



Making Sense of FATCA

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Agenda

1. Introduction to FATCA
2. Customer impact
3. Withholding
4. Market intelligence
5. How to approach FATCA
6. Questions



Section 1

Introduction to FATCA

FATCA – headline changes

The **Foreign Account Tax Compliance** provisions of the US HIRE ACT (signed into law 18 March 2010) are designed to counter offshore tax avoidance by US persons.

- ▶ FATCA strengthens the information reporting and compliance around US persons who have money invested outside of the US
- ▶ From 1 July 2013, Foreign Financial Institutions (FFIs) with US customers will suffer 30% withholding on US income and capital payments unless they enter into an agreement with the IRS
- ▶ Rules already apply from September 2010 in respect of dividend equivalent payments
- ▶ A cornerstone of the FFI agreement is that the FFI undertake comprehensive documentation and reporting requirements to the IRS
- ▶ Draft Regulations are expected by 31 December 2011

Should an FFI not enter into an FFI agreement with the IRS, it will lose the right to relief at source (although not treaty relief per se) on all US sourced payments and suffer 30% withholding on US capital redemptions for both proprietary and investor payments.

A Non Financial Foreign Entity (NFFE) generally will suffer a 30% withholding tax on the types of payments described above if it fails to disclose to the withholding agent or the withholding agent fails to report more than 10% ownership by a US person other than a US person that is excluded from such disclosure

What does FATCA mean for Financial Institutions?

Who is caught by the rules?

The rules will affect any entity that accepts deposits, holds financial assets for the account of others or engaged in investing, reinvesting, or trading in securities, commodities or derivatives.

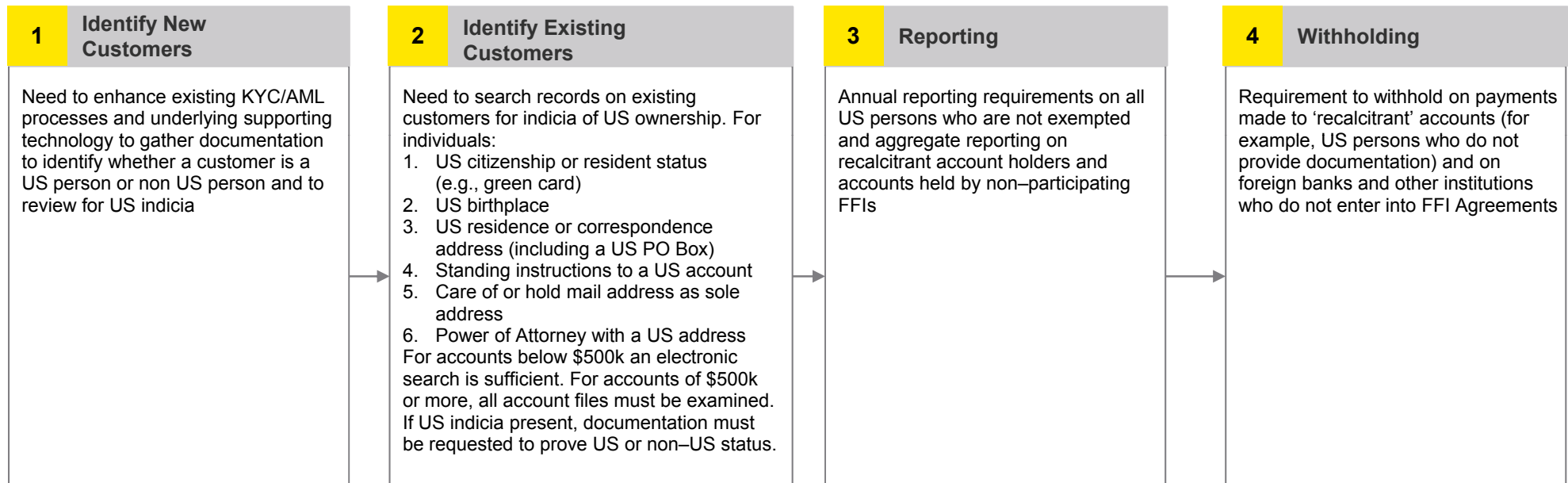
Once an entity is in scope, so too are all global affiliated financial institutions

What are the implications for Financial Institutions?

