

# Citi TTS Seminar

## FATCA

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**This presentation does not constitute tax advice.  
It is for information purposes only.**

# FATCA Background

- The Foreign Account Tax Compliance Act (FATCA) is
  - US tax legislation that aims to prevent or detect tax evasion by U.S. Persons who
    - Hold bank deposits and/or securities in offshore accounts, or
    - Own foreign investment entities (e.g., personal investment corporations and trusts)
- FATCA was enacted into law on 3/18/2010 as part of the HIRE ACT
- Added new Chapter 4 to the Internal Revenue Code
- Basic Requirements:
  - US financial institutions (USFIs) and foreign financial institutions (FFIs) may be required to:
    - Identify and report directly or indirectly to the IRS with respect to:
      - accounts owned directly or indirectly by specified US persons, and
      - financial institutions that do not comply (or "participate") with FATCA (so-called "non-participating FFIs")
  - Withhold a 30% FATCA tax from certain U.S. source income when paid to:
    - Non-participating FFIs (NPFIs),
    - Non-compliant passive non-financial foreign entities (NFFE), and
    - If the withholding agent is an FFI, recalcitrant accounts

# Withholding as an Enforcement Tool

- 30 Percent FATCA Withholding

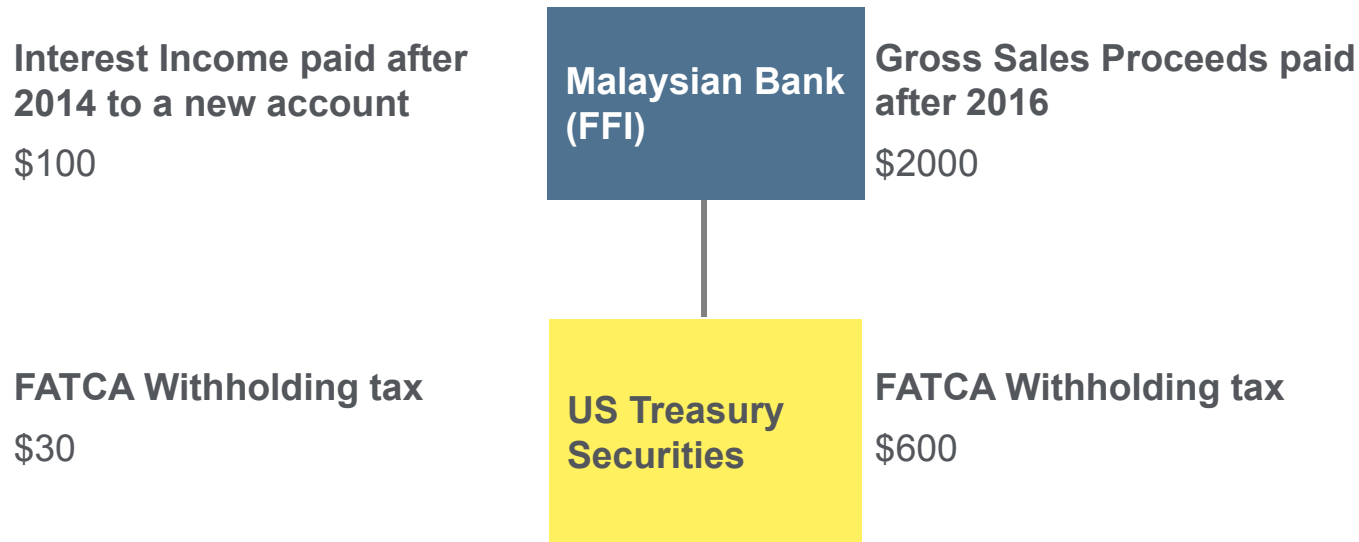
- Imposed on “withhold-able” payments, including:

- U.S. source income from securities
- Interest on bank deposit accounts maintained in the United States or in a foreign branch of a U.S. bank
- Gross proceeds from the sale/redemption of U.S. securities (not until 2017)

- When made to FFIs or NFFEs unless:

- The FFI qualifies as a participating FFI, a registered deemed-compliant FFI, a certified deemed-compliant FFI or an exempt beneficial owner
- The NFFE certifies that it has no substantial U.S. owners, certifies that it has substantial U.S. owners and discloses their identity, or is classified as an excepted NFFE (excepted from the ownership certifications because it presents a low risk of being used for tax evasion)

