
**IIB Annual Seminar on
U.S. Taxation of International Banks**

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FATCA -- Overview and Onboarding

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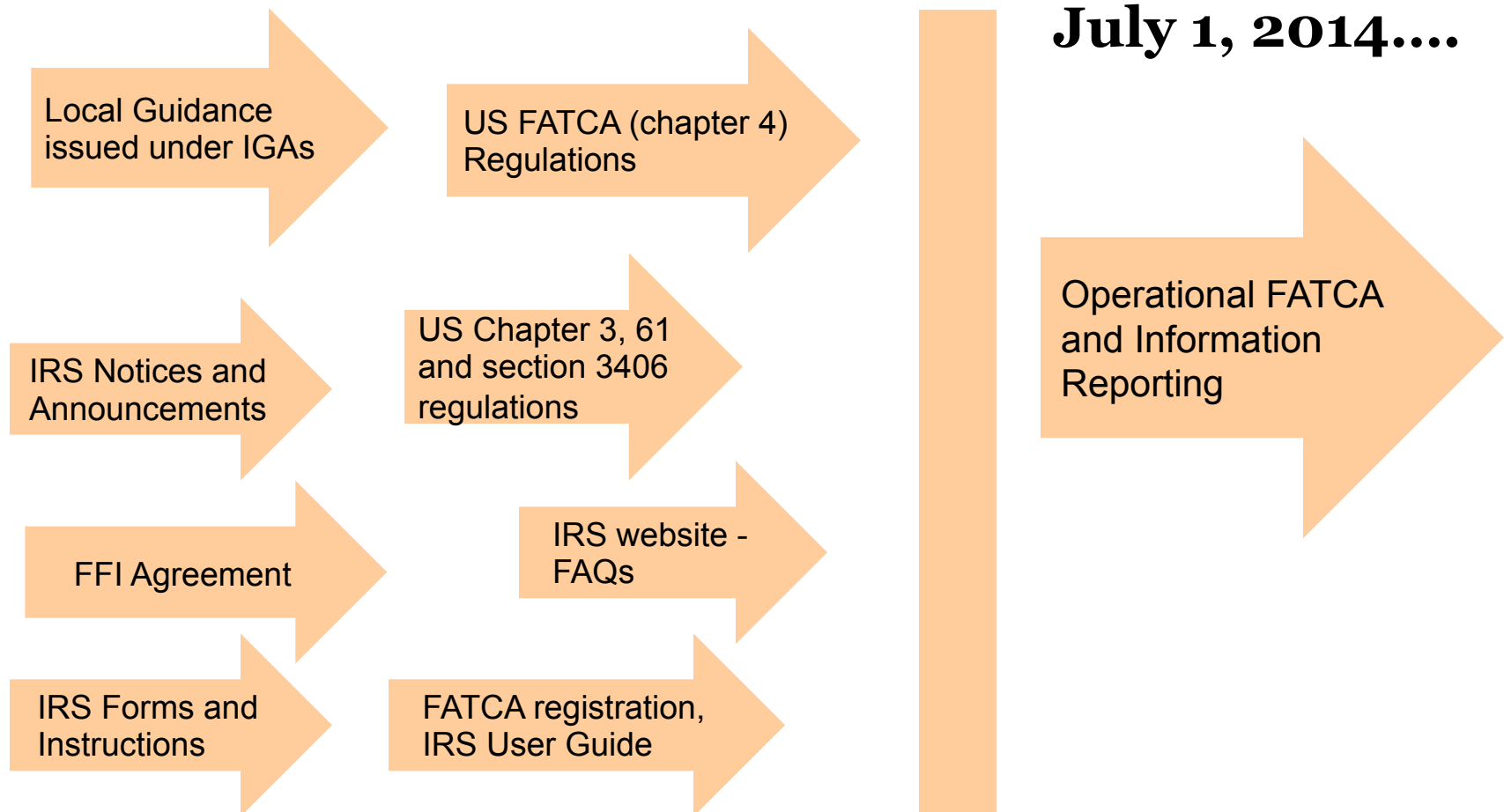
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FATCA Overview and View to the Horizon

- 1. Overview of the Guidance Issued to Date**
- 2. Remaining Guidance to be Issued**
- 3. Key Milestone Dates**
- 4. A look to the Horizon**

Many forms of Guidance Needed to Operationalize FATCA and Information Reporting



Three Primary Models for FATCA and Information Reporting Compliance...

