



SATC's FATCA Seminar

4 July 2013

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Introduction



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Frequently Asked Questions

- What are the trustee's responsibility under FATCA?
- How do we determine whether the trustee company is an FFI?
- Does the trust company need to register under FATCA in its own right?
- What should the trust company consider in relation to trusts that it manages?
- How does TrustCo determines whether managed trusts (and other managed entities) are FFIs?
- What is the position of managed entities other than trusts?
- How can trusts which are FFIs become FATCA compliant?
- What are the documentation requirements for FATCA compliance for trusts?
- How should trustees identify trust owners for FATCA purposes?
- What information should trustee report on owners of Owner-Documented FFIs for FATCA purposes?
- What is the position of charitable trusts? ...of unit trusts? ...of retirement funds?
- What is the position of estate under FATCA?
- Is the position different if the trustee or trust is resident in a IGA country?
- How will the Private Bank treat accounts held with the Bank by trusts?

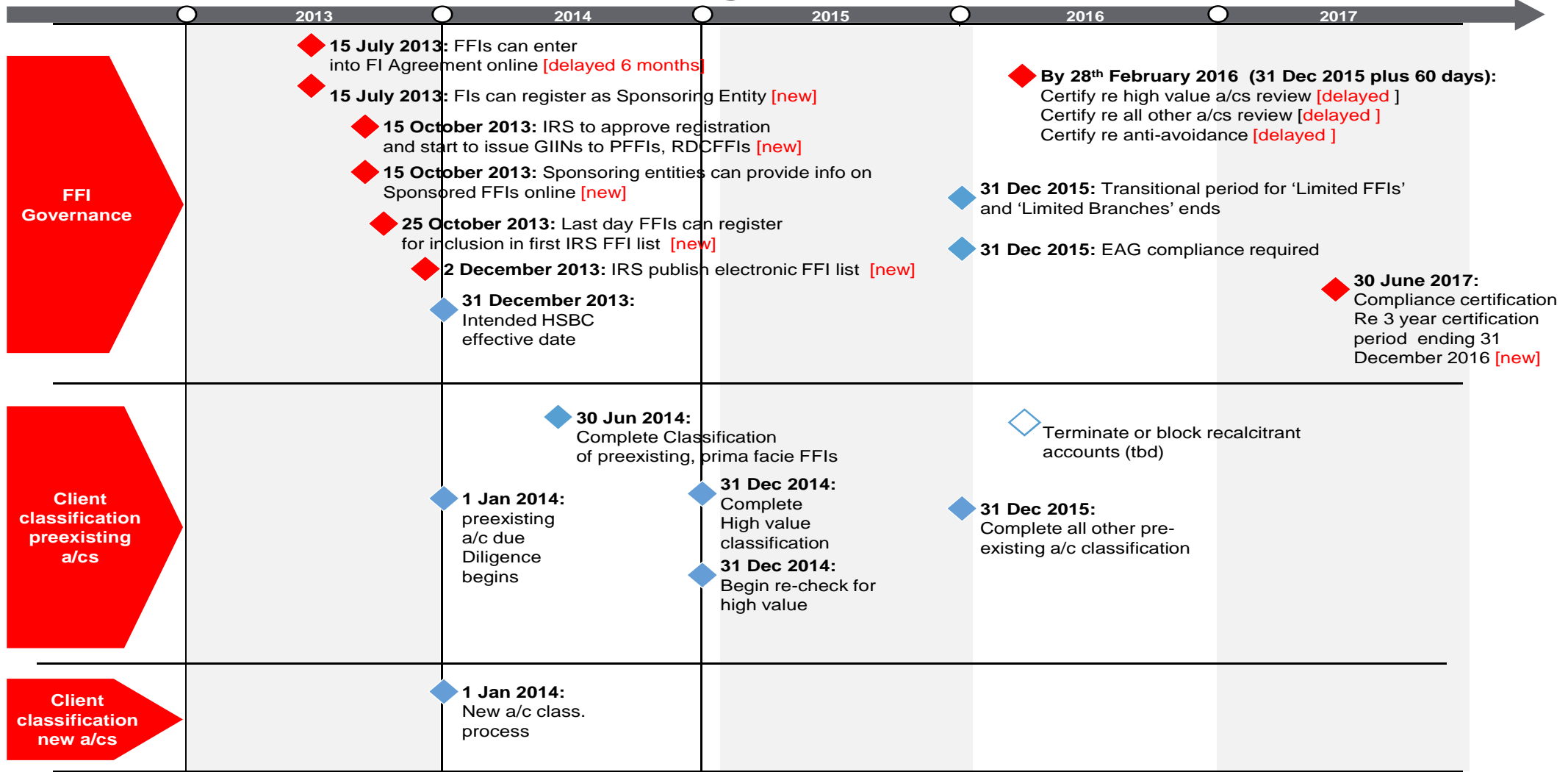
Questions might be asked by Professionals