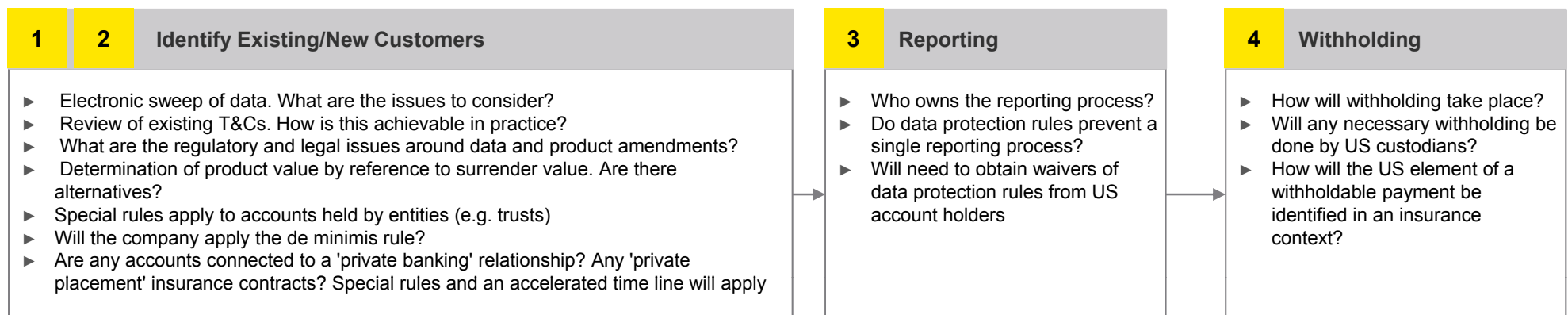
Documentation and Identification		Withholding	Reporting
Existing clients	New clients		
<p>For individuals Review of electronically searchable information for indicia of US status and documentation for accounts with identified US indicia.</p> <p>For non-individuals Review of information to determine whether customer is another financial institution or exempt entity It will be necessary in some cases to identify beneficial owners of entities to determine whether there is a substantial US owner of the entity or seek confirmation from the entity that there are no US owners.</p>	<p>Account opening processes will have to be amended to reflect the need for FATCA compliance on accounts opened from the effective date of the FFI agreement</p> <p>Note – new accounts opened by existing account holders will likely be treated as new clients for these purposes.</p>	<p>There will be a requirement to withhold 30% tax on certain US sourced payments (for example dividends and interest) paid to recalcitrant account holders and to non-participating foreign financial institutions that are customers of Financial Institutions.</p> <p>More importantly, the requirement to withhold will also apply to the gross proceeds from the sale of assets that generate US-source interest and dividends</p>	<p>Annual reporting will be required on identified US persons – to include name, address, taxpayer Identification number as well as account balance and gross payments in and out of the account.</p> <p>Reporting on the number and aggregated value of recalcitrant account holders (i.e., persons who have not provided required documentation) and non-participating foreign financial institutions is also required (unless excepted by the Secretary)</p>

FATCA – What are the key implications?

