issues.

- December 21, 2012:

Ireland signs a Model 1 Reciprocal FATCA IGA.

- January 17, 2013:

The IRS issues final regulations under FATCA (published officially on January 28). These regulations consist of 544 pages of explanatory preamble and operative rules. Additional clarification is still expected to be released regarding the FFI agreement, the FFI registration portal, and revised Forms W-8 to identify account holders.

- February 14, 2013:

Switzerland signs the first Model 2 FATCA IGA.

- April 15, 2013:

Norway signs a Model 1 Reciprocal FATCA IGA.

- May 9, 2013:

The U.S. Treasury posts revised Model IGAs and Annexes.

- May 14, 2013:

Spain signs a Model 1 Reciprocal FATCA IGA.

- May 28, 2013:

The U.S. Treasury posts revised versions of Annex II to the IGAs.

- May 31, 2013:

Germany signs a Model 1 Reciprocal FATCA IGA.

- May 31, 2013:

The U.K. issues further FATCA Guidance notes and revised draft regulations. The guidance brings the rules in the U.K. into line with much of the regulations.

- June 11, 2013:

Japan signs a Model 2 FATCA IGA (though the agreement is called a "Statement" rather than an agreement).

- July 12, 2013:

Just days before the FATCA registration portal is to open, the IRS releases Notice 2013-43, pushing back the portal opening date to August 19, 2013, and delaying many documentation and withholding deadlines by six months.

- July 12, 2013:

The U.S. Treasury posts revised Model IGAs and Annexes.

- August 19, 2013:

The IRS FATCA Registration Portal opens.

- August 19, 2013:

The U.S. Treasury posts revised Model IGAs and new versions of Annex II.

- September 9, 2013:

The IRS publishes "technical corrections" to the final FATCA regulations.

While the modifications are minor, they are worth noting.

- October 29, 2013:

The IRS releases Notice 2013-69, which includes a draft FFI agreement and previews several important changes planned for the next round of FATCA regulations.

- November 4, 2013:

The U.S. Treasury posts revised Model IGAs and Annexes.

- November 14, 2013:

France signs a Model 1 Reciprocal FATCA IGA.

- November 26, 2013:

Costa Rica signs a Model 1 Reciprocal FATCA IGA.

- November 29, 2013:

The Cayman Islands signs a Model 1 Nonreciprocal FATCA IGA.

- December 13, 2013:

The British Crown Dependencies of Guernsey, the Isle of Man and Jersey each sign a Model 1 Reciprocal FATCA IGA.

- December 13, 2013:

The IRS releases Announcement 2014-1, to remind the financial institutions of the key dates and updated timing for the final FFI Agreement and the QI, WP and WT agreements.

- December 16, 2013:

Malta signs a Model 1 Reciprocal FATCA IGA.

- December 17, 2013:

The IRS declares that it has finalized the format for automatically exchanging FATCA data with IGA jurisdictions.

- December 18, 2013:

Netherlands signs a Model 1 Reciprocal FATCA IGA, accompanied by an MOU.

- December 19, 2013:

Bermuda signs a Model 2 FATCA IGA.

- December 26, 2013:

The IRS releases Rev. Proc. 2014-13, containing the final FFI Agreement.

The FFI Agreement in general follows the draft published as Notice 2013-69 in October 2013. Amendments include updates to cross-references and other changes to conform the FFI Agreement to the regulations, corrections of minor errors, and explanations.

- January 10, 2014:

Italy signs a Model 1 Reciprocal IGA.

- February 4, 2014:

Hungary signs a Model 1 Reciprocal IGA.

- February 5, 2014:

Canada signs a Model 1 Reciprocal IGA.

- February 20, 2014:

IRS released two packages of regulations under FATCA amounting to 565 pages. First, the "coordination" regulations attempt to bridge existing U.S. tax documentation, withholding and information reporting practices to the new FATCA rules. Second, a package of technical corrections and revisions makes a vast number of changes to the final FATCA regulations (in addition to the updates issued last September in T.D. 9610 and the changes previewed in Notice 2013-69 last October).

- March 3, 2014:

The IRS released final versions of Form W-8BEN and W-8ECI, along with instructions for the Form W-8BEN. The newly finalized forms appear to closely track the drafts released in May and June 2013, but require individuals to provide a date of birth even if a foreign taxpayer identification number is provided, as foreshadowed by the recently released updates to the regulations.

- March 5, 2014:

The IRS releases two important forms for FATCA tax reporting. Form 8966 will be used to report on U.S. accounts, owner documented FFIs and nonparticipating FFIs. Form 1042 is the tax return filed by withholding agents to report the amount of U.S. source income paid and tax withheld. The Form 1042 instructions are not released until May 2.

- March 10, 2014:

The IRS publishes the instructions to Form W-8ECI.

- March 30, 2014:

The IRS finalizes Form W-8BEN-E, the main U.S. tax form for identifying non U.S. entities for FATCA and other U.S. withholding tax purposes.

Controversially, the version date on the form is February 2014, denoting that withholding agents may have only four months to start using the form— even though instructions were not issued.

- April 2, 2014:

Announcement 2014-17 declares that the IRS will treat 19 countries that have not yet signed FATCA IGAs as having IGAs in effect. The countries have all reached "agreements in substance" on the IGAs and have consented to having their names on the list. Prominent omissions include China, Hong Kong, Russia, and Singapore.

- April 30, 2014:

The IRS releases Form W-8IMY but without instructions.

- May 2, 2014:

The IRS issues Notice 2014-33, which comprises many important declarations related to FATCA. The main declaration was that calendar years 2014-2015 "will be regarded as a transition period" for IRS implementation of FATCA's due diligence, reporting and withholding rules. The notice permits as well withholding agents to treat entity accounts opened in the second half of 2014 as preexisting accounts and previews several significant changes to the regulations.

- May 5, 2014:

Singapore reaches an agreement in substance for a Model 1 IGA.

- May 9, 2014:

Hong Kong reaches an agreement in substance for a Model 2 IGA.

- June 11-12, 2014:

IRS officials participate in the Executive Enterprises Institute's 26th Annual Forum on International Tax Withholding and Information Reporting. The presenters foreshadow many of the upcoming guidance items for FATCA.

- June 24, 2014:

The IRS releases a revised FFI agreement.

- June 25, 2014:

The IRS releases instruction for Form W-8BEN-E (the form foreign entities to declare beneficial ownership of income) and Form 8966 (FATCA Report).

- June 26, 2014:

China reaches an agreement in substance for a Model 1 IGA.

- June 27, 2014:

The IRS releases the instructions for the Form 1042-S for 2014. This is the form that withholding agents will use to report U.S. source payments and withholding under both FATCA and chapter 3.

- June 27, 2014:

The IRS issues a substantial revised Qualified Intermediary ("QI") agreement.

- June 30, 2014:

Russia ratifies legislation authorizing its financial institutions to report to the IRS under FATCA. The number of countries with signed IGAs or agreements in substance reached 90, and the GDP of the covered countries (including Russia) is 90 percent of the world's GDP.

- June 30, 2014:

The IRS releases corrections to the coordination regulations released on February 20.

- July 1, 2014:

FATCA goes into effect.

- July 1, 2014:

FATCA withholding is not required on obligations outstanding on 1 July 2014 (unless they are materially modified subsequent to 1 July 2014). Obligations to make a payment with respect to, or to repay, collateral posted to secure obligations under a notional principal contract (NPC) that is a grandfathered obligation are also grandfathered.

Moreover, transition period begins for purposes of IRS enforcement and administration of FATCA Due Diligence, Withholding and Reporting provisions; and certain provisions of chapters 3 and 61, and section 3406 to the extent rules were recently modified (ending 31 Dec 15). Finally, FATCA-compliant onboarding procedures for new accounts of USWAs as well as PFFIs should be operational. A USWA or PFFI may treat an obligation (which includes an account) held by an entity that is opened, executed, or issued on or after July 1, 2014, and before January 1, 2015, as a preexisting obligation. USWAs & PFFIs begin to withhold on US source Fixed, Determinable, Annual, Periodic (FDAP) payments to new accounts held by documented NPFFIs.

PFFIs must withhold on US source FDAP payments to recalcitrant accounts.

- August 2014:

Czech Republic, Lithuania, and Sweden entered into FATCA IGA with U.S.

- September 2014:

Brazil enter into FATCA IGA with U.S.

- October 2014:

Poland enters into FATCA IGA with U.S.

- November 2014:

Bahamas, Hong Kong, Barbados, Moldova, entered into FATCA IGA with U.S.

- December 2015:

Turks and Caicos Island, Cyprus, Bulgaria, Singapore, Curaçao, entered into into FATCA IGA with U.S.

- December 31, 2014:

For purposes of Chapter 3 withholding, withholding certificates and documentary evidence that would otherwise expire on 31 December 2013, will instead expire on 31 December 2014, unless the occurrence of a change in circumstances that would otherwise render the withholding certificate or documentary evidence incorrect or unreliable. Regarding pre-existing obligations, USWAs and other WAs, other than participating FFIs, are required to document pre-existing payees that are prima facie FFIs by 31 December 2014. PFFIs are required to document these prima facie FFI payees by the later of 31 December 2014, or six months after the effective date of their FFI Agreement.