- When are trusts classified as Passive NFFEs?
- What type of investment entity is a trustee?
- What FATCA compliance status will trustee fall under within an expanded affiliated group?
- Are there differences in definition of “Investment Entity” between the FATCA regulations and the IGA?
- What’s the definition of financial assets, e.g. when held in trust or PIC portfolio?
- Will foreign (non-US) Trust companies require FFI registration?
- Who are the “Responsible Officers” for each trust company that require to be registered under FFI Agreements?
- When does FATCA starts for trustees?
- By when must trustees put in place documentation requirements for pre-existing accounts (“Preexisting Obligations”)?
- What types of trust does the IRS recognize for US withholding tax purposes?
- Do the “Chapter 3” rules for the definition of a “US trust” also apply under FATCA?
- What are the “Chapter 4” rules in respect of foreign grantor trusts?
- So, will all trust be FFIs?

Final Regulations – FATCA Timelines

Final Regulations

FATCA Timelines – FFI – Changes since Announcement 2012-42



◆ Unchanged Regulatory Milestone / Requirement
 ◆ Changed/new Regulatory Milestone / Requirement since Announcement 2012-42
 TBD Regulatory Milestones

Prop regs & 2012-42. Summary v1

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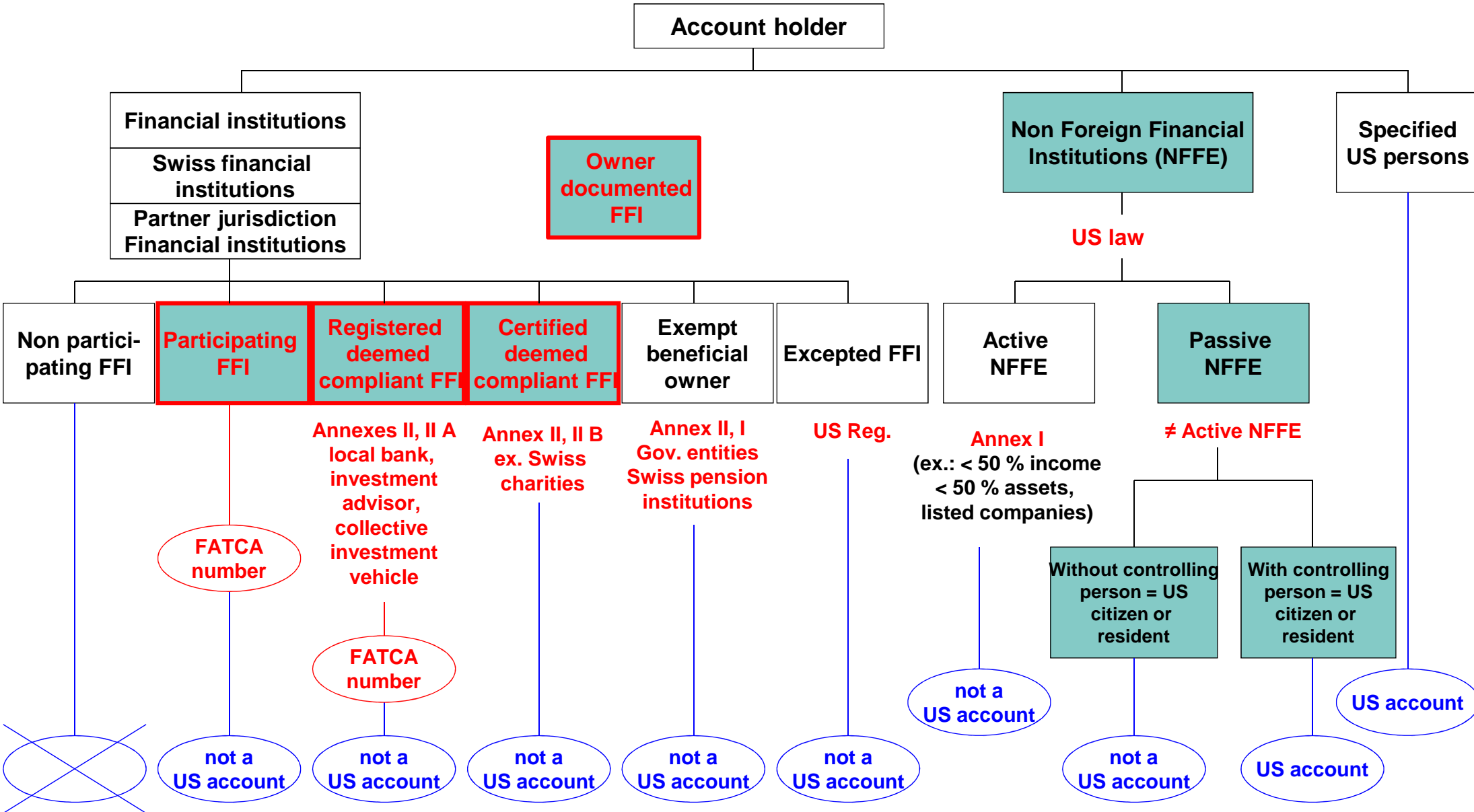
4 INTERNAL

