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Foreign Account Tax Compliance Act
(FATCA)

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Deklaration Kapitalerträge (Tax)

F A T C A

- **Hintergrund**
- Anforderungen
- Zeitplan
- Overview

U.S. SENATE
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

STAFF REPORT ON

DIVIDEND TAX ABUSE:
HOW OFFSHORE ENTITIES DODGE TAXES ON U.S. STOCK DIVIDENDS

September 11, 2008

Each year, the United States loses an estimated $100 billion in tax revenues due to offshore tax abuses. The U.S. Senate Permanent Subcommittee on Investigations has examined various aspects of this problem, including how U.S. taxpayers have used offshore tax havens to escape payment of U.S. taxes. This Report focuses on a different subset of abusive practices that benefit only non-U.S. persons, have been developed and facilitated by leading U.S. financial institutions, and have been utilized by offshore hedge funds and others to dodge payment of billions of dollars in U.S. taxes owed on U.S. stock dividends.

Using phrases like "dividend enhancement," "yield enhancement," and "dividend uplift" to describe their products, U.S. financial institutions have developed, marketed, and profited

Quelle:
U.S. Senate Permanent Subcommittee on Investigations staff report on dividend tax abuse:
"How offshore entities dodge taxes on U.S. stock dividends", September 11, 2008

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FATCA - Willensbildung

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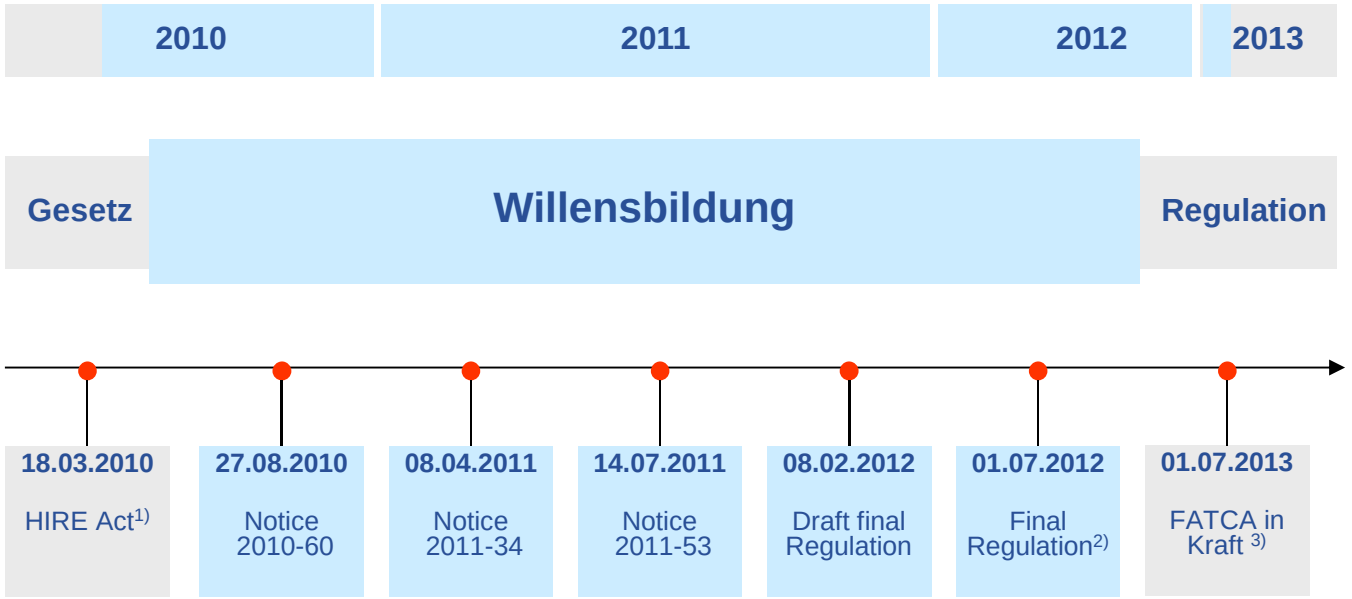

1) HIRE Act: Hiring Incentives to Restore Employment (HIRE) Act
2) Geplanter Termin für die Herausgabe der Final Regulation
3) Grundsätzlicher Starttermin für FATCA ist der 01.01.2013

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Die Grenzen von QI: Passthru Payments