- January 1, 2015:

WAs, USWAs and PFFIs should start treating undocumented pre-existing prima facie FFIs as NPFFIs after the 31 December 2014 due diligence deadline (or, for PFFIs, six months after the effective date of the FFI agreement, if later) passes until the date the withholding agent attains adequate documentation to establish a different Chapter 4 status for the payee. Hence, all withholding agents should withhold on withholdable payments made to these NPFFIs.

- January 2015:

Qatar entered into FATCA IGA with U.S.

- February 2015:

Agreement between the Government of the United States of America and the Government of the Republic of Kosovo to Improve International Tax Compliance and to Implement FATCA.

- March 15, 2015:

Reporting on Forms 1042 and 1042-S related to US FDAP payments to foreign entity recipients began.

- March 31, 2015:

PFFIs began the yearly reporting of account balances and identifying information for year-end 2014. Information that was reported included: name, address, Tax Identification Number (TIN) and account number of either (1) the account holder, who is a specified US person; (2) the NFFE that is US-owned (TIN if available) and of each substantial US owner of such entity; or (3) the owner-documented FFI (ODFFI) and of each specified US person owner of the ODFFI.

- March 2015:

Belarus and Croatia entered into FATCA IGA with U.S.

- April 2015:

Uzbekistan and Kuwait entered into FATCA IGA with U.S.

- May 2015:

Columbia, Iceland, Romania entered into FATCA IGA with U.S.

- June 2015:

South Korea, Holy See (Vatican City), and United Arab Emirates entered into FATCA IGA with U.S.

- June 30, 2015:

PFFIs must complete due diligence on high-value accounts within one year of the effective date of their FFI agreement.

- July 2015:

India, Georgia, Philippines, Turkey, and Slovak Republic entered into FATCA IGA with U.S.

- July 1, 2015:

PFFIs begin withholding on high-value pre-existing accounts identified as recalcitrant.

- August 2015:

Portugal, St. Vincent and the Grenadines, St. Kitts and Nevis, entered into FATCA IGA with U.S.

- September 2015:

Azerbaijan, Montserrat, and Cambodia entered into FATCA IGA with U.S.

- September 30, 2015:

Model 1 IGA requires the competent authority to begin yearly reporting to the IRS.

- October 2015:

Algeria and San Marino entered into FATCA IGA with U.S.

- November 2015:

Angola entered into FATCA IGA with U.S.

- December 31, 2015:

Transition period ended for purposes of IRS implementation and administration of FATCA Due Diligence, Withholding and Reporting provisions; and some provisions of chapters 3 and 61, as well as section 3406 to the extent rules were lately amended.

3.2.2 Projected Timeline from 2016 till 2018

- January 1, 2016:

Members of a PFFI's expanded affiliated group and branches with local law restrictions to compliance will no longer be able to claim the limited FFI or limited branch exemptions from compliance.

- March 31, 2016:

PFFIs report YE 2015 non-US reportable amounts paid to NPFFIs.

PFFIs: Annual reporting for US accounts includes payments other than gross proceeds for year-end 2015.

- June 30, 2016:

Pre-existing obligations: USWAs and WAs, other than participating FFIs, will be required to document all remaining pre-existing accounts by 30 June 2016. Undocumented entity accounts and payees will be treated as NPFFIs after that date.

Pre-existing obligations: PFFIs will be required to document all remaining accounts by the later of 30 June 2016 or six months after the effective date of their FFI Agreement. Undocumented entity accounts and payees will be treated as NPFFIs, and undocumented individual account holders will be treated as recalcitrant after that date.

- July 1, 2016:

Obligations that give rise to a dividend equivalent [pursuant to §871(m)] are grandfathered until the date the obligation is first subject to dividend equivalent treatment plus six months.

PFFIs begin withholding on all recalcitrant individual accounts and undocumented entity accounts that were pre-existing accounts. USWAs and WAs begin withholding on all undocumented entity accounts that were pre-existing accounts.

- August 29, 2016:

Responsible officer must certify that:

The high-value pre-existing individual account due diligence is complete, that all account due diligence is complete and that all documentation requirements are complete, or if no documentation is obtained, account is treated as a recalcitrant account;

The PFFI did not have any formal or informal practices or procedures in place at any time from 6 August 2011 through the date of certification to assist account holders in the avoidance of Chapter 4.

- December 31, 2016:

USWAs and PFFIs ability to rely on pre-FATCA Forms W-8 from certain payees expires after 31 December 2016.

- January 1, 2017:

USWAs, WAs and PFFIs are required to withhold on gross proceeds payments made to recalcitrant individual and entity accounts.

Finals regulations "reserved" on definition of foreign passthru payments. Any required withholding on such payments will not occur before 1 January 2017.

Obligations that produce or could produce a foreign passthru payment (that cannot produce a withholdable payment) are grandfathered until the date final regulations are issued defining the term “foreign passthru payment” plus six months.

- March 31, 2017:

PFFIs report YE 2016 non-US reportable amounts paid to NPFFIs.

PFFIs: US account reporting to include gross proceeds on sales or redemption of property in custodial accounts.

- March 15, 2018:

PFFIs, WAs and USWAs include US gross proceeds for year-end 2017 subject to withholding on Forms 1042 and 1042-S.

- June 30, 2018:

Once every three years, the responsible officer must certify to the IRS that the PFFI is in compliance with the FFI agreement and make a certification on effective internal controls.

CHAPTER 4

DATA COLLECTION, ANALYSIS, AND FINDINGS

4.1 Introduction

This chapter presents the primary data collected as answers to the questions addressed to four banks (Bank of Beirut, BBAC, Fransabank, Cedrus Bank) represented by the Head of Compliance Department in each bank.

The primary data collected will be compared with the data collected in 2013 from two banks (Fransabank and FNB) in order to highlight and analyze the impact of the evolution of FATCA on Lebanon.

4.2 The findings of Fransabank and FNB Bank in 2013[52]

Below is a summary of the answers of Fransabank and FNB Bank to the questionnaire, conducted by a student at Sagesse University in 2013. Her summary was as follows:

"Both answers to the first question concerning the compliance department showed the importance and value in preparing the bank staff prior to the implementation of FATCA through extensive training sessions, planning, controlling, and assessing the implementation of this Act.

[52] The exact and detailed answers of both banks to the questionnaire can be found in the thesis submitted by Rita Corbani in Sagesse University whose title is: FATCA's Regulations Impact on the Lebanese Banking Secrecy Law in 2013.

Second, the answers to question 2 were common between both bank officers, namely that each person who has any interest in US assets or any entity that also has any interest in US assets, whether in capital value or in income resulting from those assets, is affected by FATCA.

Third, the answers to question 3 were common and stated that transactions, subject to FATCA provisions are withholdable payments and pass thru payments.

Fourth, both officers confirmed that neither the Internal Revenue Service nor the U.S. Treasury will issue a list of U.S. persons.

Fifth, both officers answered that FATCA is a reality. In fact, Lebanese banks have started their actual activities aimed at complying with FATCA.

Sixth, when it comes to the actions taken by the banks as preparations to comply with FATCA, the officers stated that it must start with a thorough comprehension of the Act, its requirements, and consequences. Then, the banks should establish the compliance department that will hold responsibility for training the employees and cooperating with the top management in order to plan for compliance. This department must also clarify 'for the impacted clients' the objectives and consequences of the Act.

Seventh, the officers clearly declared that all Lebanese Banks and worldwide Foreign Financial Institutions must comply with FATCA. Thus, no exception for Lebanese Banks is expected. Moreover, nor BDL nor the Lebanese government shall hold any negotiation terms.

Eighth, FATCA is imposed on all FFIs. It gives no choice whether to comply or not, thus, Lebanese financial institutions can't be forbidden to comply by any parties (neither BDL nor the government). Moreover, Lebanese financial institutions will be subject to a 30% withholding tax penalty in case they opted for non-compliance.

Ninth, when it comes to identifying the dual nationality of clients, at Lebanese banks, the officers stated that there are two approaches: one, the *Prima Facie* customers who come to the

bank and declare having dual nationalities, or the *Non-Prima facie* customers where data concerning the client is collected through assessing, and examining the client database, as well as through direct contact with clients.

Tenth, both officers replied that FATCA won't impact and affect the Lebanese banking sector and economy.

Eleventh, few amendments were implemented on the "Know Your Client" to update it in favor of compliance with FATCA'S reposting requirements and customers' data collection.

Above all, both officers replied that FATCA won't have a major impact, and won't significantly contradict the Lebanese Banking secrecy as the Act targets only U.S. citizens and entities, and thus is not a general condition for all clients dealing with Lebanese banks. Thus, the information revealed will only be concerning the clients impacted with FATCA and who form a limited sample of the whole national and international clients list, dealing with Lebanese financial institutions."

4.3 The findings of Bank of Beirut, BBAC, Fransabank, and Cedrus Bank in 2016

A. Bank of Beirut SAL represented by Mr. Mohamad Shbaro as Head of International Compliance

Question 1: What is the role of the compliance department with regards to FATCA implementation?