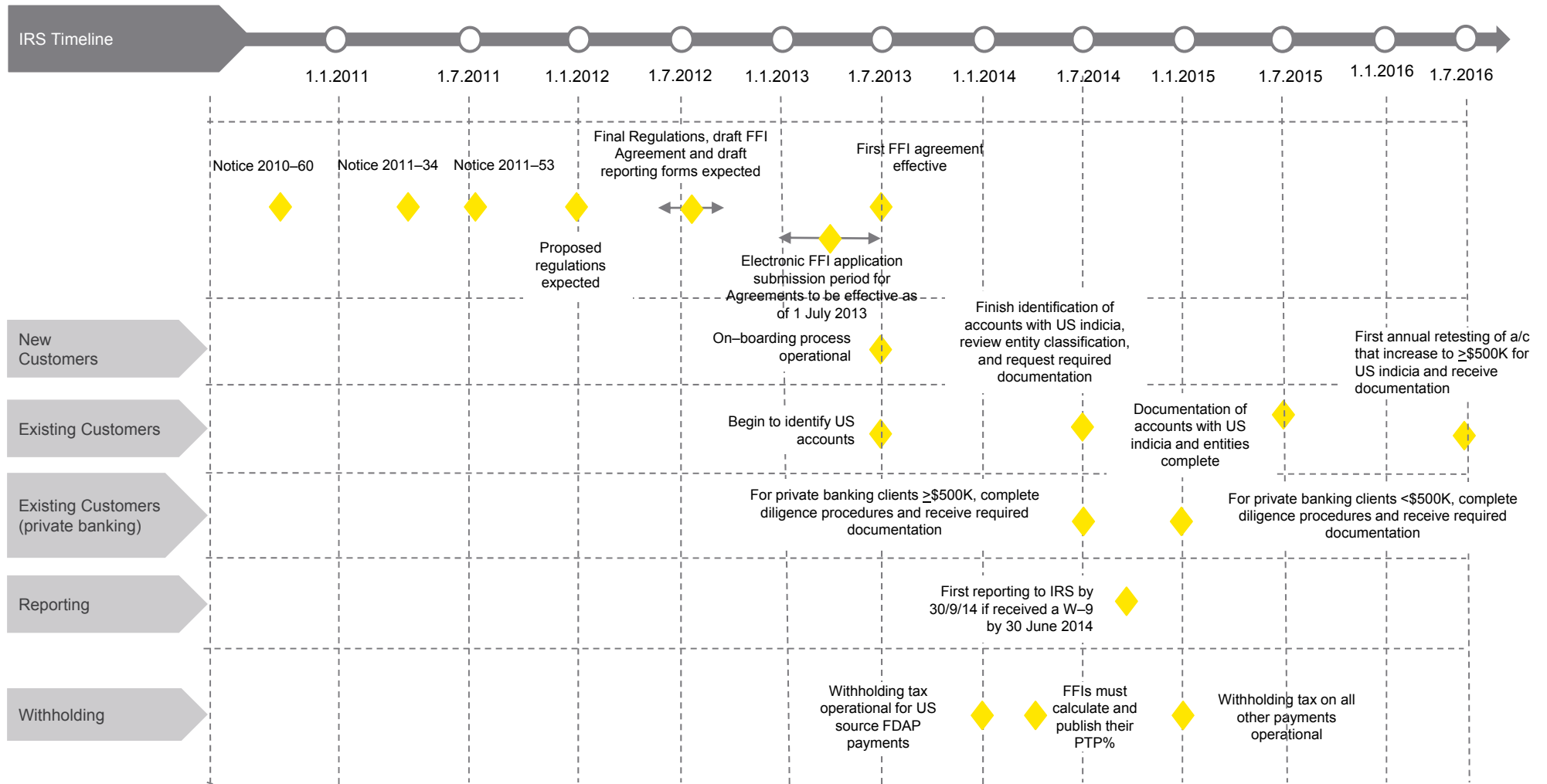
FATCA imposes four main obligations on FFIs:



Some strategic questions



Revised FATCA timeline – key milestones for compliance



► Technically, under Notice 2011-53, the diligence review procedures must be completed within two years of the FFI Agreement effective date. This timeline assumes that the split in the diligence review procedures between identification and documentation set forth in Notice 2011-34 and Notice 2010-60 will be carried over into final regulations.

► This slide does not address requirements placed on US Financial Institutions (USFIs).

FATCA – headline changes

What are the immediate next steps?

- ▶ Decide whether an FFI wishes to become a 'participating FFI' – 'participating' is expected to be the industry norm.
- ▶ Undertake a group-wide assessment of products and customers to understand what the new FATCA requirements mean, and crucially prioritise the issues.
- ▶ Engage stakeholders internally with the results of the above and help set budgets for design and delivery.

Even financial institutions with low numbers of US customers will be affected by FATCA – in some cases it may be as time-consuming to prove clients are not US persons.

There will likely be a requirement to have documentation from all clients who are not exempted – either documenting US persons or obtaining sufficient information to support a determination of non-US status.