Orbit of Qualifications of Account Holders of Annex I and II (simplified)

Lenz & Staehelin

IGA definition introduces some doubt as to whether professionally managed trusts / entities which do not invest in financial assets could be treated as FFI, as opposed to being treated as Passive NFFE.

Insert GPS number here



What should TrustCo consider in relation to trusts that it manages?

Step 1:	Identify which trusts administered by the TrustCo are FFIs, by applying the FFI definition of 'investment entity'.
Step 2:	<p>For trusts identified as FFI, the Trustee should consider the available options for trusts to become FATCA compliant.</p> <p>The trustee business will need to consider as a policy decision whether all or only some of these compliance options should be made available to their managed trusts, by considering the features of each compliance status.</p> <p><i>Note: For trusts not identified as FFI the Trustee should understand the likely FATCA status which the trustee will need to certify on documentation to be provided to the bank(s) with which the trust holds accounts or other products in-scope of FATCA.</i></p>
Step 3:	For trusts identified as FFIs, the Trustee should ensure that compliance activities relevant to the FATCA compliance status of the trust are carried out in accordance with the FATCA compliance timetable (e.g. registration, identification/documentation, reporting and withholding obligations, responsible officer certifications).

FATCA Implementation Checklist

Subject		2013	2014	2015	2016	2017	2018
1	<p>Formalities</p> <p>Policy for US persons in place</p> <p>If other FFIs are affiliated , group-wide responsibilities determined</p> <p>Decided on Responsible Officer</p> <p>Carried out trainings for all employees to increase awareness and knowledge of FATCA</p>	<p>By October 25th</p> <p>Register with IRS as PFFI or Registered Deemed Compliant FFI.</p> <p>Train employees on change of circumstances and US indicia</p> <p>By 30 November 30th</p> <p>Communicate GIIN to custodians and withholding agents</p>					
2	<p>Account Opening Process</p>	<p>By December 31st</p> <p>Update your account opening procedures & forms to review on US indicia</p>					
3	<p>Existing Clients</p> <p>Defined approach for US indicia search</p>	<p>By December 31st</p> <p>Banks: Carry out electronic search for US indicia for all individual accounts</p> <p>Banks: Perform paper file search on individual accounts AuM > 1m USD</p>	<p>By March 31st</p> <p>Banks: Carry out electronic search for US indicia</p> <p>Banks: Perform paper file search on individual accounts AuM > 1m USD</p> <p>Scope out entity accounts (exempt BOs, active NFFEs < 250K threshold, etc.) and begin requesting documentation from all entity accounts in scope where required</p>	<p>By December 31st</p> <p>Banks: Obtain from all remaining ind. Accounts with US indicia doc. or code as Non-Consenting US Accounts</p> <p>Obtain certification of status and GIIN, from all non-exempt entity accounts or code Non-Consenting NPPFI</p>			