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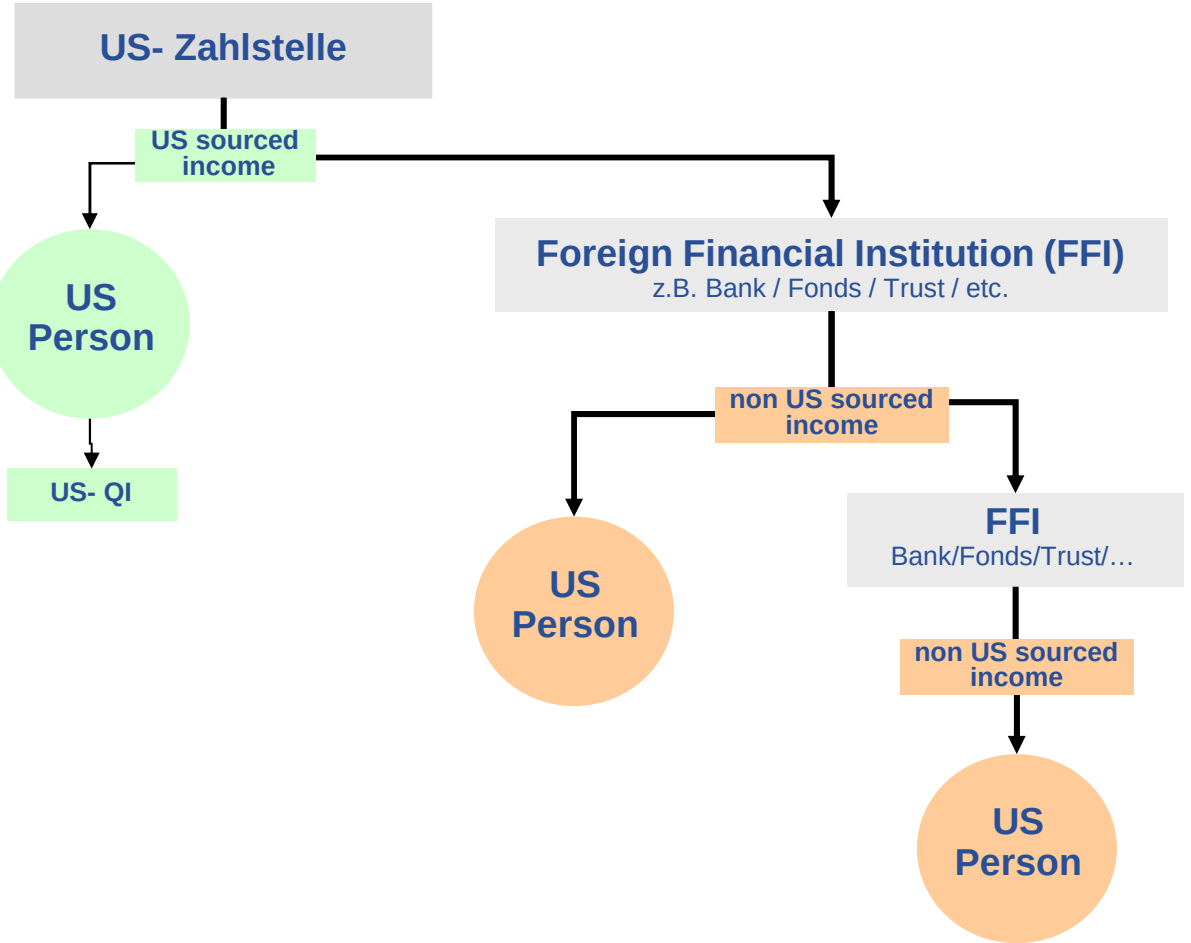

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FATCA - Kerninhalte

- Identifikation- und Dokumentation von US Kunden
  - Neu- und Bestandskunden
  - Indizienbasiert; Umkehr der Beweislast
- Reporting
  - Direkt / indirekt an US Steuerbehörde (IRS)
  - US Personen (detailliert) & «Recalcitrant Personen»
- Quellensteuer
  - Bei nicht kooperativen Kunden / FFI (Recalcitrants)
  - Erträgnisse & Kapitalrückzahlungen
  - Erweiterter US-Wertschriften Begriff / Einbindung von Non-US- Wertschriften / passthru payments
- FFI- Agreement
  - Vertrag des IRS mit Foreign Financial Institution (FFI)
  - ca. 75’000 bis 100’000 Institutionen

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Impacted?