US Withholding Agents, Deemed-compliant FFIs

- US Regulations
- IRS and Treasury Website
- IRS Forms and Instructions
- IRS Notices, Announcements, etc.

Participating FFIs

- FFI agreement

FFIs Covered under an Intergovernmental Agreement (IGA)

- Local Guidance Notes
- Self-certification procedures

US Treasury Regulations...

January 2013

- “Final” chapter 4 regs
 - Comment period commenced
 - Covered wide range of issues

March 2014

- Temporary chapter 4 regs
- Temporary “coordination” regs under Ch 3, 61 and section 3406
 - Address stakeholder comments
 - Coordinate chapters 3, 4, 61 and section 3406
 - Synchronize with IGA
 - Modify effective dates

IRS Announcements, Notices, Revenue Procedures... (continued)

July 2013 – Notice 2013-43

- Postponed effective date 6 months (to July 1, 2014)
- Announced key dates for FATCA registration website
 - Opened August 2013
 - Submissions allowed Jan 1, 2014
 - First list published June 2, 2014
- W-8s expiring in 12/31/13 will expire on 12/31/14
- IGAs treated as in effect prior to local guidance being issued

IRS Announcements, Notices, Revenue Procedures...(continued)

October 2013 – Notice 2013-69

- Issued draft FFI Agreement (final FFI agreement issued in December 2013 – Revenue Procedure 2014-13)
- Introduced concept of direct reporting NFFE
- Modified transitional reporting to NPFFIs for 2015 and 2016

April 2014 – Announcement 2014-17

- Expansion of IGAs treated as being in effect
- Must agree in substance prior to July 1, 2014
- Must sign IGA by December 31, 2014
- 10 additional days to register on IRS website

IRS Announcements, Notices, Revenue Procedures...(continued)

May 2014 – Notice 2014-33

- 2014 and 2015 treated as a “transition period”
 - “Good faith” efforts to be considered
 - How to demonstrate good faith?
 - What does the relief cover?
 - Will IGA countries take similar approach?
- Obligations treated as pre-existing if opened, executed or issued between July 1, 2014 and December 31, 2014
 - Only applies to entities (i.e., not to individuals)
 - \$250,000 de-minimus rule does not apply
 - Will IGA countries conform?

Key Milestone Dates

FATCA withholding

- July 1, 2014 – withholding on FDAP withholdable payments
- Jan 1, 2017 – withholding on gross proceeds and possibly foreign passthru payments

Pre-existing Obligations – cutoff dates

- June 30, 2014 – individuals
- December 31, 2014 – entities

Reporting

- New Form 1042-S due March 15, 2015
- New Form 8966 due March 31, 2015

Key Milestone Dates (continued)

New Account due diligence procedures

- July 1, 2014 – Individuals
- Jan 1, 2015 – Entities

Pre-existing account due diligence

- Jan 1, 2015 – Prima facie FFIs
- June 30, 2015 – High value individuals
- June 30, 2016 – all other

May not longer accept pre-FATCA W-8 forms

- Jan 1, 2015?

Responsible Office Compliance Certifications

- August 29, 2016 – preexisting account certification
- July 1, 2018 – compliance and internal control certification

IRS Forms, Registration Guidance

Forms

- Form W-8BEN for individuals finalized Feb 2014 with instructions
- Form W-8BEN-E, W-8IMY finalized Feb 2014 **without** instructions
- Form W-8ECI, EXP – finalized with instructions
- Form 8966, 1042-S – issued **without** instructions

FATCA Registration Guidance

- Portal opened in August 2013
- Registration submission commenced Jan 1, 2014
- First list published June 2, 2014 – 77,000 registrants
- IRS User Guide published August 2013 (updated Dec 2013)
- Frequently Asked Questions on website periodically updated

Intergovernmental Agreements (IGAs)

IGAs as of June 14, 2014..