FATCA Implementation Checklist

Subject		2013	2014	2015	2016	2017	2018
1	<p>IT, Withholding</p> <p>Coordinated with IT/outsource provider regarding the following necessary changes :</p> <p>Securities master file data</p> <p>Client coding (US indicia)</p>		<p>Starting January 1st FATCA begins worldwide</p> <p>Starting July 1st Treat all Financial Intermediaries for whom you could not obtain a GIIN as Nonparticipating FFIs (NOTE: under the Swiss IGA no withholding is required at first. Under the Final Regs withholding needs to be applied).</p>	<p>Starting January 1st Begin withholding on other NPFFI and recalcitrant accounts</p>			
2	<p>Reporting</p>		<p>By December 31st Register with IRS FIRE system for e-filing of forms Ensure that systems are capable of generating formats required for e-filing with IRS (1042, 1099, 8999 reporting) or select appropriate software product or outsource service provider Ensure that your system are capable of calculating and withholding FATCA tax on applicable securities and account, if necessary and/or required</p>	<p>By March 31st Reporting deadline Form 8966 for anonymous recalcitrant / non consenting US pools (US sourced income) for tax years 2013 and 2014 Reporting deadline for Form 8966 over US accounts (statistic data and accounts balance) for tax years 2013 1nd 2014</p>			
	<p>DISCLAIMER: This checklist does NOT cover every possible situation and / or client structure, it might not even covers the most common situations . Should you have a situation that is not addressed , please consult with your local FATCA specialist.</p>	<p>This information is not intended or written by HSBC Private Bank to be used, and cannot be used, by a client or any other person or entity for the purpose of avoiding tax penalties that may be imposed on any taxpayer.</p>	<p>Readers should not consider this document to be a recommendation to undertake any tax position, nor consider the information contained therein to be complete.</p>	<p>Readers should thoroughly evaluate their specific facts and circumstances and obtain the advice and assistance of qualified tax adviser</p>			8



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FATCA SATC

4 July 2013

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Handout

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PUBLIC

- With the enactment of the Foreign Account Tax Compliance Act (FATCA), the United States wishes to ensure that all accounts held abroad by US taxpayers can actually be taxed. FATCA is a **unilateral set of US regulations** that applies worldwide for all countries. It requires foreign financial institutions (FFIs) to enter into an agreement and disclose information on US accounts to the Internal Revenue Service or levy a high tax within that framework.
- Financial institutions that do not implement FATCA will lose access to the US capital market and be avoided by FATCA-compliant institutions. FATCA implementation is causing a significant administrative and financial burden for the affected financial institutions worldwide, which can be alleviated by entering into a bilateral agreement with the United States. The United States proposes two models:

- **Model agreement II**

Bilateral agreements to simplify FATCA implementation are also possible for countries that, like Switzerland, reject the automatic exchange of information.

- This agreement covers the following:

- Swiss financial institutions deliver information on US accounts directly to the Internal Revenue Service rather than via government bodies.
 - Financial institutions are not obliged to report the names of recalcitrant US clients, make a tax deduction for such clients or terminate the client relationship with them. A client who does not consent to the financial institution transmitting data to the Internal Revenue Service is considered recalcitrant.
 - The United States can request administrative assistance concerning recalcitrant clients by means of group requests.
 - Swiss financial institutions benefit from simplifications for the identification of clients.
 - Certain financial institutions that operate primarily on a local or regional basis are deemed compliant with FATCA.
 - The agreement creates clarity also for the insurance (property insurers) and pension sector (social security funds, pension funds): they are excluded from FATCA's scope of application.
 - Independent asset managers are relieved of the obligation to conclude a FATCA contract.
- Conclusion of a bilateral agreement is in the interests of Switzerland. In the absence of an agreement, Swiss financial institutions would have to manage without reductions in the administrative burden for FATCA implementation. This would result in a competitive disadvantage relative to financial institutions from countries that have entered into an agreement with the United States.