- Foreign Financial Institution (extract[1)])
  - Accepts deposits in the ordinary course of banking or similar business
  - Holds financial assets for the account of others
  - Is engaged … in the business of...trading securities,… commodities, …
  - Is an insurance company…
- Banking or similar business means (extract[1)]) :
  - Accepts deposits of funds
  - Makes mortgages or other loans
  - Provide trust or fiduciary service
  - Provide charge and credit card services

1) FATCA proposed regulation hrsg. von IRS am 08.02.2012, § 1.1471-5 (d), § 1.1471-5 (e) (1) und (2)

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Impact Compliance?

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3. Certifying Completion of Customer Identification Procedures

The chief compliance officer or another equivalent-level officer of the FFI (responsible officer) must certify to the IRS when the FFI has completed the above procedures (other than the annual retesting described in Step 6) for its preexisting individual accounts. …

Quelle:
IRS Notice 2011-34; Supplemental Notice to Notice 2010-60 Providing Further Guidance and Requesting; Comments on Certain Priority Issues Under Chapter 4 of Subtitle A of the Code.

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FFI- Positionierung
- Wahlmöglichkeiten

Wahl	IRS Agreement	US Kunden	US Wertschriften*	Bemerkungen
1	Nein	Ja	Ja	■ Non participating FFI, ■ Quellensteuerabzug für FFI selbst und alle Kunden (auf US- Anlagen)
2	Nein	Ja	Nein	■ Non participating FFI ■ „IRS- Watchlist?“
3	Nein	Nein	Nein	■ Non participating FFI ■ Quellensteuerabzug für alle Kunden (auf US- Anlagen)
4	Ja	Nein	Nein	■ Deemed Compliant FFI ■ Vertrag mit IRS
5	Ja	Nein	ja	■ Deemed Compliant FFI ■ Vertrag mit IRS
6	Ja	Ja	Ja	■ Participating FFI ■ Vertrag mit IRS ■ Alle FATCA-Auflagen erfüllt

* Kunden und / oder Nostrobestand

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Identifikation existierender Kunden
- Diligence Review Beispiel: Natürliche Personen

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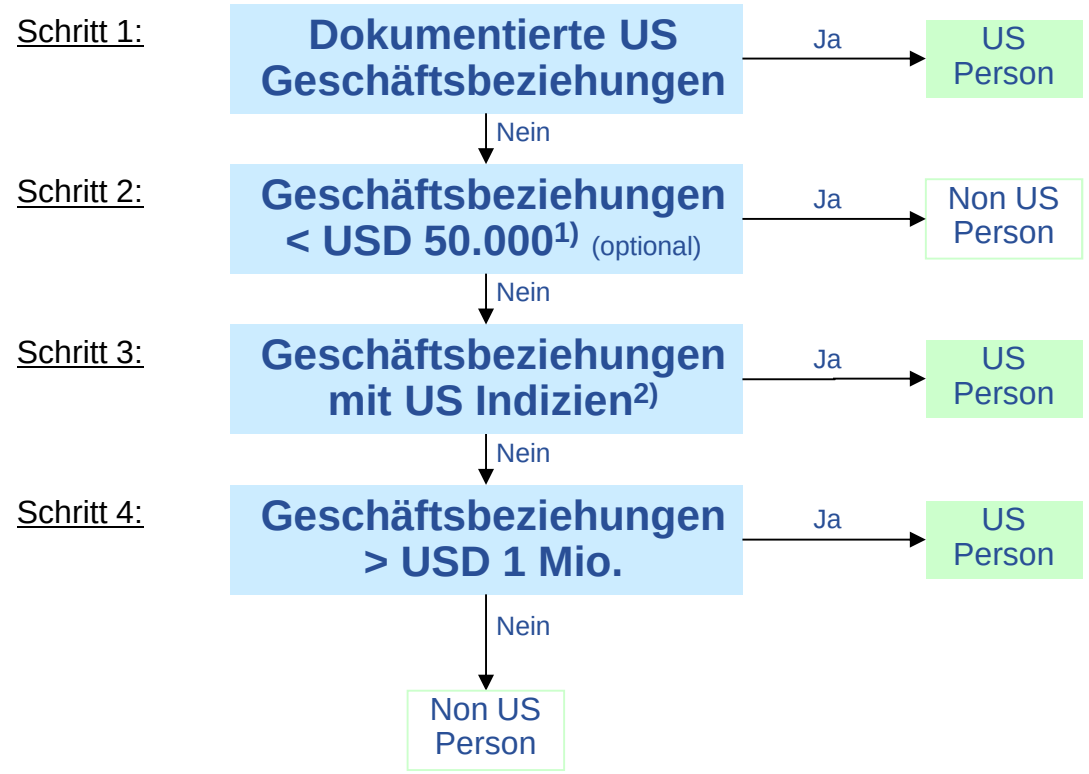