• Signed model 1 IGAs	31
• Signed model 2 IGAs	5
• Agreed in substance model 1 IGAs	39
• Agreed in substance model 2 IGAs	<u>3</u>
Total	<u>78</u>

Model IGAs are modified occasionally

Local Guidance issued to date (various stages of completion)

- Australia, Cayman Islands, Guernsey, Jersey, Isle of Man, Ireland, New Zealand and UK

Guidance not yet issued...

- QI, WP, and WT Agreements
 - Current agreements expire 6/30
 - New “layering process” for agreements – requirements vary by chapter 4 status
- Forms with instructions
- Technical corrections to regulations
- Electronic filing specifications for 1042-S and 8966
- Local guidance from IGA partners

What's on the horizon...

- Gross proceeds withholding – Jan 1, 2017
- Foreign passthru payments
- US reciprocal reporting under IGAs
- International Common Reporting Standards (OECD initiative)

Onboarding Requirements

- 1. Modified Documentation Timeline**
- 2. Deadline for Use of New Forms**
- 3. Issues for New Forms Submitted Prior to 1/1/15**
- 4. Form Issues**
- 5. Revisions to Due Diligence**
- 6. Revised Rules for Offshore Documentation**
- 7. Revisions to Presumption Rules**

Modified Documentation Timeline

Onboarding date for new entity payees moved from 7/1/14 to 1/1/15

- Withholding agent may treat payees onboarded between 7/1/14 and 12/31/14 as preexisting obligations
- \$250K entity account exception for FFIs does not apply to accounts opened on or after 7/1/14
- Grandfathering cutoff date remains 7/1/14
- FFI still required to begin documenting new individual accounts on 7/1/14

Preexisting account remediation dates remain the same

- Prima Facie FFIs – December 31, 2014 (N/A for non-IGA jurisdictions)
- All Other Entity Accounts – June 30, 2016

Operational Note

- Should begin to remediate prima facie FFIs around Oct/Nov 2014
- After initial remediation date, should document prima facie FFIs upon onboarding so that they are documented by 1/1/15

Deadline for Use of New Forms

- Previously: 7/1/14 due to onboarding requirement
- Under 6 month rule:
 - Mar 1, 2014, for Forms W-9 ("Best Practice" but no definitive guidance)
 - Sept 1, 2014, for Forms W-8BEN, W-8BEN-E, and W-8ECI
 - Nov 1, 2014, for Forms W-8IMY and W-8EXP
- According to Statements by IRS:
 - Forms W-9 should be in use as of Mar 1, 2014, though IRS has informally indicated it is not required until FATCA start date
 - Sept 1, 2014, for Forms W-8BEN
 - Jan 1, 2015, for Forms W-8BEN-E, W-8ECI, W-8IMY and W-8EXP

Are these the right timelines and, if so, how will this be reflected in written guidance?

BUT, if IGA country does not adopt delayed timeline, must start using new forms or alternative form of documentation for entities on 7/1/14

Issues for New Forms Submitted Prior to 1/1/15

Withholding may occur prior to 1/1/15 in following cases:

- Payee provides new Form W-8 with "NPFFI" checked
- Withholding instructions passed up from FFIs (reminder: new individual account documentation begins 7/1/14).

Documentation options to reduce withholding if automated withholding systems are not in place as of 7/1/14:

- For payee onboarding between 7/1/14 and 1/1/15 :
 - Utilize prior version of form;
 - Utilize substitute form (without chapter 4 statuses); or
 - Tell payees to leave Chap 4 section of form blank
 - If FATCA status is not provided or contains errors, can form still be used for Chap 3/61 purposes?
- Mitigate withholding on renewals by a late solicitation for prima facie FFIs (late Oct/early Nov).
- Mitigate withholding on renewals by solicitation of renewal documentation from non-prima facie FFIs now (using old version of form).