Switzerland and United States sign FATCA agreement

Handout

- **14 February 2013 Switzerland and the United States signed the FATCA agreement, which will help Swiss financial institutions by means of simplifications in the implementation of the US tax legislation.**
- With the enactment of FATCA, the United States wishes to ensure that all income earned worldwide by US taxpayers on accounts held abroad can be taxed by the United States. FATCA essentially requires foreign financial institutions to conclude a contract with the US tax authorities (Internal Revenue Service, IRS) that imposes reporting requirements on them regarding identified US accounts. In the case of grave errors being committed during implementation, the IRS may submit requests for information to the financial institutions concerned, about which it has to inform the Swiss authorities. On-site inspections by the IRS at the financial institutions concerned are not permitted.
- The FATCA agreement negotiated with Switzerland allows Swiss financial institutions to exchange information with the IRS and provides for simplifications in implementing FATCA. The Final Regulations published by the US Treasury and the IRS on 17 January 2013 are applicable to Swiss financial institutions to the extent that the agreement and its annexes do not expressly make provision for derogations from the rules.
- The agreement that has now been signed provides for simplifications for large sections of the Swiss financial industry:
- Social security funds, private pension funds and property and casualty insurers are excluded from the scope of FATCA.
- Collective investment vehicles and financial institutions with a predominantly local clientele (i.e. at least 98% of clients are from Switzerland or the EU) are deemed FATCA-compliant under certain conditions and are subject only to a registration obligation and the associated obligations.
- The due diligence requirements for the identification of US clients, to which all other Swiss financial institutions are subject, are designed in such a way that the administrative burden is kept within reasonable limits.
- The agreement ensures that the accounts held by US persons with Swiss financial institutions are disclosed to the US tax authorities either with the consent of the account holder or by means of group requests within the scope of administrative assistance. Information will not be transferred automatically in the absence of consent, and instead will be exchanged only on the basis of the administrative assistance clause in the double taxation agreement.
- As the United States will phase in FATCA from 1 January 2014, Swiss financial institutions will be forced to implement FATCA from this date, irrespective of an agreement between Switzerland and the United States, if they do not want to be excluded from the US capital market. Without an agreement, however, they could not benefit from simplified implementation and would thus be at a disadvantage relative to competitors in other financial centres. It is important therefore that the agreement can come into force on 1 January 2014.
- Owing to the urgency and importance of the matter, the Federal Council has decided to conduct an abbreviated consultation on the FATCA agreement as well as on the corresponding implementing act. Interested parties have four weeks to submit their views.
- In order to enable swift handling of the approval process, the Federal Council has in addition announced submission of the FATCA dispatch to the parliamentary offices.
- **Resolution of the past**
- Independent of FATCA, both countries are continuing to work together in good faith to seek a solution for the past. Such a solution must address the law enforcement needs of the United States as well as the interests of Switzerland in a settlement for the Swiss financial sector. In this regard, the successful conclusion of the FATCA negotiations has been considered as a positive signal by the responsible US authorities.

- **On 10 April 2013 the Federal Council adopted the FATCA dispatch for the attention of parliament. The agreement will help Swiss financial institutions by means of simplifications in the implementation of the US tax legislation.**
- Both the FATCA agreement between Switzerland and the United States that was signed on 14 February 2013 and its legal implementation were widely accepted during the consultation procedure. While the extraterritorial US tax legislation was generally criticised, it was nevertheless acknowledged that, with the agreement, Switzerland had achieved simplifications in the implementation of the legislation for Swiss financial institutions.
- With the enactment of FATCA, the United States wishes to ensure that all income earned worldwide by US taxpayers on accounts held abroad can be taxed by the United States. FATCA essentially requires foreign financial institutions to register with the US tax authorities (Internal Revenue Service, IRS) and report on identified US accounts or else to deduct and transfer a withholding tax.
- The FATCA agreement enables Swiss financial institutions to exchange information with the IRS and provides for simplifications in implementing FATCA. The Final Regulations published by the US Treasury and the IRS on 17 January 2013 are applicable to Swiss financial institutions to the extent that the agreement and its annexes do not expressly make provision for derogations from the rules.
- The agreement ensures that the accounts held by US persons with Swiss financial institutions are disclosed to the US tax authorities either with the consent of the account holder or through normal administrative assistance channels. Consequently, information will not be transferred automatically in the absence of consent, and instead will be exchanged only on the basis of the administrative assistance clause in the double taxation agreement.
- As the United States will phase in FATCA from 1 January 2014, Swiss financial institutions will be forced to implement FATCA from this date, irrespective of an agreement between Switzerland and the United States, if they do not want to be excluded from the US capital market. The agreed simplifications will not apply if there is no agreement.