When it comes to FATCA, Compliance Officers are seen as the primary line of providing assurance and ensuring compliance with the stipulated regulations. Due to their historical role in safeguarding financial institutions around the globe in their fight against money laundering and terrorism financing, and to their proficiency in handling compliance with regulations, Compliance Officers were the most qualified amongst others to ensure compliance with FATCA.

In this respect, the Compliance Department scope spans from grasping a thorough understanding of the FATCA requirements to the application of these requirements. This includes performing a gap analysis, coordinating with other stakeholders and departments within the institution (with a wide focus on Information Technology, Information Security and Operations), registering financial institutions, setting the related policies and procedures, spreading the knowledge not only across their financial institutions but also to their clients, performing the due diligence requirements, meeting the reporting deadlines, setting the withholding process and providing tailored training sessions to the staff.

Question 2: Who is impacted by FATCA?

FATCA is far-reaching and can impact any individual or entity (U.S. or foreign), to the extent that such person is involved in making or receiving payments that fall within the scope of FATCA.

In fact any entity making or receiving a payment of U.S. source income should consider whether it is subject to FATCA. FATCA may apply to both financial and non-financial operating companies. Due to this breadth, FATCA impacts virtually all non-U.S. entities, directly or indirectly, receiving most types of U.S. source income, including gross proceeds from the sale or disposition of U.S. property which can produce interest or dividends.

U.S. entities, both financial and non-financial, that make payments of most types of U.S. source income to non-U.S. persons will also be impacted as they may now be required to withhold a 30% tax on that income paid to a non-U.S. person under FATCA. This will require the U.S. entities to maintain documentation on those non-U.S. persons and also to track how those persons are classified under FATCA.

Question 3: What type of transactions is subject to FATCA?

FATCA provisions apply to "withholdable" payments. "Withholdable payments" are defined as:

- Any payment of interest (including any portfolio interest and original issue discount), dividends, rents, royalties, salaries, wages, annuities, licensing fees and other FDAP (Fixed or Determinable, Annual or Periodic) income, gains, and profits, if such payment is from sources within the United States.

- Any gross proceeds from the sale or disposition of U.S. property of a type that can produce interest or dividends

Question 4: Will U.S. Treasury or IRS publish a list of U.S. persons?

No, U.S. Treasury will not publish a list of U.S. persons, as it will expose and jeopardize the US person's security. Hence, if the US Treasury publishes a list f US persons, they will easily become targets for terrorist and other opponents of the United States.

Question 5: Do you consider FATCA currently happening?

FATCA already occurred, and big time.

Question 6: How did Lebanese Banks prepare for FATCA implementation?

In Lebanon, the Government decided not to be involved in FATCA, and thus leaving the burden of FATCA on the banking sector and other reporting institutions. Moreover, the Lebanese Government did not enter into an Intergovernmental Agreement with the Internal Revenue Service (IRS). Each bank had to register solely and sign an agreement with the IRS to become FATCA Compliant.

Question 7: Are there any special exceptions for Lebanese Banking Sector or did BDL negotiate special terms with U.S. Treasury?

No.

Question 8: What would have happened if Lebanon did not permit its banks to follow the FATCA rules?

In this case, financial institutions located in Lebanon will be considered as Non-Participating FFIs, and therefore will be subject to a withholding percentage of 30% on certain types of payments.

Eventually, this will lead to their exclusion from the US and other financial sectors located in multiple jurisdictions around the globe, which will impact the Lebanese economy, as financial institutions will be extradited from new and pre-existing correspondent banking relationships.

Question 9: How do banks identify U.S. customers (individuals &/or entities) that have dual nationality?

Based on the FATCA requirements, Financial Institutions are required as part of the Know Your Customer procedures to inquire whether their customers are:

- US Nationals,
- Holders of US Nationality besides their Native Nationality (dual Nationality),
- Green Card holder,
- Resident in the United States for more than 183 days (specific rules apply to this condition).

As for Entities, Financial Institutions will inquire whether these entities:

- Are established in the United States,

- Comprise a US Shareholder amongst the ownership/shareholding structure.

In addition, Financial Institutions perform scrutiny to identify any existing US Indicia. These are:

- U.S. citizenship or lawful permanent resident (green card) status;
- A U.S. birthplace;
- A U.S. residence address or a U.S. correspondence address (including a U.S. P.O. box);
- A U.S. telephone number (regardless of whether such number is the only telephone number associated with the account holder)
- Standing instructions to pay any amounts from the account to an account maintained in the U.S.;
- An "in care of" address or a "hold mail" address that is the sole address with respect to the client; or
- A power of attorney or signatory authority granted to a person with a U.S. address.

Question 10: What effect does FATCA have on the Lebanese banking sector and Lebanese economy?

The impact of FATCA on Lebanese banks and the Lebanese economy is the same around the globe, since FATCA is a US law with global impact on all jurisdictions & financial institutions. Also, to be noted that the banking secrecy will have to be lifted on all US accounts, and therefore we cannot debate whether FATCA will increase or decrease the number of US clients at Lebanese banks. For example, if a US client, wishes to withdraw his funds from a non Lebanese bank to another or vice versa, he will still be reported.

Question 11: What changes have the banks done with KYC in order to support FATCA implementation?

FATCA did not only affect the KYC process. It had a major implication on the Information Technology and the Management Information Systems as well.

With respect to the KYC, they were amended to include questions related to identify a US Person or a Person with US Indicia.

Question 12: Has your bank already reported FATCA?

Yes.

Question 13: Did the implementation procedures of FATCA contradict with the Lebanese Banking Secrecy Law?

Lebanon is one of the countries in the world with banking secrecy laws, which were created to further strengthen the financial systems in the country. Under the laws, no person or group has the right to disclose the bank account details of any depositor.

There is no threat to Lebanon's banking secrecy, despite the mounting pressure from the international community to disclose the accounts of US persons holding accounts at Lebanese Financial Institutions.

Financial Institutions are already fully implementing FATCA and this is done with the consent of U.S. Persons who have bank accounts in Lebanon

B. BBAC SAL represented by Mr. Talal Abou Zeki as Head of Legal Compliance

Question 1: What is the role of the compliance department with regards to FATCA implementation?

In my opinion compliance with FATCA conditions is like AML conditions compliance both use KYC approach in their work.

Question 2: Who is impacted by FATCA?

Any American citizen, green card holder, people with financial interests in USA, anyone who spend specific period in USA through 3 last years, anybody who have address or phone number in USA.

Question 3: What type of transactions is subject to FATCA?

All transactions related to above mentioned customers.

Question 4: Will U.S. Treasury or IRS publish a list of U.S. persons?

NO.

Question 5: Do you consider FATCA currently happening?

YES

Question 6: How did Lebanese Banks prepare for FATCA implementation?

They implement IT programs to identify customers that are included by FATCA.

Question 7: Are there any special exceptions for Lebanese Banking Sector or did BDL negotiate special terms with U.S. Treasury?

No for both.

Question 8: What would have happened if Lebanon did not permit its banks to follow the FATCA rules?

As happened to Lebanese Canadian bank.

Question 9: How do banks identify U.S. customers (individuals &/or entities) that have dual nationality?

From information taken from KYC form and his account opening details.

Question 10: What effect does FATCA have on the Lebanese banking sector and Lebanese economy?

Only cost without revenue.

Question 11: What changes have the banks done with KYC in order to support FATCA implementation?

They increase a FATCA information paragraph to KYC form.

Question 12: Has your bank already reported FATCA?

I think so

Question 13: Did the implementation procedures of FATCA contradict with the Lebanese Banking Secrecy Law?

Now yes.

C. Cedrus Bank SAL represented by Mrs. Joumana Rizk as Head of Legal Compliance

Question 1: What is the role of the compliance department with regards to FATCA implementation?

The main role of the compliance is to ensure that the bank is compliant with FATCA regulations and reporting deadlines.

Question 2: Who is impacted by FATCA?

U.S persons will be impacted by FATCA because the aim goal of this legislation is to obtain information with respect to offshore accounts owned by US taxpayers.

- U.S. citizen (including dual citizen)
- U.S. resident alien for tax purposes
- Entities with substantial US holder.

Question 3: What type of transactions is subject to FATCA?

The bank shall annually report the following information on their US accounts.

- The name, address, and Taxpayer Identification Number (TIN)
- The account number;
- The account balance or value at year end (to be confirmed by Regulations).
- Gross dividends, interest and other income paid or credited to the account.

Question 4: Will U.S. Treasury or IRS publish a list of U.S. persons?

I am not sure about it but the IRS (Internal Revenue System) has a data mining program that might captured the disclosed US persons.

Question 5: Do you consider FATCA currently happening?

Yes. In 2016 the Lebanese banks will be reporting FATCA data for the second time.

Question 6: How did Lebanese Banks prepare for FATCA implementation?

The Lebanese banks entered into direct agreements with the IRS. FATCA implementation has been implemented in two phases.

- The first was to identify and report all existing accounts with a threshold of over $1 million. This category was reported in 2015.
- The second moved to thresholds of $50,000 and above that will be reported in March.2016.

Question 7: Are there any special exceptions for Lebanese Banking Sector or did BDL negotiate special terms with U.S. Treasury?