Issues for New Forms Submitted Prior to 1/1/15

What if your payee provides the new Form W-8 anyways?

- Can withholding agent turn away new official version of form for old version of official form?
- Can withholding agent turn away new official version of form for a substitute form?
 - Treas. Reg. Sec. 1.1471-3(c)(6)(v)(A) states that a withholding agent may refuse to accept a withholding certificate (including an official version) in favor of requiring a substitute form provided by the withholding agent
- If valid FATCA status is provided, can withholding agent ignore the FATCA status if the status is not an NPFFI?
- Prior to 1/1/15, if US owners are provided for ODFFIIs or passive NFFEs, is the USWA required to report these for the 2014 year?

Form Issues

➤ **Print name line**

- IRS has indicated this is a required field
- If it is an inconsequential error is a signature match necessary?
- What if signature is legible?

➤ **Abbreviations**

- › Removed statement that abbreviations are not permitted
- › However, language in regulations still refers to an abbreviated country as inconsequential error
- › Was the intent to cease treating abbreviations as errors or just to remove instructions from the face of the form?

➤ **Affiliate of publicly traded entity**

- › Certification on Form W-8 more flexible than regulation language
- › Per informal discussions with IRS, regulations will be modified to match language in Form W-8
- › Would mean publicly traded entity could be US or foreign and financial or non-financial

Form Issues

➤ *W-8BEN (Indiv): DOB only if no foreign TIN provided?*

- Form instructions are not clear but we believe intent was to only require DOB if no foreign TIN provided

➤ *Form W-8IMY: Election to be treated as US person*

- Chapter 3 regulations indicates election available to NFFE insurance companies but Chapter 4 does not
- Will this be harmonized?

➤ *Form W-9*

- **US persons utilizing Form W-9 includes:**

- › Foreign insurance companies making Sec 953(d) election
- › Foreign branches of USWAs (including foreign branches that are Model 1 FFIs—means these branches do not need to provide GIIN)

- **Substitute Forms W-9**

- › Is a USWA required to provide the new 4th certification on a substitute Form W-9 when that certification is not relevant to the USWA?

Revisions to Due Diligence

New Indicia

July 1, 2014 (New accounts)

New indicia searches for U.S. telephone number and U.S. birthplace go into effect

Preexisting accounts

If already documented as Non-U.S. for purposes of chapters 3 and 61, no need for search of account file for U.S. indicia

- If withholding agent happens to review document on file that has U.S. birthplace, must obtain cure.
- No need to obtain cure for U.S. telephone number, even if the withholding agent reviews documents that it had on file
- If account holder notifies withholding agent, of new telephone number (or other U.S. indicia) must cure.

Revisions to Due Diligence

➤ *Relaxation of electronic forms rules (pending fix of citation error)*

- › Permitting the withholding agent to rely upon the faxed or scanned form provided that it does not know that the person furnishing the form is not authorized to do so

➤ *Reasonable Statement*

- Additional explanations permitted if written in by payee (reversal of prior Chapter 4 rule)
- Short cuts to substantial presence test (183 days, 31 days, 122 days)

➤ *Reliance on electronic search for US indicia of a preexisting entity account*

- IRS confirmed in informal discussions that removal of electronic search option for preexisting entity obligations in temporary/proposed regulations was an error

➤ *30 day grace period to review AML documentation*

➤ *Permit sole reliance on standardized industry coding system?*

- Preamble to correction regulations indicates that WA has reason to know FATCA status inaccurate ONLY if AML classification conflicts with status but regulations do not state this
- Will the regulations be modified to match the preamble?