- **On 20 May, the IRS released an updated draft of the Form W-8BEN-E for entities.**
- Many affected financial institutions will request that pre-existing entity clients self-certify their FATCA status using the final version of this form. For most entity customers, this form will be their only tangible connection to the FATCA regulatory regime and the letter from financial institutions requesting completion of the form may be the first time that they discover that FATCA affects them. As a result, many will be unfamiliar with the FATCA-introduced terminology and concepts in the form and some will rely on the financial institutions requesting the form for guidance. Therefore, we urge you to review this draft form closely and take it into consideration while preparing diligence programs for preexisting clients, modifications to onboarding processes and procedures, and the related client communication materials.
- As expected, the form has changed since the draft published last year. Three significant changes are:
 - The addition of sections designed specifically for disregarded entities and branches receiving payments;
 - The anticipated change to a capacity check box to match the Form W-8ECI and W-8EXP drafts released last year; and
 - Various modifications to account for the FATCA Intergovernmental Agreements (IGAs).

Memorandum of Understanding on FATCA agreement Handout

- **On June 7 2013 Switzerland and the United States signed a Memorandum of Understanding on interpretations regarding the FATCA agreement of 14 February 2013.**
- Within the scope of the negotiations on the FATCA agreement signed on 14 February 2013, both sides agreed to set out individual interpretations of a technical or administrative nature in a Memorandum of Understanding (MoU).
- The MoU summarises the obligations of Swiss financial institutions, states the relationship with the qualified intermediary system, and confirms the simplified self-declaration for exempt Swiss beneficial owners under the FATCA agreement. Finally, it is stated that Swiss financial institutions can generally apply definitions from the implementing provisions of the US Department of the Treasury if these simplify matters relative to the definitions in the FATCA agreement.

Memorandum of Understanding on FATCA agreement Handout

- **The content of the MOU was described in the Federal Council’s message of 10 April. Together with the Botschaft, the MoU elaborates on the following:**
- Article 1, Part 1 – The Botschaft referenced the uncertainty of whether Reporting Swiss Financial Institutions (RSFIs) were required to also close accounts of NPFFIs. The list of requirements in the MOU specifically excludes the requirement to close accounts of NPFFIs.
- Article 1, Part 2 – The MOU states that the verification and enforcement procedures are governed by the IGA. However, significant non-compliance (i.e. material failures and events of default) are defined under the Regulations.
- Article 2 – Arguably, RSFIs would still be bound by the terms of the FFI agreement to the extent duplicate reporting or withholding is required absent this additional guidance. However, we are still waiting for this additional guidance from the U.S. Treasury and the IRS.
- Article 3 – The form and content of the simplified self-certification for non-reporting SFIs is not yet known. If operating in Switzerland only, non-reporting SFIs could benefit from these reduced procedures, whereas non-reporting SFIs that open or maintain an account outside of Switzerland are likely to be subject to the documentation requirements imposed by the FIs in those other countries.
- Article 4 – The option permitting SFIs to apply definitions from the final FATCA Regulations in lieu of those in the IGAs, so long as doing so would not thwart the purpose of the IGA, was introduced in similar form in the new Framework Model 1 and 2 IGAs.
- **According to the accompanying press release, the MoU seeks to “summarize the obligations of Swiss financial institutions.”**

- The text of the agreement is published. It has been submitted to parliament for approval and is subject to an optional referendum:
- **On 20 June 2013 the Upper Chamber of the Swiss Parliament (Ständerat) accepted the FATCA IGA Model II (34 vs. 3).**
- The only tangible opposition to its passage in the Ständerat was an alternative bill proposed by the Socialist Party (SP) to adopt a Model 1 IGA in order to implement the first steps towards the automatic exchange of information regime the SP favors.
- In September 2013 the Lower Chamber of the Swiss Parliament (Nationalrat) will have to accept the mentioned IGA Model II as well. If it passes, opponents will have 100 days to submit a petition with enough signatures to trigger a popular referendum against the treaty.
- Referendum: there is the likelihood of a referendum.
- Swiss Federal Council: Art 271 Penal Code authorisation

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