No

Question 8: What would have happened if Lebanon did not permit its banks to follow the FATCA rules?

Banks would be subjected to a 30 percent withholding tax on income from U.S financials assets held by them or simply locked out of the US because FATCA can deny them the right to use a US correspondent bank which would make it difficult to settle US-dollar transactions.

Question 9: How do banks identify U.S. customers (individuals &/or entities) that have dual nationality?

It will be difficult when a customer open an account on his non-US ID or passport and do not declare his US nationality; but it could be simple if this customer is born in the "United States",

his ID/passport will show as place of birth "United States" making it easy for the bank to determine that the customer is a US person.

Question 10: What effect does FATCA have on the Lebanese banking sector and Lebanese economy?

Compliance with FATCA had imposed on banks a costly screening, implementation and compliance process infrastructure in order to identify and report information about their US clients.

Question 11: What changes have the banks done with KYC in order to support FATCA implementation?

The KYC form was updated to include all the requested information to identify US indicia (Other nationality, green card, US substantial presence test, US address…).

The KYC renewal and the customers monitoring processes will determine whether a change in circumstance has occurred that could impact a customer's FATCA status.

Question 12: Has your bank already reported FATCA?

Yes

Question 13: Did the implementation procedures of FATCA contradict with the Lebanese Banking Secrecy Law?

Yes. Under FATCA the Lebanese banks request that any depositor holding a U.S passport or a green card sign a Banking Secrecy waiver.

D. Fransabank SAL represented by the Head of Legal Compliance who wishes to remain "Anonymous"

Question 1: What is the role of the compliance department with regards to FATCA implementation?

Ensure compliance to the FFI Agreement

Question 2: Who is impacted by FATCA?

All FFIs and U.S. persons

Question 3: What type of transactions is subject to FATCA?

Custodial, Depository, Equity and Debt interest accounts

Question 4: Will U.S. Treasury or IRS publish a list of U.S. persons?

Currently No

Question 5: Do you consider FATCA currently happening?

It is happening

Question 6: How did Lebanese Banks prepare for FATCA implementation?

Updated system KYC, policies and procedures, forms etc...

Question 7: Are there any special exceptions for Lebanese Banking Sector or did BDL negotiate special terms with U.S. Treasury?

Currently there is no IGA

Question 8: What would have happened if Lebanon did not permit its banks to follow the FATCA rules?

We would have been considered NPFFIs

Question 9: How do banks identify U.S. customers (individuals &/or entities) that have dual nationality?

Questionnaires and self-certifications

Question 10: What effect does FATCA have on the Lebanese banking sector and Lebanese economy?

Increased work load on staff and cost (new systems, trainings, etc…)

Question 11: What changes have the banks done with KYC in order to support FATCA implementation?

Included U.S. Indicia questions

Question 12: Has your bank already reported FATCA?

Yes

Question 13: Did the implementation procedures of FATCA contradict with the Lebanese Banking Secrecy Law?

A Banking Secrecy Waiver has to be signed

4.4 Analysis and Comparative Study

The following analysis is based on the responses given by the four banks to the questionnaire:

In Question 1, the four banks highlighted the vital role the Compliance Department plays in thoroughly understanding FATCA's requirements and application. This includes performing

a gap analysis, coordinating with other stakeholders and departments within the institution (with a wide focus on Information Technology, Information Security and Operations). It also comprises registering financial institutions, setting the related policies and procedures, spreading the knowledge not only across their financial institutions but also to their clients, performing the due diligence requirements, meeting the reporting deadlines, setting the withholding process and providing tailored training sessions to the staff.

By comparing the response of the four banks, in 2016 to those of the two banks in 2013, it is noticeable that the Compliance Departments have maintained the same important role regarding the implementation of FATCA's regulations in Lebanese Banks.

Regarding Question 2, the four banks stated that FATCA's regulations impact individuals as well as entities that are included in making or accepting installments of U.S. source income that, in turn, falls within the limits of FATCA.

The four banks in 2016 provided the same result that was reached previously by the two banks in 2013, regarding who is impacted by FATCA.

In Question 3, the result of the answers of the four banks can be summarized by declaring that the type of transactions subjected to FATCA's regulations are withholdable payments.

Analyzing the response of the four banks in 2016 with those given by two banks in 2013, one notices that the type of transactions subject to FATCA have not been changed nor modified.

In Question 4, the response of all the four banks about whether the U.S Treasury or the IRS will publish a list of U.S. persons, was negative for it violates US laws. The four banks would not project any issuance of a list of U.S. persons and this is due to safety reasons in order not to uncover and endanger the U.S. person's security.

Answering Question 5, all four banks confirmed that FATCA is being implemented and in full scale (big time).

The banks in 2013 anticipated that FATCA will surely happen and thus began their preparations to comply with these regulations, and, in 2016 some banks expressed that they will be reporting FATCA data for the second time.

Regarding Question 6, the common response by the four banks was that the Lebanese government did not enter into any intergovernmental agreement with IRS thus leaving the burden of FATCA on the Lebanese banks which had to do all the necessary preparations by the Compliance Department in order to ensure compliance, such as IT programs, staff trainings, updated policies, procedures and forms.

All four banks in 2016 and 2013, were aware since 2013 that the Lebanese government would not enter into agreement with FFI or the IRS; and therefore each bank had to act on its own, planning and adopting steps in preparation for compliance.

The four banks in 2016, question 7, clearly affirmed that financial institutions, worldwide, should comply with FATCA. Hence, the Lebanese banks are of no exception. This was also predicted in 2013. To conform to FATCA's regulations was not voluntary.

Regarding Question 8, the common response between the four banks was that in case of non-compliance, financial institutions situated in Lebanon will be treated as **Non-Participating FFIs**, and consequently will be subject to a 30% withholding percentage on funds or payments the IRS and FFI can control or handle.

By comparing the response of the four banks in 2016 with those of the two banks in 2013, one discovers that the Lebanese banks had no choice in 2013, since compliance was mandatory otherwise they will be subject to 30% withholding as penalty as well as undisclosed

harassments. The Lebanese banks in 2016 still have no choice for, compliance is still mandatory and they are still subject to the 30% withholding penalty.

Regarding Question 9, correlating to identifying the dual nationality of clients, the majority of the banks in 2016 responded that, they, primarily, depend on the information taken from the KYC and the account opening details provided by the client. They would also perform scrutiny to identify any existing US Indicia.

By comparing the responses of the four banks in 2016, one discovers that the Lebanese banks in 2016 are using the same methods used by those of 2013. These methods are summarized by two approaches: *Prima Facie* and *Non-Prima Facie* customers which means that the methods of identification did not evolve despite the evolution of the regulations.

Regarding Question 10, the majority of the banks in 2016 consider that FATCA impacted them negatively since compliance with FATCA had imposed on them costly screening, implementation and compliance process infrastructure in order to identify and report information about their US clients. Consequently, this increased the work load on staff as well as higher cost due to the implementation of new systems and trainings. Thus, FATCA increased the cost on Lebanese banks without increasing the revenue which did reduce some profits.

It is interesting to highlight a clear discrepancy between answers received in 2013 and others in 2016. The two banks in 2013, declared that FATCA won't impact or affect the Lebanese banking sector or economy. In contrast, the banks in 2016 clearly stated that FATCA impacted them negatively. It is apparent that Lebanese banks in 2013 could not foresee the wide impact of FATCA on their operation and costs.

As for Question 11, the four banks in 2016 responded stating that the KYC form was updated to comprise all the requested information to help them detect US indicia (Other

nationality, green card, US substantial presence test, US address…). Therefore, the KYC was updated to facilitate customers monitoring processes.

By examining the response of the four banks in 2016, it becomes evident that the banks in 2013 implemented few amendments on the KYC to update it in favor of FATCA's compliance requirements. Likewise, banks in 2016 updated again their KYC according to the final and updated FATCA's regulations. Therefore, even though, FATCA is costly, Lebanese banks are continuously updating their systems, forms, etc... In order to meet the compliance requirements imposed By FATCA to avoid being subjected to any sanctions by the U.S.

Regarding Question 12, all the four banks in 2016 already reported FATCA and some will report in 2016 for the second time.

By comparing the response of the four banks in 2016 to those of 2013, one concludes that the banks were ready since 2013 to report to FATCA and they considered that compliance, not a matter of choice, but rather, compulsory.

Regarding Question 13, the majority of the banks in 2016 considered that the implementation of the FATCA procedures, in theory, contradicts with the Lebanese Banking Secrecy Law.

However the response of the two banks in 2013, clearly stated that FATCA won't contradict nor affect the Lebanese Banking secrecy.

In conclusions all interviewees of the four different banks agree, in general, that

- No exceptions of any kinds can be considered
- Lebanese banks have to individually comply, or risk the penalty of 30% on all their US financial operations. They might risk be blacklisted

In addition, the application of FATCA imposes upon the banks

- additional Costs of different types
- employees training and time consuming at the start
- Perhaps cost in archiving and documenting
- Most importantly, they may lose some clients' accounts with no profitable return.

