



INTERNATIONAL CONFERENCE ON FATCA

FATCA-QIA INTERACTION

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FATCA AND QIA INTERACTION - AGENDA

1. BACKGROUND AND FATCA STATUTE

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1.2 Differences and similarities between the QI and FATCA regime

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1. BACKGROUND AND FATCA STATUTE

1.1 FATCA and QIA interaction - the HIRE ACT provisions

❖ Sec. 1471(c)(3) – “*Separate Requirements for Qualified Intermediaries* - In the case of a foreign financial institution which is treated as a Qualified Intermediary by the Secretary for purposes of Section 1441 and the regulations issued thereunder, the requirements of this section shall be in addition to any reporting or other requirements imposed by the Secretary for purposes of such treatment”

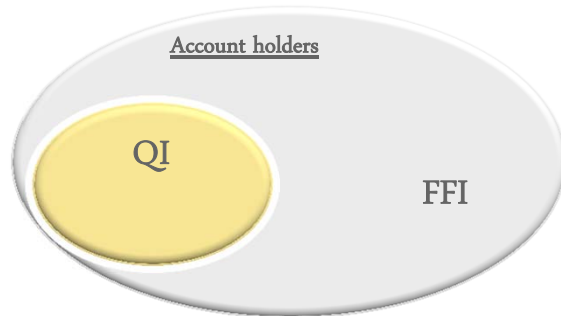
(FATCA requirements are in addition to QI obligations)

❖ Sec 1474 (d) – “*Coordination with other withholding provisions* – The Secretary shall provide for the coordination of this chapter with other withholding provisions under this title, including providing for proper crediting of amounts deducted and withheld under this chapter against amounts required to be deducted and withheld under such other provisions”.

(FATCA withholding tax is credited against the QI withholding tax)

1. BACKGROUND AND FATCA STATUTE

1.2 Differences and similarities between the QI and FATCA regime



GOALS

❖ QI regime – Identification of US and non-US account holders, investing in US assets deposited in “QI accounts”, to apply the proper amount of US withholding tax and disclose the reportable payments to each such US account holders

❖ FATCA regime - Identification of all investors, and exchange information on US account holders’ financial investments, to avert the application of the 30% punitive FATCA withholding tax”

MAIN OBLIGATIONS

QUALIFIED INTERMEDIARY

1. QI Agreement
2. Client identification
3. Withholding tax obligations
4. US income tax returns
5. Internal controls and external audit obligations

FOREIGN FINANCIAL INSTITUTION

1. FFI Agreement (except for Model 1 FI)
2. Client identification
3. Potential withholding tax obligations
4. Reporting and US income tax returns
5. Internal controls

2. FINAL REGULATIONS AND FORTHCOMING GUIDANCE – AREAS OF FATCA AND QIA INTERACTION

2.1 Announced Revenue Procedure and guidance

The Final Regulations anticipate that:

- (1) *“The Treasury Department and the IRS expect to publish a revenue procedure setting out the terms of an FFI agreement, consistent with these final regulations, coordinating an FFI’s obligations under the FFI Agreement with chapter 3 obligations and with the provisions of any applicable IGA, and including administrative provisions such as those relating to termination, renewal, and modification of the agreement”*

- (2) *“The Treasury Department and the IRS intend (1) to issue guidance coordinating chapters 3 and 61 with chapter 4, in order to reduce or eliminate duplicative reporting as between chapter 4 (and reporting pursuant to a Model 1 IGA) and chapters 3 and 61; and (2) to conform, as appropriate, the withholding payee identification, and other due diligence rules of chapters 3 and 61 with rules under chapter 4”*

2. FINAL REGULATIONS AND FORTHCOMING GUIDANCE – AREAS OF FATCA AND QIA INTERACTION

2.2 FFI Agreement, New QI Agreement, and registration requirements

FATCA PORTAL REGISTRATION

- FATCA Portal will be the primary way for FFIs to communicate with the IRS and to complete and maintain the Chapter 4 registration, agreement, certifications
- Beginning January 1, 2014, QIs must assume Chapter 4 responsibilities to maintain their QI status.
- By July 15, 2013 at the latest, FFIs will be able to register through the Portal and agree to comply with applicable Chapter 4 status obligations. FFIs will be able to register as (i) participating FFIs, (ii) sponsoring entities, (iii) limited FFIs, (iv) registered deemed-compliant FFIs (including reporting Model 1 FFIs).
- Existing QIs are required to renew their QI Agreement and agree with QI Agreement modifications (to be released) through the FATCA Portal.
- First time FFI applicants for QI status need to submit the existing paper application and, once approved, must register through the FATCA Portal.
- QIs may contract with a PAI, as long as the PAI is either a Participating FFI or a Registered deemed-compliant FFI and QIs are required to identify these PAIs as a part of the registration process.
- Unique assigned GIIN will be used for QI and FATCA purposes (GIINs assigned beginning no later than October 15, 2013).