# Example: Impact if a Bank Does Not Comply with FATCA



- Malaysian Bank invests in US Treasury securities that generate US source interest income and eventually gross proceeds from sale
- If Bank is a NPFFI a new **30% FATCA withholding tax** will apply to periodic payments of interest income, and if the bonds are sold after 2016, gross sale proceeds

# What is an FFI?

- The term “foreign financial institution” includes investment entities and certain holding companies as well as traditional financial institutions
- Any non-U.S. entity that falls into one of the following categories:
  - Depository banks
  - Custodial banks or brokerage firms
  - Insurance companies that issue policies having cash value or annuities
  - Investment Entities, including
    - Entities that conduct the following activities as a business on behalf of customers
      - Trading in financial assets
      - Portfolio management
      - Investing, administering, or managing money or financial assets
    - Collective investment vehicles, mutual funds, hedge funds, and private equity funds
  - Holding company or treasury center that
    - Is part of an expanded affiliated group (EAG) that includes another FFI
    - Is formed in connection with or availed of by certain investment entities

# What is Expected of an FFI?

- To avoid 30 percent withholding under FATCA, a FFI **must enter into agreement** with IRS and meet the following obligations:
  - Comply with verification and **due diligence** procedures for payees and financial accounts
  - Obtain information necessary to determine if each account is a U.S. account
  - **File annual reports** with the IRS on U.S. accounts
  - **Withhold** and pay the IRS 30 percent of withhold-able payments made to:
    - Recalcitrant account holders, Non-compliant FFIs, and FFIs electing to be withheld upon
  - Comply with IRS requests for additional information on U.S. accounts
  - **Obtain a waiver of foreign laws** that would prevent reporting or disclosure (e.g., privacy or bank secrecy laws) of U.S. persons or close any U.S. account failing to provide a required waiver.
- The IRS can terminate the FFI agreement for any performance failures.
- All FFIs in expanded affiliated group need to be compliant in order for any FFI in that expanded affiliated group to be compliant.

# IRS Registration of FFIs

- FFIs are required to register as Participating FFIs, Registered deemed-compliant FFIs or Limited FFIs
- Every FFI that is a member of an expanded affiliated group (EAG) must register with the IRS, unless an exception applies
- A Limited FFI is an NPFFI that is a member of an EAG and is subject to FATCA withholding
- Once an FFI has registered, the IRS will approve its registration and issue a GIIN (Global Intermediary Identification Number) to each Participating FFI and Registered deemed compliant FFI.
- The IRS registration web site will be primary means for FFIs to complete and maintain their FATCA registrations, renew QI agreements and make periodic compliance certifications.
- The web site will be used for ongoing electronic communication between the IRS and FFIs
- A GIIN will be used as an identifying number in satisfying the FFI's reporting obligations and identifying its status to a withholding agent.
- The IRS will electronically post the first IRS list of Participating FFIs and registered deemed compliant FFIs (including Model 1 FFIs) on June 2, 2014, and will update the list on a monthly basis.



# Key FATCA Due Dates

## Near term requirements

FATCA Compliance Tasks	USFI	FFI	Due Dates <sup>1</sup>	Comments
Finalize FFI Registration		✓	5/5/2014	For inclusion in first IRS list of FFIs to be released on 6/2/2014.
FFI Agreements Effective		✓	6/30/2014	Or later date the FFI enters into an FFI agreement.
Grandfathered Obligations (those that produce/could produce U.S. source income)	✓	✓	6/30/2014	Identify outstanding obligations
			7/1/2014	Begin monitoring material modifications
New Account Due Diligence procedures in place	✓	✓	7/1/2014 or 1/1/2015	Applies to accounts opened by individuals after 6/30/2014 and entities after 12/31/2014.
Withhold on U.S. Source FDAP Income	✓	✓	7/1/2014	Begin withholding on new individual accounts and certain pre-existing accounts for NPFFI <sup>2</sup>