CONCLUSION AND RECOMMENDATIONS

This chapter is divided into two subdivisions. The first part consists of a statement of the deductions drawn from the case study. The second part comprises recommendations that favor the optimization of the results from the compliance of Lebanon with FATCA. The conclusion and recommendations are drawn from interviewing responsible officers and managers of four major banks. The writer faced many obstacles for banks, specifically are very reluctant to disclose much information.

Main Findings and General Conclusion

The aim of this thesis is to study the impact of the Evolution of FATCA and most importantly its impact on Lebanon's financial life. It is important to note that the answers collected from the interviewees were subjective, therefore, the following conclusion cannot be generalized.

As a result of the primary data collected from interviews with four Lebanese bank officers in 2016, and by comparing this data with the former one collected from two Lebanese bank officers in 2013, the following conclusion has been evident.

Based on the discussion, processing, and analysis of the findings held, one can conclude that the evolution of FATCA significantly directly impacts Lebanese banks and in selective cases indirectly the Lebanese economy. On one hand, the banking sector has been affected since the cost of continuously implementing FATCA regulations to the Lebanese banks is substantial with no revenue, in return. Their no doubt that the Lebanese banking sector, which is the major actor-pillar of the economy's activities. Although Lebanese banks continue to reap high profits, in spite of the economic and political crises the country is plunged into FATCA's implementation levy certain costs without return.

As for the legal framework, the findings claim that FATCA as a whole including its evolution, undermines and contradicts with the Lebanese Banking Secrecy Laws. FATCA is an example of how International Regulations can affect local-national laws.

Recommendations

The following recommendations are based on the author's own study of FATCA and its evolution impact on the legal and economic interests of Lebanon. Although, there is a need for additional research by economists and political scientist about FATCA, rumors are internationally spreading that other countries, like France, may follow the US steps and impose their own version of FATCA.

Given the updated FATCA requirements, the recommendations are more suggestions:

1. Studying in depth the processes:
    - Existing on-boarding procedures and systems will continuously need to be evaluated and modified in order to meet the updated FATCA requirements.
    - Make a strong use of the technology to reduce the costs caused by FATCA's implementation.
    - Procedure controls to guarantee uniformity and steadiness as new parts of general FATCA governance will continually need to be introduced.
2. People
    - Operations modifications rising from the application of FATCA regulations will impact the respective teams together with the back office role (centralized account opening process) and/or branch employees (decentralized account opening process). Training and organizing are essential.

- The Lebanese banks should ensure that any operational change to the above processes is interconnected with the respective operational units.
- Lebanese banks should scrutinize their corporate learning channels and apply existing channels to allocate FATCA knowledge as required.
- FATCA guidance should be provided to the audience and need to have negligible effect on business as usual (BAU) bank operations.

3. Technology

- Enhancements will be required to every bank's existing IT systems in order to capture the additional FATCA information, according to the new account opening methods and procedures.
- Additionally, IT systems should be able to recognize when customer information varies demonstrating any US indicia. In the event such US indicia are noted, the IT systems would be required to prompt the Lebanese banks to acquire supplementary data as needed.
- IT systems should be able to maintain further FATCA reporting requirements.
- IT systems should comprise practical improvements to effect control of withholdable payments where applicable. Otherwise, the Lebanese banks should consider executing a manual procedure for withholding.

4. Internal Audit

- FATCA affects the internal audit function of Lebanese banks. The Internal Audit function should arrange and examine IT and operational controls to guarantee that the correct data is seized at client on-boarding as well as at the reporting phase.

5. Legal considerations - The Lebanese Banking Secrecy Law of 1956

The Lebanese Secrecy Law that was introduced in 1956 provided that all banks operating on the Lebanese territory are subject to the Lebanese Banking Secrecy Law, irrespective of being Lebanese, or branches of foreign banks.

Under the above mentioned provisions, all persons mentioned in Article 2 of the said law are forbidden from disclosing any data regarding the name of the client, his/her funds, assets and associated matters to authorities or persons.

The only cases where the above mentioned information may be disclosed are the following:

- A written approval by the concerned customer or his successors
- A bankrupt person
- A legal action between the client and the bank
- An interchange of data regarding indebted accounts between banks in order to secure their investments
- The demand of the judicial authorities in actions of illegal enrichment

Therefore, on one hand, the Lebanese laws should be amended in order to include a category to lift the banking secrecy in case of tax evasion so that the local laws would not be breached by international regulations.

On the other hand, the Lebanese government should enter into an FFI agreement with the IRS so that the Lebanese government or its sovereign institution, such as its Banque du Liban, would have a direct relationship with the US Treasury and not with every bank individually.

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APPENDIX

Terms/Acronyms	Definition
Account	Solely for purposes of Chapter 4 of the Internal Revenue Code, account means a financial account as defined in Treas. Reg. §1.1471-5(b) and includes a depository account, custodial account, any equity or debt interest in a financial institution, any cash value insurance contract and any annuity contract issued or maintained by a financial institution.
Account holder	The term account holder is the person listed or identified as the holder or owner of the account with the FFI that maintains that account, regardless of whether the entity is a flow-through entity.
Active NFFE	An active NFFE is any entity that is a NFFE if less than 50 percent of its gross income for the preceding calendar year is passive income and less than 50 percent of the weighted average percentage of assets (tested quarterly) held by it are assets that produce or are held for the production of passive income (i.e., dividends, interest, annuities etc.)
AML	Anti-Money Laundering
AML due diligence	The term AML due diligence means the customer due diligence procedures of a financial institution pursuant to the anti-money laundering or similar requirements to which a financial institution, or branch thereof, is subject. This includes identifying the customer (including the owners of the customer), understanding the nature and purpose of the account, and ongoing monitoring.
Beneficial owner	The term beneficial owner means the person who is the owner of the income for tax purposes and who beneficially owns that income. Thus, a person receiving income in a capacity as a nominee, agent or custodian for another person is not the beneficial owner of the income.
Broker	The term broker means any person, U.S. or foreign, that, in the ordinary course of a trade or business during the calendar year, stands

	ready to effect sales to be made by others. A broker includes an obligor that regularly issues and retires its own debt obligations, a corporation that regularly redeems its own stock, and a clearing organization that affects sales of securities for its members. A broker does not include an international organization that redeems or retires an obligation of which it is the issuer, a stock transfer agent that records transfers of stock for a corporation if the nature of the activities of the agent is such that the agent ordinarily would not know the gross proceeds from sales, an escrow agent that effects no sales other than such transactions as are incidental to the purpose of escrow (such as sales to collect on collateral), or a corporation that issues and retires long-term debt on an irregular basis.
Certified deemed-compliant FFI	A certified deemed-compliant FFI means an FFI that has certified as to its status as a deemed-compliant FFI by providing a withholding agent with the documentation applicable to the relevant deemed-compliant category. A certified deemed-compliant FFI is not required to register with the IRS.
CFC	Controlled Foreign Corporation
Chapter 3	For purposes of Chapter 4 of the Internal Revenue Code, any reference to Chapter 3 means Sections 1441 through 1464 and the regulations thereunder, but does not include Sections 1445 and 1446 and the regulations thereunder, unless the context indicates otherwise.
Chapter 4 of the Internal Revenue Code	The term Chapter 4 of the Internal Revenue Code means Sections 1471 through 1474 and the regulations thereunder.
Chapter 4 reportable amount	The term Chapter 4 reportable amount means an amount reportable on a Form 1042-S for purposes of Chapter 4 of the Internal Revenue Code (Sections 1471-1474). This means U.S. source FDAP income (regardless of whether subject to withholding under Chapter 4 and including a passthru payment that is U.S. source FDAP income); gross proceeds subject to withholding under

	Chapter 4; and foreign pass-thru payments subject to withholding under Chapter 4.
Chapter 4 status	The term Chapter 4 status means, with respect to a person, the person's status as a U.S. person, a specified U.S. person, a foreign individual, a participating FFI, a deemed-compliant FFI, a Model 1 FFI, an exempt beneficial owner, a nonparticipating FFI, a territory financial institution, a QI branch of a U.S. financial institution, an excepted NFFE or a passive NFFE.
Chapter 4 withholding	Refers to the 30% FATCA withholding
CIP	Customer Identification Program
Complex trust	A complex trust is a trust that is not a simple trust or a grantor trust.
Custodial account	The term custodial account means an account for the benefit of another person that holds any financial instrument or contract held for investment (including, but not limited to, a depository account, a share or stock in a corporation, a note, bond, debenture or other evidence of indebtedness, a currency or commodity transaction, a credit default swap, a swap based upon a non-financial index, a notional principal contract, an insurance or annuity contract, and any option or other derivative instrument) for the benefit of another person.
Customer master file	A customer master file includes the primary files of a participating FFI or deemed-compliant FFI for maintaining account holder information, such as information used for contacting account holders and for satisfying AML due diligence.
Deemed-compliant FFI	The term deemed-compliant FFI means an FFI that is treated as meeting the requirements of Section 1471(b). Also includes a QI branch of a U.S. financial institution that is a reporting Model 1 FFI.
Depository account	The term depository account means a commercial, checking, savings, time or thrift account, or an account which is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness or other similar instrument; and any amount held by an insurance company