2. FINAL REGULATIONS AND FORTHCOMING GUIDANCE – AREAS OF FATCA AND QIA INTERACTION

2.2 FFI Agreement, New QI Agreement, and Registration Requirements

EXPECTING ADDITIONAL INFORMATION (...)

- The deadline for the QIA renewal is not mentioned in the Final Regulations. Under the current QI regime, the QIA renewal application must be filed with the IRS by June 30 of the calendar year in which the QIA expires. However, the Final Regulations set forth that “(...) *The last day by which a financial institution can register with the IRS to ensure its inclusion on the December 2013 IRS FFI List is October 25, 2013*”. Is this the new deadline to comply with the QIA renewal requirement? Will the IRS FFI list include evidence of the (renewed) QI status?
- The Final Regulations do not mention who should represent the QI in the QIA renewal application: is it either (i) the “responsible party” previously notified to the IRS within the QI regime, or (ii) the “responsible officer” mentioned in the proposed registration process released by the IRS on June 12, 2012, or (iii) any other QI/PFFI’s legal representative?

2. FINAL REGULATIONS AND FORTHCOMING GUIDANCE – AREAS OF FATCA AND QIA INTERACTION

2.3 Client identification

LEVELS OF FATCA AND QIA INTERACTION

1. US Forms (W9, W8-IMY, W8BEN-E, W8-BEN, etc.)
2. Instructions needed to perform a proper identification of entities that, with respect to the same account, qualify as both (i) beneficial owners under the QI regime, and (ii) FFIs under the FATCA regime (e.g., Italian mutual funds, insurance companies, etc.)
3. Substitute and Non-IRS Forms (“including Forms prepared or filled out in a foreign language”)
4. US Forms transmitted by fax or electronic transmission
5. Type of documentary evidence
6. Period of validity of documentary evidence
7. Notation vs. copies of documentary evidence
8. New Accounts treated as preexisting accounts
9. Sharing client documentation within the expanded affiliated group
10. US Indicia
11. Presumption rules
12. Reasons to know
13. (...)

2. FINAL REGULATIONS AND FORTHCOMING GUIDANCE – AREAS OF FATCA AND QIA INTERACTION

2.3 Client identification

Example of advisable harmonization to reduce the due diligence burden

- ❑ Non-US individual client investing in US securities through a QI/PFFI
 1. The US securities are deposited in a QI account
 2. The QI account is a custodial account under the FATCA regime
 3. The QI and FATCA regimes require that a non-US individual client is identified by either a Form W8-BEN, or documentary evidence
 4. The QI documentary evidence requirements are generally more restrictive than FATCA (only copies of documentary evidence listed in the QI attachment are generally acceptable)
 5. In lack of harmonization, and to avoid duplicate identifications, QIs/PFFIs should identify the non-US individual client by either a (i) Form W8BEN, or (ii) documentary evidence recognized under the QI regime
 6. Thus, in this landscape, it is likely that the QI/PFFI will not apply the more relaxed FATCA approach to documentary evidence

2. FINAL REGULATIONS AND FORTHCOMING GUIDANCE – AREAS OF FATCA AND QIA INTERACTION

2.4 Withholding tax obligations and US income tax returns

Focus on:

❖ Election to be withheld upon for U.S. source FDAP income

1. The election is granted under certain conditions, to PFFIs and registered-deemed compliant FFIs that act as QIs with respect to the FDAP income payment
2. A QI that does not make this election is required to assume primary withholding responsibility under the (“new”) QI regime
3. This option is not available to QIs that have assumed QI primary withholding responsibility

❖ Election to be withheld upon for gross proceeds

[“Reserved”]

❖ Exception to withholding if the withholding agent lacks control, custody, or knowledge