## Future requirements

FATCA Compliance Tasks	USFI	FFI	Due Dates <sup>1</sup>	Comments
Due Diligence on prima facie FFIs among preexisting entity accounts <sup>4</sup>	✓	✓	12/31/2014	Documentation due date
			1/1/2015	Begin withholding on NPFFIs <sup>2</sup>
Form 1042-S Reporting	✓	✓	3/15/2015	Applies to “withholdable” payments
U.S. Account Reporting <sup>3</sup>	✓	✓	3/15/2015	First reporting year for Form 8966 is 2014.
Due Diligence on high-value accounts among preexisting individual accounts		✓	6/30/2015	Documentation Due Date
			7/1/2015	Begin withholding unless documented or excepted <sup>5</sup>
Limited FFI Status (Impacts EAG compliance)		✓	Ends 12/31/2015	
Due Diligence on all remaining preexisting accounts (other individual accounts held by USFIs)	✓	✓	6/30/2016	Documentation due date
			7/1/2016	Begin withholding unless documented as exempt or an exception applies
Withhold on Gross Proceeds	✓	✓	1/1/2017	Begin withholding on sales/redemptions unless documented as exempt or an exception applies
Withhold on Foreign Passthru Payments		✓	1/1/2017	Or if later, the date final regulations defining covered payments are published

<sup>1</sup> Note: These dates are based on Notice 2013-43 and the final FATCA Regulations and as further amended by Announcement 2014-17 and Notice 2014-33.

<sup>2</sup> Once a preexisting account is documented, it will be treated as having the FATCA status that is claimed from the time it is documented rather than starting at the end of the due diligence period. For preexisting entity accounts documented as NPFFIs, withholding must begin even if the due diligence period has not ended.

<sup>3</sup> U.S. account reporting for USFIs is limited to reporting on Substantial U.S. Owners of Passive NFFEs and Specified U.S. Owners and Debt Holders of an Owner Documented FFI.

<sup>4</sup> FFIs located in an IGA country are not required to perform due diligence to identify prima facie FFIs by 1/1/2015

<sup>5</sup> FFIs located in an IGA country are not required to withhold on recalcitrant accounts

# New Account Due Diligence

- Unless documentation sufficient to determine the FATCA status of the payee or account holder is provided to the withholding agent, an entity will be presumed to be an NPFFI and subject to FATCA withholding
  - Applies to new accounts opened or obligations entered into after 12/31/2014
- This presumption is rebutted by providing documentation sufficient to establish that the payee or account holder is FATCA compliant
- Key Differences between FATCA and prior law:
  - FATCA requires increased due diligence on the claims made
  - A withholding agent must treat the claim as invalid, if any information contained in the account opening file or other client files “conflicts” with the payee’s claimed FATCA status
  - This includes a review of information or documentation collected in the performance of due diligence under Anti-money laundering (“AML”) and Know-your-customer (“KYC”) rules.
  - A claim of foreign status will be treated as **unreliable if there are certain types of “U.S. indicia” present**, unless additional documentation sufficient to “cure” the U.S. indicia is obtained.
  - This means that clients having U.S. indicia will be required to provide additional documentation to substantiate a claim of foreign status.

# How to Classify Accounts Under FATCA

- FIs need to determine whether to treat:
  - An individual account holder as a U.S. person or a foreign person
  - An entity account holder as:
    - a U.S. person
    - A foreign financial institution (FFI)
    - An exempt foreign organization (e.g., a foreign government) or
    - A non-financial foreign entity (NFFE)
  - An FFI as:
    - A participating FFI
    - A deemed-compliant FFI
    - An exempt beneficial owner, or
    - Non-participating FFI
  - An NFFE as:
    - An excepted NFFE or
    - A passive NFFE (having a substantial US owner)
- Presents a new and completely different way to categorize client accounts and service providers

# Definition of a US Person

- A Specified U.S. person is any U.S. person **OTHER THAN**:
  - A publicly traded corporation or member of its expanded affiliated group;
  - Organization exempt from tax under Section 501(a) or an individual retirement plan;
  - The U.S., the District of Columbia, any state, any U.S. territory, any political subdivision the foregoing, or any wholly-owned agency or instrumentality thereof;
  - Banks; REITS; RICs,
  - Common trust fund or trust exempt from tax;
  - A U.S. registered dealer in securities, commodities or derivatives; or
  - A broker.
- Above list is similar to list of “exempt recipients” used to identify persons exempt from Form 1099 reporting, except that certain private corporations are specified U.S. persons