Revised rules for Offshore Documentation

- ***Alternate documentation procedures available for payments made outside of the United States with respect offshore obligations***

- ***"Payment made outside the United States"***
 - › Limits evaluation to location where withholding agent conducts actions to effect payment
 - › Removes focus on actions of the payee and location to which payment is mailed

- ***"Offshore obligation"***
 - › Exception now only applies to financial accounts
 - › Does not apply to non-financial entities or obligations outside of account relationship
 - › Was this result intentional?

Revisions to Presumption Rules

➤ ***ECI Presumption***

- › Removed requirement that a GIIN be obtained for US branch of foreign bank or insurance company in order to presume payment is ECI
- › Retained EIN requirement

➤ ***Reversal of Eyeball Test***

- › Does not apply to non-withholdable payments
- › Does not apply to preexisting obligations already treated as US under eyeball test
- › Discrepancy between preexisting rule in Chapter 3 and Chapter 4 – Believe Chapter 4 rule is a drafting error

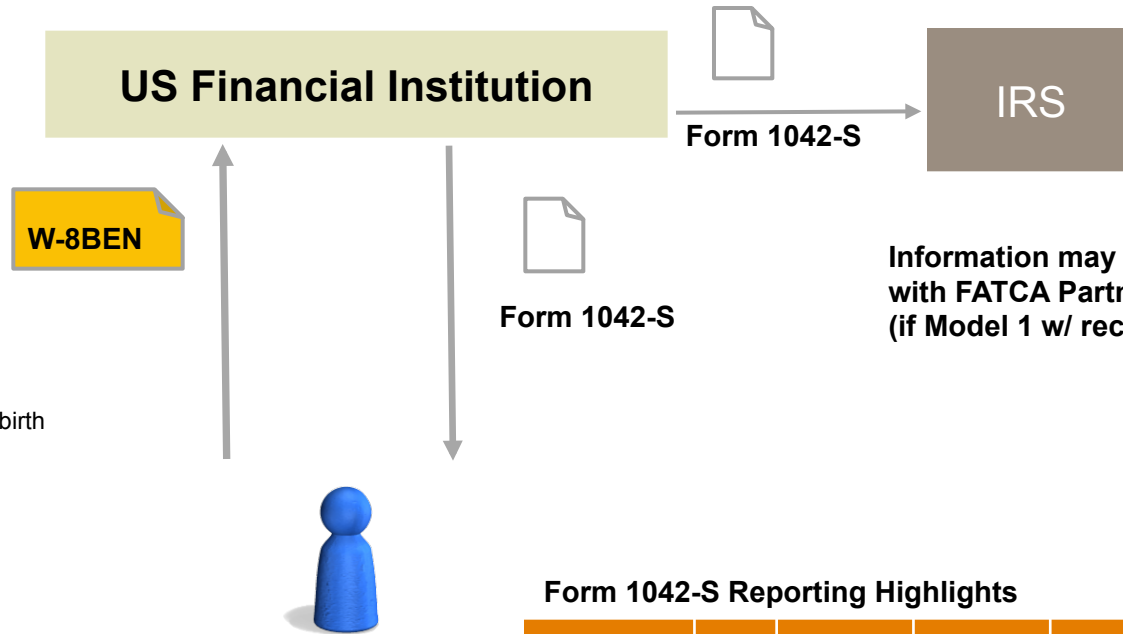
Overlapping Treasury Regulation & IGA Requirements

- **Payment of U.S. source FDAP income subject to Chapter 3 withholding**
 - Must follow Treas. Regs. for Chapter 3
 - Generally means documenting to higher standard when customer invests in US assets
- **Foreign branches of USFIs must comply with regulations in addition to requirements of Model 1 IGAs**
 - Foreign branch of USFI is not exempt from withholding obligations even if located in Model 1 country
 - Which documentation rules apply to foreign branch's deposit accounts?
 - Foreign branch overlap does not apply to Model 2 branches and Non-IGA branches

Example #1

For discussion purposes only

Individual account holder



Information may be subject to exchange with FATCA Partner Country under IGA (if Model 1 w/ reciprocity)

Form W-8BEN must include:

- Non-U.S. TIN OR date of birth
- Country of citizenship
- Perm. residence address

Due diligence “red flags”:

- U.S. place of birth (new accounts, or pre-existing accounts upon discovery) **(new)**
- Only U.S. telephone number **(new)**
- Other U.S. indicia (e.g., U.S. mailing address)

Any U.S. indicia must be “cured” with appropriate documentation / written explanation (or presumption rules apply).