	under an agreement to pay or credit interest thereon.
Documentary evidence	The term documentary evidence means documents, other than a withholding certificate or written statement that a withholding agent is permitted to rely upon to determine the Chapter 4 status of a person.
Documentation	The term documentation means withholding certificates, written statements, documentary evidence and other documents that may be relevant in determining the status of a person for the purpose of a reporting or withholding requirement under Chapter 4 of the Internal Revenue Code, including any document containing a determination of the account holder's citizenship or residency for tax or AML due diligence purposes or an account holder's claim of citizenship or residency for tax or AML due diligence purposes.
Dormant account	A dormant account is an account (other than a cash value insurance contract or annuity contract) treated as a dormant or inactive account under applicable laws or regulations or the normal operating procedures of the participating FFI that are consistently applied for all accounts maintained by such institution in a particular jurisdiction. If neither applicable laws or regulations nor the normal operating procedures of the participating FFI maintaining the account address dormant or inactive accounts, an account will be treated as a dormant account if the account holder (A) has not initiated a transaction with regard to the account or any other account held by the account holder with the FFI in the past three years; and (B) has not communicated with the FFI that maintains such account regarding the account or any other account held by the account holder with the FFI in the past six years.
ECI	Effectively Connected Income
EIN	The term EIN means an employer identification number (also known as a federal tax identification number).
Electronically searchable information	The term electronically searchable information means information that an FFI

	maintains in its tax reporting files, customer master files or similar files that is stored in the form of an electronic database against which standard queries in programming languages, such as Structured Query Language, may be used. Information, data or files are not electronically searchable merely because they are stored in an image retrieval system (such as portable document format (.pdf) or scanned documents).
Entity	The term entity means any person other than an individual.
Excepted NFFE	The term excepted NFFE means an NFFE that is one of the following: (i) publicly traded corporation whose stock is regularly traded on one or more established securities markets; (ii) certain affiliated entities related to a publicly traded corporation; (iii) any corporation that is a member of the same expanded affiliated group as a corporation, (iv) certain territory entities that is directly or indirectly wholly owned by one or more bona fide residents of the same U.S. possession under the laws of which the entity is organized he term "bona fide resident of a U.S. possession" means an individual who qualifies as a bona fide resident); (v) an active NFFE; (vi) excepted nonfinancial entities like holding companies, treasury centers and captive finance companies that are members of a nonfinancial group; start-up companies; entities that are liquidating from bankruptcy; and non-profit organizations; and (vii) direct reporting NFFEs and sponsored direct reporting NFFEs.
Exempt beneficial owner	The term exempt beneficial owner includes a foreign government, any political subdivision of a foreign government or any wholly owned agency or instrumentality of any one or more of the foregoing; any international organizations and any wholly owned agency or instrumentality thereof; any foreign central bank of issue; governments of U.S. possessions; certain retirement funds; and entities wholly owned by exempt beneficial owners.

Expanded affiliated group	A financial institution generally would be part of an "expanded affiliated group" that includes another financial institution if: (i) one financial institution controls the other financial institution directly or through a chain of controlled entities or (ii) they are both under the common control (directly or through a chain of controlled entities) of a single corporation (whether or not such corporation is a financial institution itself). FATCA defines an "expanded affiliated group" as an "affiliated group," as defined by Section 1504(a), but by substituting a more-than-50% ownership requirement for the at-least-80% ownership requirement in each place where it appears in Section 1504(a), and disregarding the Section 1504(b)(2) prohibition on including insurance companies in an affiliated group and the Section 1504(b)(3) prohibition on including non-U.S. corporations in an affiliated group. It also includes partnerships and trusts if they are controlled, within the meaning of Section 954(d)(3), by other members of the expanded affiliated group (including other controlled partnerships or trusts). Under FATCA, all FFI entities that are part of a FFI's expanded affiliated group must be a participating FFI or a registered deemed-compliant FFI.
FATCA	The Foreign Account Tax Compliance Act (FATCA) is codified as Chapter 4 of the Internal Revenue Code. It represents the Treasury Department's efforts to prevent U.S. taxpayers who hold financial assets in non-U.S. financial institutions (foreign financial institutions or FFIs) and other offshore vehicles from avoiding their U.S. tax obligations. The intent behind the law is for foreign financial institutions (FFIs) to identify and report to the IRS U.S. persons holding assets abroad and for certain non-financial foreign entities (NFFEs) to identify their substantial U.S. owners. In order to comply with the rules, FFIs are required to enter into an FFI agreement with the U.S. Treasury or comply with intergovernmental agreements (IGAs) entered into by their local

	jurisdictions. U.S. withholding agents (USWAs) must document all of their relationships with foreign entities in order to assist with the enforcement of the rules. Failure to enter into an agreement or provide required documentation will result in the imposition of a 30% withholding tax on certain payments made to such customers and counter-parties. Failure to impose the requisite withholding under FATCA requirements could result in significant financial exposure.
FATCA	Foreign Account Tax Compliance Act
FATCA registration portal	The FATCA registration portal is a web-based tool that will be implemented to manage all required registrations, agreements and certifications between institutions subject to FATCA requirements and the IRS.
FATF	The term FATF means the Financial Action Task Force, which is an inter-governmental body that develops and promotes international policies to combat money laundering and terrorist financing.
FATF-compliant	The term FATF-compliant means the relevant jurisdiction is not subject to a FATF call on its members and other jurisdictions to apply counter-measures to protect the international financial system from the on-going and substantial money laundering and terrorist financing (ML/TF) risks emanating from the jurisdiction; is not a jurisdiction with strategic AML/CFT deficiencies that has not made sufficient progress in addressing the deficiencies; and is not a jurisdiction with strategic AML/CFT deficiencies irrespective of whether the jurisdiction has agreed upon an action plan with the FATF.
FDAP	Fixed, Determinable, Annual, Periodic
FDAP income	The term FDAP income means fixed or determinable annual or periodic income. Includes interest, dividends, rents, royalties, commissions, fees and premiums.
FFI	Foreign Financial Institution
Foreign financial institution (FFI)	An FFI is defined as any financial institution that is a foreign entity, other than a financial

	institution organized under the laws of a possession of the United States. Financial institution means any entity that: (i) accepts deposits or other similar investments of funds in the ordinary course of a banking or similar business (Depository Institution); (ii) holds, as a substantial portion of its business, financial assets for the benefit of one or more other persons (Custodial Institution); (iii) primarily conducts trading in money market instruments, foreign currency, foreign exchange interest rate, and index instruments, transferable securities or commodity futures; individual or collective portfolio management; or investing, administering or managing funds, money or financial assets on behalf of other persons (Investment Entity); (iv) is an insurance company or holding company within an expanded affiliated group that includes an insurance company, and the insurance company or holding company issues, or is obligated to make payments with respect to a cash value insurance or annuity contract (Specified Insurance Company); or (v) is a holding company that holds stock in other members of its expanded affiliated group or treasury center that is part of an expanded affiliated group that includes a depository institution, custodial institution, insurance company or investment entity, or is formed in connection with or availed of by a an investment vehicle established with an investment strategy of investing, reinvesting or trading in financial assets (Holding Company or Treasury Center).
FFI agreement	The term FFI agreement refers to an agreement between the IRS and the participating FFI. An FFI agreement includes a QI agreement, a withholding partnership agreement and a withholding trust agreement that is entered into by a FFI Model 1 FFI) that has an effective date or renewal date on or after June 30, 2014.
Financial account	Section 1471(d)(2) defines a financial account as any depository account, any custodial account, and any equity or debt

	interest in an FFI, other than interests that are regularly traded on an established securities market. It includes traditional bank, brokerage, money market accounts, and interests in investment vehicles, and excludes most debt and equity securities issued by banks and brokerage firms, subject to an anti-abuse rule. It excludes certain savings accounts (including both retirement and pension accounts and nonretirement savings accounts) that meet certain requirements with respect to tax treatment and the type and amount of contributions. It also excludes any account that otherwise constitutes a financial account if it is held solely by one or more exempt beneficial owners or by nonparticipating FFIs that hold the account as intermediaries solely on behalf of one or more such owners. Thus, a participating FFI need not determine whether such an account is a U.S. account or held by a recalcitrant account holder.
FI	Financial Institution
Financial Institution (FI)	Financial Institution - any entity that (i) accepts deposits in the ordinary course of a banking or similar business, (ii) holds financial assets for the account of others as a substantial portion of its business, or (iii) is engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading securities, partnership interests, commodities or similar financial instruments
Financial account	Section 1471(d)(2) defines a financial account as any depository account, any custodial account, and any equity or debt interest in an FFI, other than interests that are regularly traded on an established securities market. It includes traditional bank, brokerage, money market accounts, and interests in investment vehicles, and excludes most debt and equity securities issued by banks and brokerage firms, subject to an anti-abuse rule. It excludes certain savings accounts (including both retirement and pension accounts and nonretirement savings accounts) that meet certain