1) Kapital- Lebensversicherungen bis USD 250.000,--
2) Auf Basis “Electronical Search”

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Reporting

- Investments (aus US-Quelle und aus nicht US-Quellen)
- deren wiederkehrende Erträge
- unabhängig wo und wie sie gehalten werden.

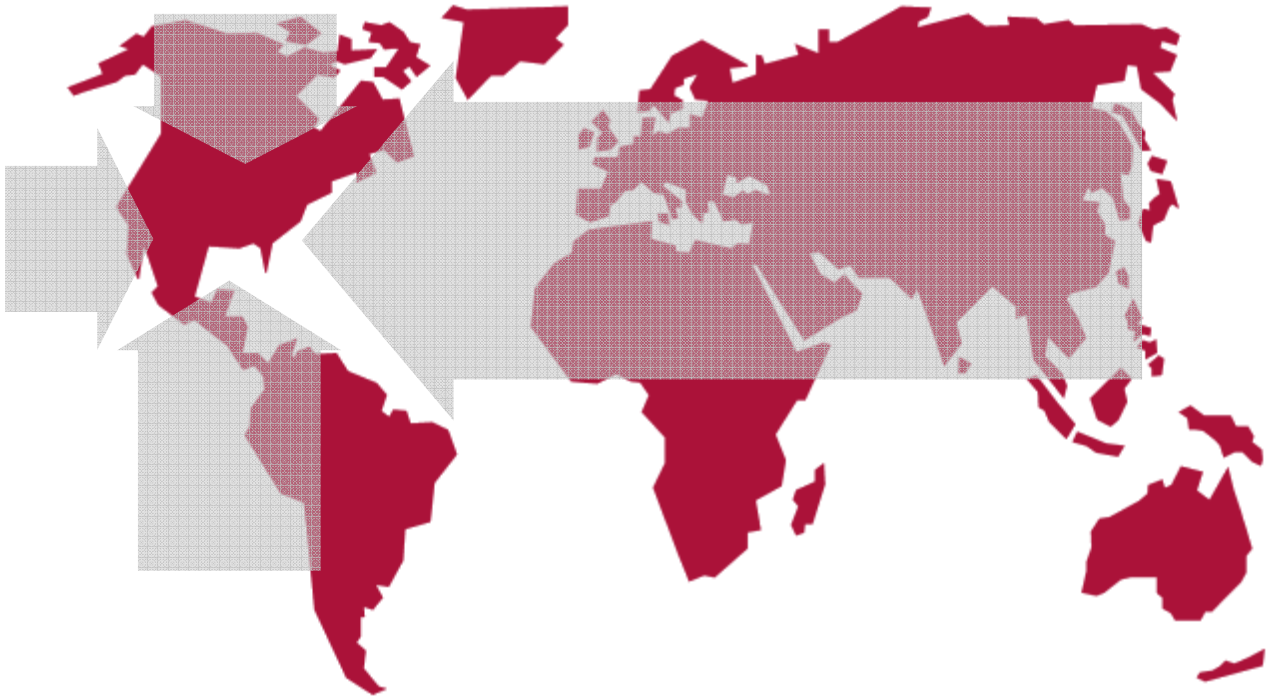
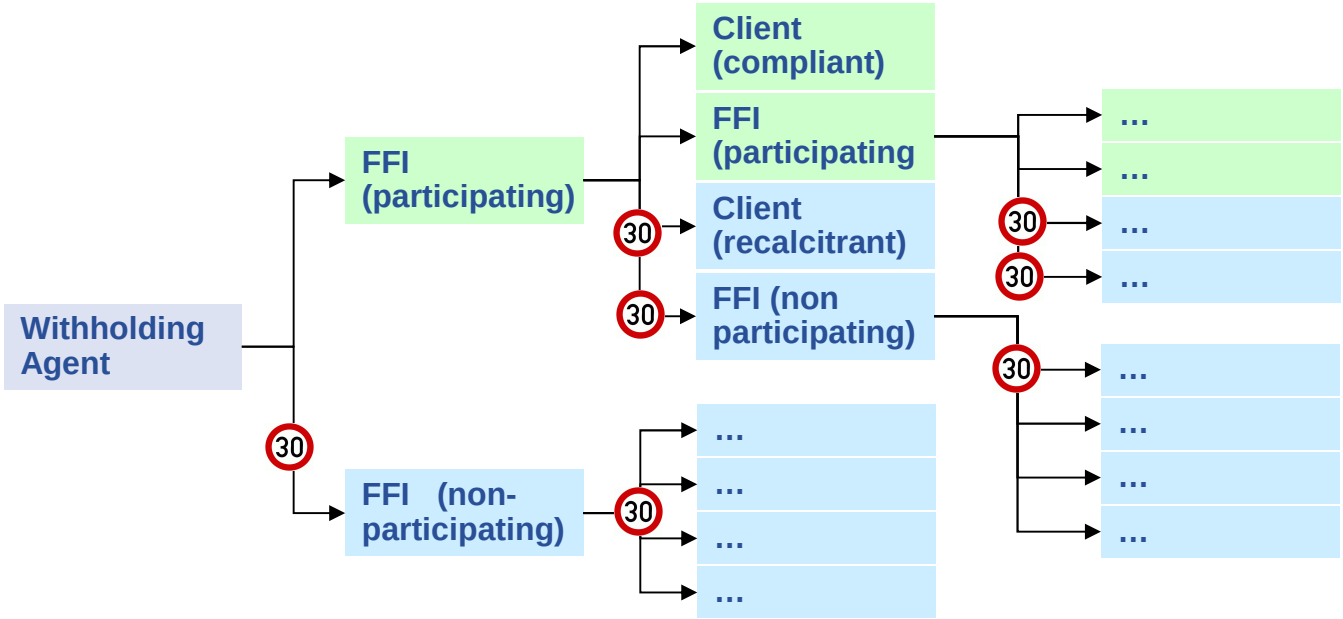