Non-U.S. individual
(non-treaty)

Form 1042-S Reporting Highlights

Income	IC	Tax Rate	CH3 EC	CH4 EC	CH3 SC	CH4 SC
Deposit int.	29	0	02	15	19	27
Divs	06	30 (ch3)	00	15	19	27
Int (gen)*	01	0	05	15	19	27
Sales	NR					

*Assumes interest payment is eligible for portfolio interest exemption (same assumption on following slides).

KEY to 1042-S table

CH3 = chapter 3 (NRA withholding); CH4 = chapter 4 (FATCA withholding)

IC = Income Code; EC = Exemption Code; SC = Status Code; NR = No reporting

Example #2

For discussion purposes only

Entity account holder (FATCA forms processed)

US Financial Institution



W-8BEN-E



Information may be subject to exchange with FATCA Partner Country under IGA (if Model 1 w/ reciprocity)

Non-US Corp. (non-treaty)



Non-U.S. individual (shareholder)

Form W-8BEN-E possibilities:

1. "Passive NFFE" cert. on W-8BEN-E, plus rep there is no US owner; cannot be professionally managed by a financial institution
2. "Owner documented FFI" cert. on W-8BEN-E, plus ben owner documentation (*doc evidence or W-8BEN*) and "owner reporting statement"
3. Other (PFFI, Reporting Model 1 FFI, etc., or *non-participating FFI*)

Form 1042-S Reporting Highlights (assume PNNFE / ODFFI)

Income	IC	Tax Rate	CH3 EC	CH4 EC	CH3 SC	CH4 SC
Deposit int.	NR**					
Divs	06	30 (ch3)	00	15	18	23 / 19
Int (gen)*	01	0	05	15	18	23 / 19
Sales	NR					

** Reporting of deposit interest required to non-U.S. entity if FATCA withholding applied.

Due diligence "red flags":