	requirements with respect to tax treatment and the type and amount of contributions. It also excludes any account that otherwise constitutes a financial account if it is held solely by one or more exempt beneficial owners or by nonparticipating FFIs that hold the account as intermediaries solely on behalf of one or more such owners. Thus, a participating FFI need not determine whether such an account is a U.S. account or held by a recalcitrant account holder.
Flow-through entity	The term flow-through entity means a partnership, simple trust or grantor trust, as determined under U.S. tax principles.
Flow-through withholding certificate	The term flow-through withholding certificate means a Form W-8IMY submitted by a foreign partnership, foreign simple trust or foreign grantor trust.
Foreign entity	A foreign entity is any entity that is not a U.S. person, including a territory entity.
Foreign passthru payments	The final regulations reserve on the definition of a foreign passthru payment.
Foreign payee	The term foreign payee means any payee other than a U.S. payee.
Foreign person	The term foreign person means any person other than a U.S. person and includes, with respect to a withholdable payment, a foreign branch of a U.S. person that furnishes an intermediary withholding certificate indicating that it is a QI.
FWP	Foreign Withholding Partnership
FWT	Foreign Withholding Trusts
GIIN	Global Intermediary Identification Number
Global Intermediary Identification Number (GIIN)	A GIIN is the identification number used to identify the FFI for FATCA registration purposes and U.S. information reporting purposes. This represents combination of the FATCA ID and FFI EIN that were outlined in the proposed regulations.
Grandfather obligations	Grandfather obligations are any obligation outstanding on July1, 2014 but does not include any legal agreement or instrument that: (1) is treated as equity for U.S. tax purposes (2) lacks a stated expiration or term (for example, a savings deposit or demand deposit, a deferred annuity contract or a life insurance contract or annuity contract that

	permits a substitution of a new individual as the insured or as the annuitant under the contract); (3) is a brokerage agreement, custodial agreement, investment linked insurance contract, investment linked annuity contract or similar agreement to hold financial assets for the account of others and to make and receive payments of income and other amounts with respect to such assets; or (4) is a master agreement that merely sets forth standard terms and conditions that are intended to apply to a series of transactions between parties but that does not set forth all of the specific terms necessary to conclude a particular transaction.
Grantor trust	A grantor trust is a trust where one or more persons are treated as owners of all or a portion of the trust under Sections 671 through 679. If only a portion of the trust is treated as owned by a person, that portion is a grantor trust with respect to that person.
Gross proceeds	The term gross proceeds means the proceeds from any sale, exchange or disposition of property that requires recognition of gain or loss under Section 1001, without regard to whether the owner of such property is a foreign person that is not subject to U.S. federal income tax with respect to such sale, exchange or disposition. For purposes of this definition, property is of a type that can produce interest or dividends that would be U.S. source FDAP income.
HIRE Act	Hiring Incentives to Restore Employment; FATCA was enacted as part of HIRE
Insurance company	The term insurance company means a company more than half of the business of which during the calendar year is issuing (or being obligated to make payments with respect to) insurance or annuity contracts or the reinsuring of such contracts.
IGAs	Intergovernmental Agreements
Intergovernmental agreements (IGAs)	Intergovernmental agreements are intended to enable FFIs to identify and report to the IRS U.S. persons that hold assets abroad and for certain non-financial foreign entities (NFFEs) to identify their substantial U.S. owners. In order to comply with the rules,

	FFIs are required to enter into an FFI agreement with the U.S. Treasury or comply with IGAs entered into by their local jurisdictions. USWAs must document all of their relationships with foreign entities in order to assist with the enforcement of the rules.
Indicia	A U.S. legal term meaning indication. In the context of FATCA, indicia refer to evidence or indications that an account holder might be a U.S. person
Intermediary	An intermediary means, with respect to a payment that it receives, a person that, for that payment, acts as a custodian, broker, nominee or otherwise as an agent for another person, regardless of whether such other person is the beneficial owner of the amount paid, a flow-through entity or another intermediary
Intermediary withholding certificate	The term intermediary withholding certificate means a Form W-8IMY submitted by an intermediary.
IRS	Internal Revenue Service
ISDA	International Swaps and Derivatives Association
KYC	Know-Your-Customer
Limited branch	A limited branch is a branch of an FFI that, under the laws of the jurisdiction as of February 15, 2012 and that apply with respect to the accounts maintained by the branch, cannot do certain things. It cannot, with respect to accounts and the FFI agreement it is required to treat as U.S. accounts, report such accounts to the IRS, close such accounts within a reasonable period of time or transfer such accounts to a branch of the FFI, a participating FFI member of the expanded affiliated group of the FFI, or another participating FFI that may so report. It also cannot, with respect to recalcitrant account holders and accounts held by nonparticipating FFIs, withhold with respect to each such account, block such accounts (an account is considered blocked when the FFI prohibits the account holder from effecting any transactions with respect to an account until such time as the account

	is closed, transferred or the account holder provides the documentation for the FFI to determine the U.S. or non-U.S. status of the account), close each such account within a reasonable period of time or transfer such account to another branch of the FFI or a participating FFI member of the expanded affiliated group of the FFI that is not subject to the restrictions with respect to such account holders.
Limited FFI	A limited FFI is a member of an expanded affiliated group that includes one or more participating FFIs that agrees to the conditions to become a limited FFI and if under the laws of each jurisdiction that apply with respect to the accounts. A limited FFI is required to treat as U.S. accounts, report such accounts to the IRS, close such accounts within a reasonable period of time or transfer such accounts to an affiliate or other participating FFI that may so report. With respect to recalcitrant account holders and accounts held by nonparticipating FFIs, a limited FFI is required to withhold with respect to each such account, block each such account, close each such account within a reasonable period of time or transfer each such account to an affiliate of the FFI that is a participating FFI.
NFFEs	Non-Financial Foreign Entities
Non-financial foreign entity (NFFE)	The term NFFE means a foreign entity that is not a financial institution (including a territory NFFE). The term also means a foreign entity treated as an NFFE pursuant to a Model 1 IGA or Model 2 IGA.
Nonparticipating FFI	The term nonparticipating FFI means an FFI other than a participating FFI, a deemed-compliant FFI or an exempt beneficial owner.
NQI	Nonqualified Intermediary
Nonqualified Intermediary (NQI)	A nonqualified intermediary means any intermediary that is not a U.S. person and not a qualified intermediary, or a qualified intermediary that is not acting in its capacity as a qualified intermediary with respect to a payment.

Nonqualified intermediary withholding statement	A NQI shall provide a withholding statement to the extent the nonqualified intermediary is required to furnish, or does furnish, documentation for payees on whose behalf it receives reportable amounts or to the extent it otherwise provides the documentation of such payees to a withholding agent.
NPFFI	A Non-Participating FFI - an FFI that is not a participating FFI, or a Deemed Compliant FFI or otherwise excluded from the application of FATCA. Sometimes called a Bad FFI
NQI	Non Qualifying Intermediary
NWP	Non-withholding Foreign Partnership
Non-withholding partnership (NWP)	The term non-withholding foreign partnership or NWP means a foreign partnership that is not a withholding foreign partnership.
NWT	Non-withholding Foreign Trust
Non-withholding Trust (NWT)	The term non-withholding foreign trust or NWT means a foreign trust that is a simple trust or grantor trust and is not a withholding foreign trust.
Offshore obligation	The term offshore obligation means any account, instrument or contract maintained and executed at an office or branch of a withholding agent at any location outside of the United States or in any location in a possession of the United States. The term payment with respect to an offshore obligation means a payment made outside of the United States, within the meaning of 1.6049-5(e), with respect to an offshore obligation.
OID	Original Issue Discount
PFFI	Participating Foreign Financial Institutions
Participating FFI	The term participating FFI means an FFI that has agreed to comply with requirements of an FFI agreement, including an FFI described in a Model 2 IGA that has agreed to comply with the requirements of an FFI agreement. The term also includes a QI branch of a U.S. financial institution, unless such branch is a reporting Model 1 FFI.
Limited FFI	A limited FFI is a member of an expanded affiliated group that includes one or more participating FFIs that agrees to the

	conditions to become a limited FFI and if under the laws of each jurisdiction that apply with respect to the accounts. A limited FFI is required to treat as U.S. accounts, report such accounts to the IRS, close such accounts within a reasonable period of time or transfer such accounts to an affiliate or other participating FFI that may so report. With respect to recalcitrant account holders and accounts held by nonparticipating FFIs, a limited FFI is required to withhold with respect to each such account, block each such account, close each such account within a reasonable period of time or transfer each such account to an affiliate of the FFI that is a participating FFI.
NFFEs	Non-Financial Foreign Entities
Non-financial foreign entity (NFFE)	The term NFFE means a foreign entity that is not a financial institution (including a territory NFFE). The term also means a foreign entity treated as an NFFE pursuant to a Model 1 IGA or Model 2 IGA.
Nonparticipating FFI	The term nonparticipating FFI means an FFI other than a participating FFI, a deemed-compliant FFI or an exempt beneficial owner.
NQI	Nonqualified Intermediary
Nonqualified Intermediary (NQI)	A nonqualified intermediary means any intermediary that is not a U.S. person and not a qualified intermediary, or a qualified intermediary that is not acting in its capacity as a qualified intermediary with respect to a payment.
Nonqualified intermediary withholding statement	A NQI shall provide a withholding statement to the extent the nonqualified intermediary is required to furnish, or does furnish, documentation for payees on whose behalf it receives reportable amounts or to the extent it otherwise provides the documentation of such payees to a withholding agent.
NPFFI	A Non-Participating FFI - an FFI that is not a participating FFI, or a Deemed Compliant FFI or otherwise excluded from the application of FATCA. Sometimes called a Bad FFI
NQI	Non Qualifying Intermediary
NWP	Non-withholding Foreign Partnership