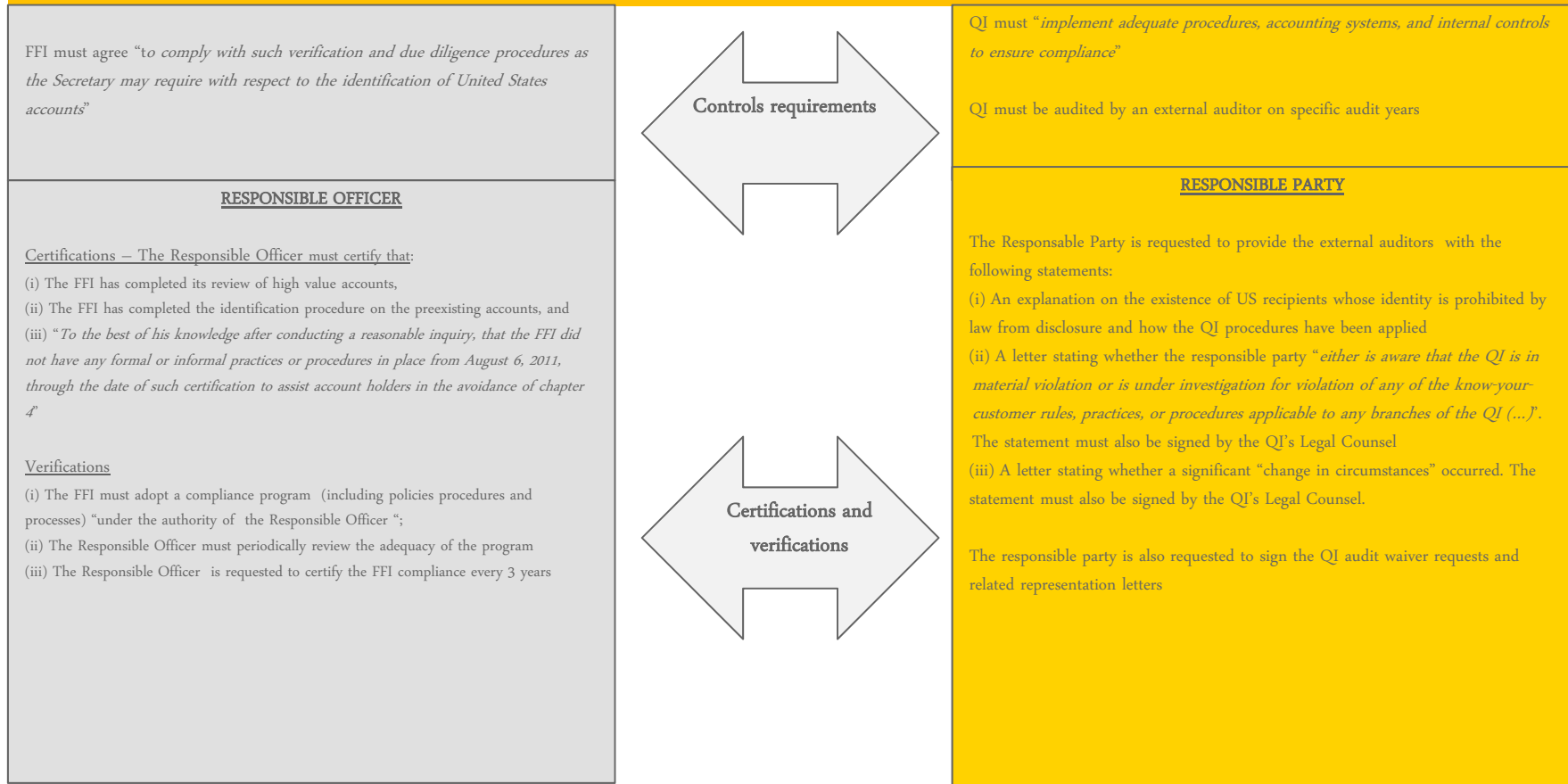
○ The Final Regulations highlight that “a withholding agent does not lack knowledge of the facts that give rise to a payment merely because the withholding agent does not know the character or source of the payment for U.S. tax purposes”

❖ New Forms 1042-S and 1042

○ Announced new Forms 1042-S and Form 1042 to add FATCA “reportable amounts”

2. FINAL REGULATIONS AND FORTHCOMING GUIDANCE – AREAS OF FATCA AND QIA INTERACTION

2.5 Internal controls – certifications and verifications of the “responsible officer” (FFI) and “responsible party” (QI)



... OUR LAST QUESTION:

Will the FFI’s “responsible officer” be required to assume also the QI certification and verification obligations?



THANK YOU FOR PARTICIPATING!

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