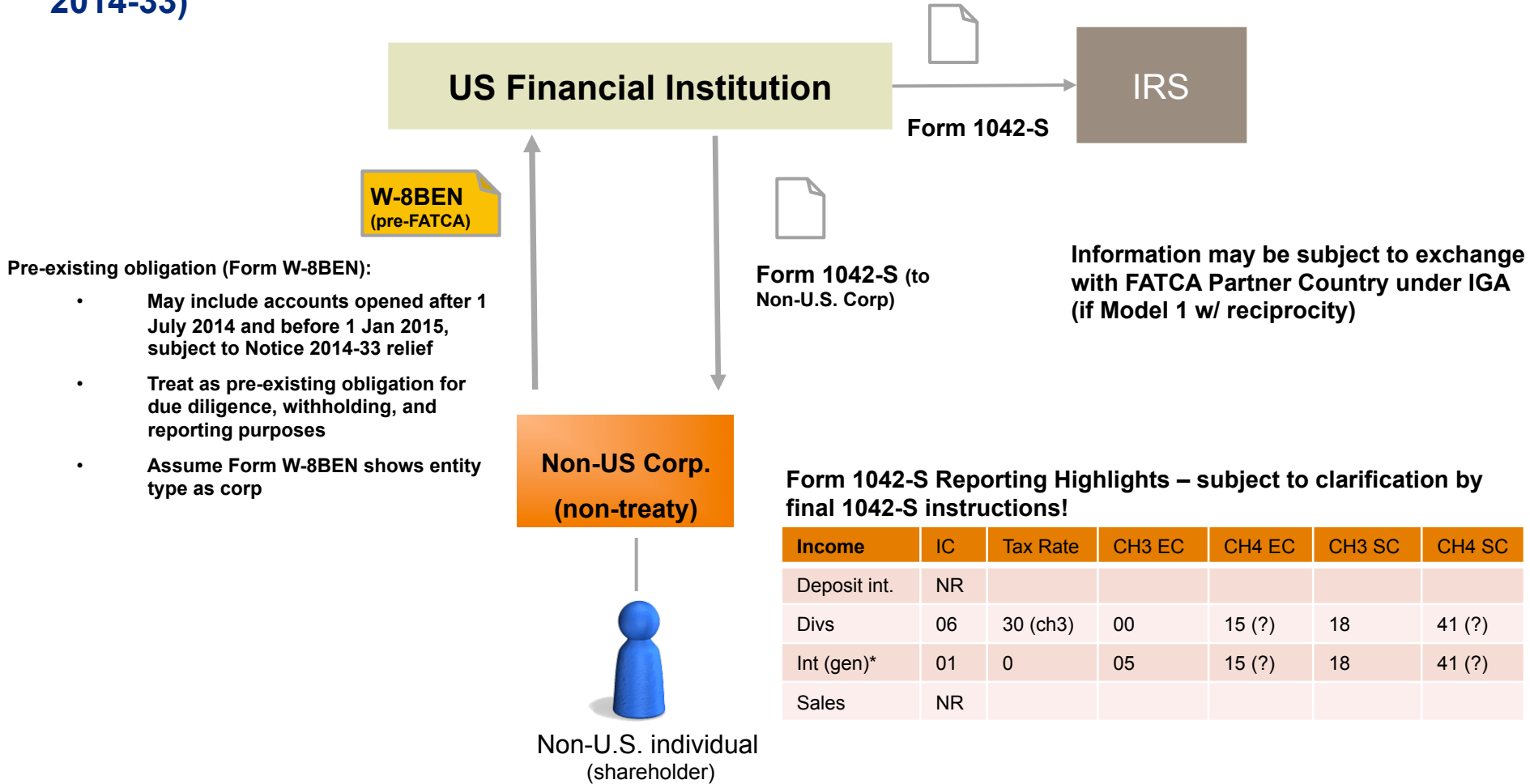
- Only US telephone number (*new*)
- Other US indicia (e.g., US mailing address)
- Conflicting information regarding FATCA status (potential use of industry codes as safe harbor)

Any U.S. indicia must be "cured" with appropriate documentation / written explanation (or presumption rules apply).

Example #3

For discussion purposes only

Pre-existing entity account (including account subject to relief relief under Notice 2014-33)



Example #4

For discussion purposes only

Entity account holder (FATCA forms processed)



W-8BEN-E

US Financial Institution

IRS

Form 1042-S
PLUS Form
8966 (no copy
to US ind.)

Form 1042-S (to
Non-U.S. Corp)

Non-U.S. Corp.
(non-treaty)

U.S. individual
(shareholder)

Form W-8BEN-E possibilities:

1. "Passive NFFE" cert. on W-8BEN-E, plus rep there **IS** a U.S. owner
2. "Owner documented" FFI" cert. on W-8BEN-E, plus ben owner documentation (Form W-9) and "owner reporting statement"

Form 1042-S to Non-U.S. Corp. (assume PNFPE / ODFFI)

Income	IC	Tax Rate	CH3 EC	CH4 EC	CH3 SC	CH4 SC
Deposit int.	NR					
Divs	06	30 (ch3)	00	15	18	22 / 19
Int (gen)*	01	0	05	15	18	22 / 19
Sales	NR					

Form 8966

Required for **ODFFI** if withholdable payment made between 7/1/14 and 12/31/14, or beginning 2015, if chapter 4 reportable amount is paid.

Required for **PNFFE** if withholdable payment is made.