Non-withholding partnership (NWP)	The term non-withholding foreign partnership or NWP means a foreign partnership that is not a withholding foreign partnership.
NWT	Non-withholding Foreign Trust
Non-withholding Trust (NWT)	The term non-withholding foreign trust or NWT means a foreign trust that is a simple trust or grantor trust and is not a withholding foreign trust.
Offshore obligation	The term offshore obligation means any account, instrument or contract maintained and executed at an office or branch of a withholding agent at any location outside of the United States or in any location in a possession of the United States. The term payment with respect to an offshore obligation means a payment made outside of the United States, within the meaning of 1.6049-5(e), with respect to an offshore obligation.
OID	Original Issue Discount
PFFI	Participating Foreign Financial Institutions
Participating FFI	The term participating FFI means an FFI that has agreed to comply with requirements of an FFI agreement, including an FFI described in a Model 2 IGA that has agreed to comply with the requirements of an FFI agreement. The term also includes a QI branch of a U.S. financial institution, unless such branch is a reporting Model 1 FFI.
Participating FFI group	The term participating FFI group means an expanded affiliated group that includes one or more participating FFIs. The term participating FFI group also means an expanded affiliated group in which one or more members of the group is a reporting Model 1 FFI and each member of the group that is an FFI is a registered deemed-compliant FFI, non-reporting IGA FFI, limited FFI or retirement fund described in §1.1471-6(f).
Partnership	The term partnership means a business entity that is not a corporation and that has at least two members.
Passive NFFE	The term passive NFFE means an NFFE other than an excepted NFFE.

Passthru payment	The term passthru payment means any withholdable payment and any foreign passthru payment.
Payee	For purposes of Chapter 4 of the Internal Revenue Code, a payee is the person to whom a payment is made, regardless of whether such person is the beneficial owner of the amount.
Payer	The term payer means any person who is required to make an information return with respect to any reportable payment, including any middlemen.
Person	The term person means an individual, a trust, estate, partnership, association, company or corporation. The term person does not include a wholly owned entity that is disregarded for federal tax purposes as an entity separate from its owner. Notwithstanding the previous sentence, the term person includes, with respect to a withholdable payment, a foreign branch of a U.S. person that furnishes an intermediary withholding certificate indicating that it is a QI.
PFIC	Passive Foreign Investment Company
Possession of the United States	The term possession of the United States means American Samoa, Guam, the Northern Mariana Islands, Puerto Rico or the U.S. Virgin Islands.
PPP	Passthru Payment Percentage - the ratio of a PFFI's U.S. to total assets
Pre-existing account	Any financial account held prior to the date the FFI's agreement with the IRS comes into force
Preexisting entity account	A preexisting entity account is a financial account held by one or more entities that is a preexisting obligation.
Preexisting individual account	A preexisting individual account is a financial account held by one or more individuals that is a preexisting obligation.
Preexisting obligation	The term preexisting obligation means any account, instrument or contract maintained or executed by the withholding agent as of July 1, 2014. With respect to a participating FFI, the term preexisting obligation means any account, instrument or contract maintained or executed by the FFI prior to

	the date that the participating FFI's FFI agreement becomes effective. With respect to a registered deemed-compliant FFI, a preexisting obligation means any account, instrument or contract maintained or executed by the FFI prior to the earlier of the date that the FFI registers as a deemed-compliant FFI or the date the FFI implements its required account opening procedures.
Presumption rules	A set of rules used to determine the status of the account holder or person you pay as U.S. or foreign and other relevant characteristics, including their status under chapter 3 and 4, where you cannot reliably associate an account holder or payment with valid documentation.
Prima facie FFI	A prima facie FFI is any payee if the withholding agent has available as a part of its electronically searchable information a designation for the payee as a QI or NQI; or for an account maintained in the United States, the payee is presumed to be a foreign entity or is documented as a foreign entity for purposes of Chapter 3 or 61; and the withholding agent has recorded as part of its electronically searchable information a standardized industry code that indicates that the payee is a financial institution.
QFFI	A Qualifying FFI is one which has entered an agreement with the IRS under FATCA. Essentially the same as a PFFI
OID	Original Issue Discount
QI	Qualified Intermediary
Qualified intermediary (QI)	With respect to a payment to a foreign person, the term qualified intermediary means a person that is a party to a withholding agreement with the IRS and such person is: (A) a FFI or a foreign clearing organization; (B) a foreign branch or office of a U.S. financial institution or a foreign branch or office of a U.S. clearing organization; (C) a foreign corporation for purposes of presenting claims of benefits under an income tax treaty on behalf of its shareholders; or (D) any other person acceptable to the IRS.

QI agreement	A QI agreement is a withholding agreement entered into with the Internal Revenue Service (IRS) pursuant to Rev. Proc. 2014-39 and Treasury Regulation §1.1441-1(e)(5) by a foreign entity. Under its terms, the QI generally must report annually certain aggregate information concerning the beneficial owners of U.S. source payments and make any necessary tax payments to the IRS. Rev. Proc 2000-12, 2000-4 I.R.B. 387, which previously set forth the QI agreement, has been superseded by the 2014 agreement.
Recalcitrant account holder	The term recalcitrant account holder means any account holder of an account maintained by a participating FFI if such account holder is not an FFI (or presumed to be an FFI), the account does not meet the exception to U.S. account status (applying to depository accounts with a balance of $50,000 USD or less) or does not qualify for any of the exceptions from the documentation requirements (including if the participating FFI elects not to apply such exceptions), and the account holder fails to comply with requests by the participating FFI for the documentation or information that is required for determining the status of such account as a U.S. account or other than a U.S. account; the account holder fails to provide a valid Form W-9 upon request from the participating FFI or fails to provide a correct name and TIN combination upon request from the participating FFI when the participating FFI has received notice from the IRS indicating that the name and TIN combination reported by the participating FFI (or branch or division thereof) for the account holder is incorrect; or if foreign law would prevent reporting by the participating FFI (or branch or division thereof) on information with respect to such account, the account holder (or substantial U.S. owner of an account holder that is a U.S.-owned foreign entity) fails to provide a valid and effective waiver of such law to permit such reporting.

Recalcitrant NFFE	An NFFE that does not disclose its substantial U.S. owners or that fails to certify it does not have substantial U.S. owners
Recipient	The term recipient means a person that is a recipient of a Chapter 4 reportable amount, and includes the person required to be reported on a Form 1042-S with respect to a payment of U.S. source FDAP income. With respect to a payment other than U.S. source FDAP income, the regulations reserve.
Responsible Officer	An officer of a participating FFI, registered deemed-compliant FFI, or a compliance FI with sufficient authority to ensure the FFI meets its applicable FFI requirements. Among other things, the responsible officer of a participating FFI must certify every three years that the entity remains compliant.
SEC	Securities and Exchange Commission
SICAV	Societe d'Investissement A Capital Variable
SPE	Special Purpose Entity
Specified U.S. Person	A U.S. citizen or resident alien, privately owned U.S. Corporation or U.S. Owned Foreign Entity
SPV	Special Purpose Vehicle
Substantial U.S. Owner	A U.S. owner that has a more than 10% interest in an NFFE
TIN	Taxpayer Identification Number
Tax Identification Number	A Taxpayer Identification Number (TIN) is an identification number used by the Internal Revenue Service (IRS) in the administration of tax laws.
USD	United States Dollar
USWA	United States Withholding Agent
U.S. Account	A financial account held by a specified U.S. person or by an entity that, directly or indirectly, has one or more "substantial" U.S. owners
U.S. Indicia	Data which is indicative of an account holder being a U.S. Account, for example U.S. place of birth, U.S. passport, green card, U.S. address, substantial U.S. presence, regular payments to or from a USFI
U.S. Owned Foreign Entity	A foreign entity which has one or more Substantial U.S. Owners
U.S. Person	An account holder who is a U.S. citizen or taxpayer. Includes U.S. entities and other

	qualifying persons such as Green Card holders
USFI	U.S. Financial Institution - a Broker or Dealer, Investment Fund, Investment Adviser, Bank, Trust Companies based in the USA
Withholding	The act of holding some of the value of a payment, for the purpose of paying tax.
Withholding agent	A USWA is any U.S. person that is a withholding agent. That includes any person that has the control, receipt, custody over the disposal or payment of a withholdable payment or foreign passthru payment. This is generally a non-individual U.S. person and includes domestic partnerships, domestic corporations, any non-foreign estates and any trusts if a U.S. court is able to exercise primary supervision over the trust's administration and one or more U.S. persons have authority to control all substantial decisions of the trust. A U.S. person also includes a foreign branch of a U.S. person that is not a qualified intermediary acting as an intermediary with respect to a payment.
Withholdable payment	The term withholdable payment means any payment of U.S. source FDAP income and any gross proceeds from the sale or other disposition of any property of a type that can produce interest or dividends that are U.S. source FDAP income.
WP	Withholding Foreign Partnership
WT	Withholding Foreign Trust