# Impact on Your Relationship with Your Bank

- **What Your Financial Institution Will Ask you**

- What is your FATCA status?
- A multi-national corporation must determine the FATCA status for each entity in its expanded affiliated group.
- Establish FATCA status by providing appropriate documentation:
  - U.S. Legal Entities – Form W-9
  - Non-U.S. Legal Entities – Form W-8
  - Request for additional documentation if US indicia are present
- Failure to provide appropriate documentation will result in 30% FATCA withholding and reporting
- You are obligated to inform your bank of any change in circumstances that affects your FATCA status within 30 days of the change.

- **Impact on Transactional Documentation**

- May need to update Legal Documents.

# FATCA Intergovernmental Agreements (IGAs)

- An IGA establishes a partnership between the US and a foreign country
  - To improve international tax compliance
  - To establish uniform reporting standards and an automatic information exchange
  - To eliminate local legal obstacles to FATCA compliance, and
  - To implement FATCA in a manner that will reduce compliance burdens and costs .
- IGAs modify the FATCA compliance obligations of financial institutions located in the IGA country from that otherwise required by the U.S. Treasury Regulations
  - There are two primary types of IGAs: Model 1 and Model 2
  - Both models suspend the requirement to withhold on or close recalcitrant accounts, provided that the information reporting requirements are met
  - Under Model 1, FATCA information returns are to be filed with local tax authorities while under Model 2, these returns are to be filed directly with the IRS
  - Allow reliance on self-certifications (IRS form or similar agreed upon form)

# Local Legal Issues

- FATCA imposes obligations on FFIs that may be in conflict with the laws of the jurisdiction in which an FFI operates, including
  - Privacy laws prohibiting the sharing of personal information on clients, including sharing with a foreign tax authority
  - Access-to-banking laws that guarantee that an account must be opened or that accounts may not be closed unilaterally
  - Laws prohibiting the withholding of taxes for a foreign government or withholding without clients' consent
- The IGAs present an opportunity for a country to support its FFIs compliance with FATCA by
  - Changing local laws to remove legal obstacles to FATCA compliance
  - Accepting the U.S. offer in the IGAs to modify or eliminate certain FFIs obligations that would apply under the Final FATCA Regulations

# IGA Status Update

- As of May 19, 2014, 32 countries have signed an IGA
  - 27 are Model 1 IGAs
  - 5 are Model 2 IGAs
  - Model 1 bilateral agreement published in July 2012 and Model II published in November 2012.
- 33 additional countries have reached an agreement in substance
  - 31 are Model 1 IGAs and 2 are Model 2 IGAs
  - On April 2, 2014, Treasury and IRS announced that it would treat IGAs as in effect in countries that have reached an agreement in substance on the terms of an IGA
- Provides FFIs in those countries with clarity on their FATCA status when they register with the IRS and what they need to do to implement FATCA
  - Until the country specific IGA is signed, the terms of the model agreement apply
  - A country will be removed from this list if the IGA is not signed by 12/31/2014
- Updates to the lists of IGAs in effect are posted to the Treasury web site periodically at <http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA-Archive.aspx>
- The text of the model agreements can be found at:
  - <http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx>



# Information Reporting by FATCA Partner FIs

- Report U.S. account holders who are:
  - Specified U.S. persons,
  - Non-U.S. entities having at least 1 controlling person that is a specified U.S. person
  - A specified U.S. person is generally means any U.S. person other than an exempt recipient (but includes a privately held corporation that is not a related entity)
- Reportable information
  - Name, address and TIN of each specified U.S. person
  - Name, address and TIN (if any) of a non-US entity with at controlling specified U.S. person
  - Account number
  - Account balance or value at year end or account closing date
  - Total gross interest, dividends, other income, gross proceeds from sale or redemption of property paid or credited to the account
- Form 8966 will be used by FFIs in reporting on U.S. accounts,
  - unless an election is made to report on Form 1099
- FATCA Partners in Model 2 countries must report annually the “aggregate” information required respecting U.S. accounts that do not consent to reporting

Thank you

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