Required information:

- U.S. individual's name, address, and TIN
- Account number
- Account balance (ODFFI only – no balance reporting for USWA reporting PNFPE)
- "All payments" made (should this be limited to "withholdable" payments?)

Due diligence "red flags" (w/r/t Corp):

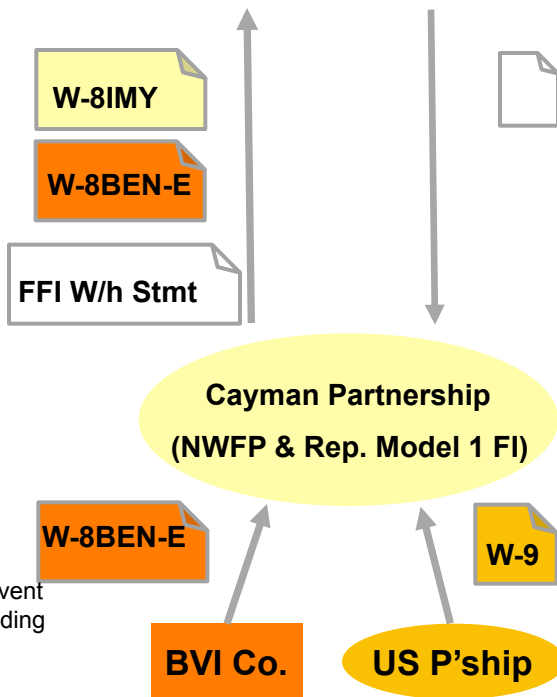
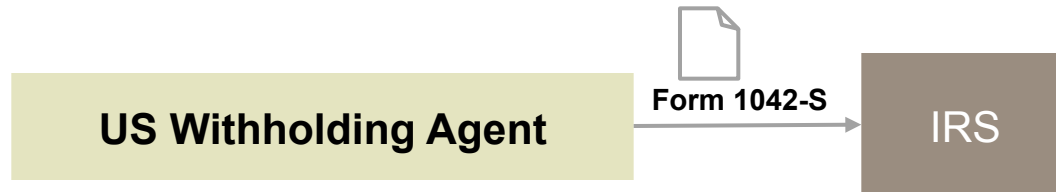
- Only U.S. telephone number (new)
- Other U.S. indicia (e.g., U.S. mailing address)
- Conflicting information regarding FATCA status



Example #5

For discussion purposes only

Cayman partnership is PFFI – US income (withholdable amounts)



Docs: Form W-8IMY (w/ GIIN) required from Cayman Partnership, PLUS:

- Form W-8BEN-E from BVI co.; AND
- FFI withholding statement

Form W-9 from US P'ship is NOT required, provided Cayman P'ship identifies a chapter 4 withholding rate pool of US payees

FFI withholding statement from Cayman must include:

•Payee-specific information (in order to prevent withholding under presumption rules), including allocation information and each payee's chapter 4 status.

•Each intermediary or flow-through entity that receives a payment on behalf of a payee, with such entity's FATCA status and GIIN, when applicable.

Forms 1042-S to:

- BVI Co. as recipient in boxes 14a-14g (Cayman P'ship reported as flow-through in boxes 15a-16f)
- US pool (Cayman P'ship as Recipient, details in boxes 14a-14f, 17-19)

Form 1042-S to BVI Co. (Assume Rep. Model 1 FI)

Income	IC	Tax Rate	CH3 EC	CH4 EC	CH3 SC	CH4 SC
Deposit int.	NR					
Divs	06	30 (ch3)	00	15	18	10
Int (gen)*	01	0	05	15	18	10
Sales	NR					

Form 1042-S to Cayman (for US pool)

Income	IC	Tax Rate	CH3 EC	CH4 EC	CH3 SC	CH4 SC
Deposit int.	NR					
Divs	06	0	[blank?]	18	[blank]	48
Int (gen)*	01	0	[blank?]	18	[blank]	48
Sales	NR					