Bild-Quelle: Weltkarte von www.JBS-System.com, ergänzt um Pfeile

Abzug Quellensteuer

Withholding Agents müssen:

- Für Non Compliant Kunden (Recalcitrants)
- Bei quellensteuerabzugspflichtigen Zahlungen
- Quellensteuer in Höhe von 30% abziehen (30)



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FATCA Umsetzung
- Zeitplan

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- **Zeitplan**
- Overview

2011 - 2013	2014	2015	2016+
06.08.2011 Keine Unterstützung von Kunden -mit Ziel FATCA Umgehung- ist gewährleistet	**01.01.2014** Start Abzug Quellensteuer bei FDAP Payments	**01.01.2015** Start Abzug Quellen-steuer zusätzlich bei: • Weitere Einkommen • Rückzahlungen	**01.01.2016** Start Re-Testing von High Value Accounts
01.07.2013 • Start FFI Agreement • On-boarding Prozess eingerichtet	**01.07.2014** Review „Vor-FATCA-Beziehungen“ ist erledigt • Individual High Value Accounts > 1Mio • Offensichtliche FFI	**30.03.2015** Reporting 30.12.2014 • Version „light“ • Kundendaten • Vermögensbestände	**30.03.2016** Reporting 30.12.2015 • Kundendaten • Bestände • (Kapital)- Erträgnisse
	30.09.2014 Start Reporting “light“ 30.06.2014 • US Personen & Recalcitrant Personen • Kundendaten & Vermögensbestände	**01.07.2015** Review „Vor-FATCA-Beziehungen“ erledigt	**01.01.2017** Start Abzug Quellen-steuer zusätzlich bei: • Passthru Payments
			30.03.2017 Reporting 30.12.2016 • Kundendaten • Bestände • (Kapital)- Erträgnisse • Rückzahlungen

Hinweise:
- FDAP: Fixed, Determinable, Annual Periodical payments
- Die Zeitplanung basiert auf der Annahme, dass das FFI Agreement bis zum 30.06.2013 unterzeichnet wird. Teilweise sind Fristen in Abhängig der Unterzeichnung des FFI Agreements vorgesehen.

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Fragen?

F A T C A

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Meinungen?

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FATCA Overview

(based on proposed regulation, IRS, 08.02.2012

- **IRS get information & knowledge** about income & assets of US taxable person held by foreign financial institutions (FFI).
- **Reduce non disclosure** of US taxable person & assets (recalcitrant clients).
- **Withholding Tax** aimed to reduce non-disclosure and in general not allowable against income tax.
- In comparison to tax certificates (like German Tax), **FATCA reporting** to IRS will only be a "tax audit tracer", that does not contain final taxable income of a taxable person.

- **HIRE ACT Chapter 4:** Wording of law
- Technical explanations (2009).
- **Notice 2010-60:** First guidance i.a. client identification, withholding, reporting (2010).
- **Notice 2011-34:** Focuses i.a. on identification of existing clients, passthru payments, etc. (2011)
- **Notice 2011-53:** Adjust timescale (2011).
- **Proposed** regulation (Feb. 2012)
- **Final Regulation:** Expected on mid of 2012.

IRS Regulation

Important dates (extract)

- **06.08.2011** No assistance for clients to avoid Chapter 4
- **01.01.2013** In general, FATCA in force
  Grandfathered obligations (key date)
- **30.06.2013** FATCA agreement signed by FFI
- **01.07.2013** New account opening procedures in place
- **01.01.2014** Tax withholding (light version)
- **30.06.2014** Pre existing account review finished (>USD 1Mio)
- **30.09.2014** First reporting (compliant / recalcitrant)
- **01.01.2015** Tax withholding (gross proceeds)
- **30.03.2015** Reporting incl. transactions
- **01.07.2015** Pre-existing account review finished
- **01.01.2017** Tax withholding (Passthru Payments?)
- **30.03.2015** Reporting incl. gross proceeds

- **FFIs:** Extensive term, participating / non participating
- **Clients:** US taxable individual clients & entities as well as FFIs in general
- **Tax Withholding:** Income payments & gross proceeds (recalcitrant clients only)
- **Withhold able payments:** US sourced assets and Passthru Payments.
- **Reporting to IRS:** US clients, positions, assets and transactions (compliant-, recalcitrant- and as recalcitrant clients).

FATCA Objectives | **FATCA Timescale**

FATCA Concerns | **FATCA** Foreign Account Tax Compliance Act | ***passthru payment***

Consequences | ***reporting***

- **Passthru payments** are cash flows from US sourced assets hold by an FFI which has US-clients as investors / shareholders (e.g. Swiss fund; KAG)
- **Withholding tax** will be calculated based on payer FFI's passthru payment percentage**.**
- **Passthru payment percentage** calculated nostro US asset based quote of payee FFI's (e.g. fund).

- **FFI Agreement** with IRS needs to be signed by Foreign Financial Institution**.**
- **Policies / procedures** adjustments i.a. client on-boarding, account maintenance, termination
- **Client / FFI** identification & FATCA classification of existing & new accounts, clarify US-indicia.
- **Tax Withholding** and tax delivery functionality needed (US-sourced & passthru payments)
- **Reporting** to IRS, clients, relationship manager, Compliance, tax services, etc. regarding compliant clients, recalcitrant clients and as recalcitrant clients.
- **Wide-ranging payments** involved as e.g. corporate actions, gross proceeds, interest.
- Evidence / **Audit** capability requested**.**

identification

- **New accounts vs. pre-existing accounts**
- Indicia based **Diligent Review** for existing natural clients:
  1. Already documented U.S. Accounts (W9)
  2. Accounts $50,000 or less
  3. Accounts less $ 1Mio
     Indicia based **electronic** search
  4. Accounts $ 1Mio
     Indicia based **manual** search
  5. Retesting
- **Entities:** 10% US ownership
- **FFIs:** Domicile is not relevant; several categories needs to be managed

- **IRS Reporting**
  - Compliant clients
  - Recalcitrant clients
  - As recalcitrant clients
  - Withholding tax reporting
- **Client Reporting**
  - Copy reporting send to IRS
  - More detailed reporting
  - Ad hoc reporting
  - Evidence reporting
- **Internal Reporting**
  - Monitoring
  - Audit
  - Front Support

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