Similarly, with the requirement to 'look through' corporates and trusts there will likely be a need to obtain documentation/information on all non-exempt corporate and trust clients to satisfy the requirements that they are not more than 10% US owned

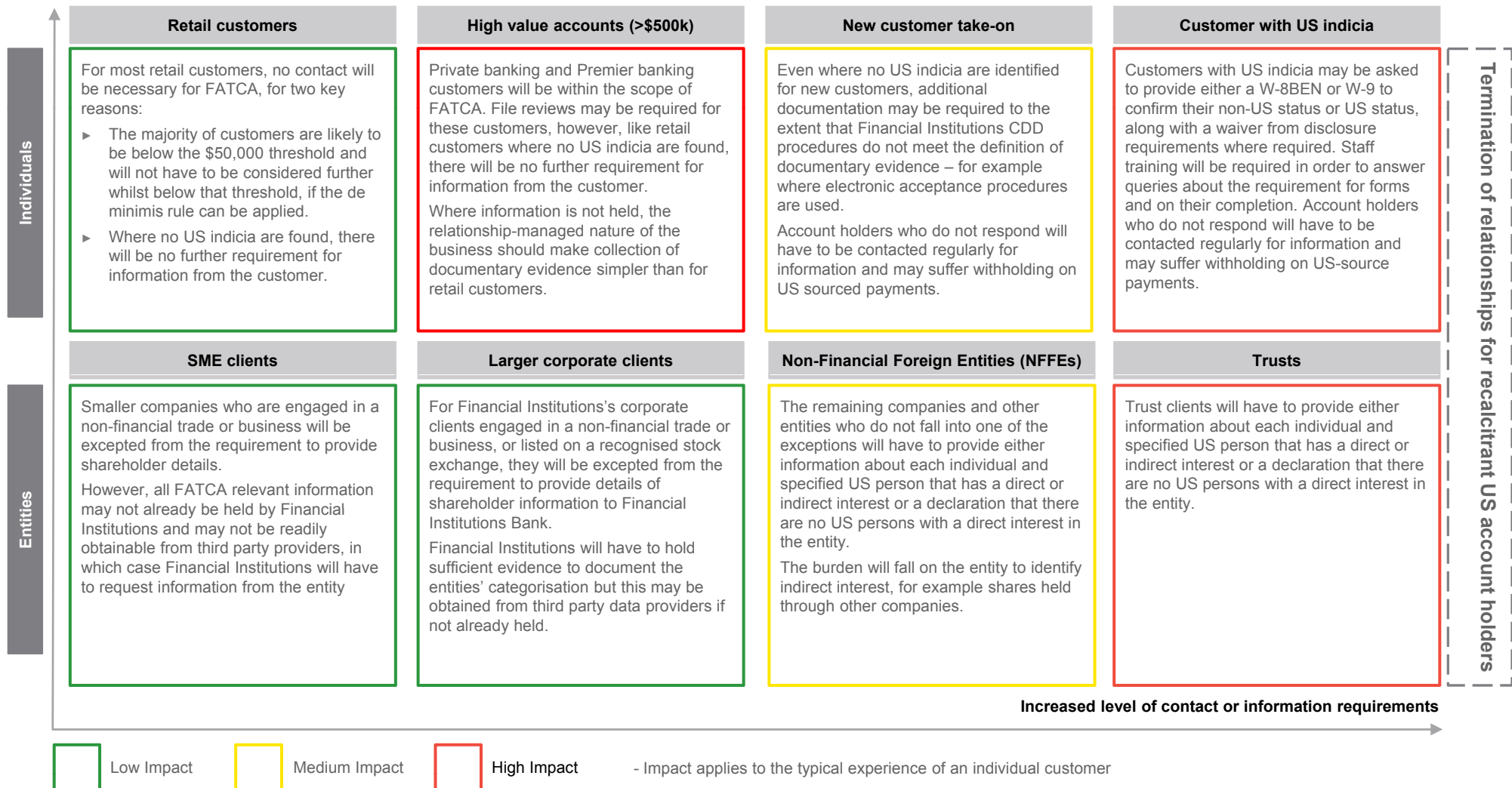


Section 2

Customer impact

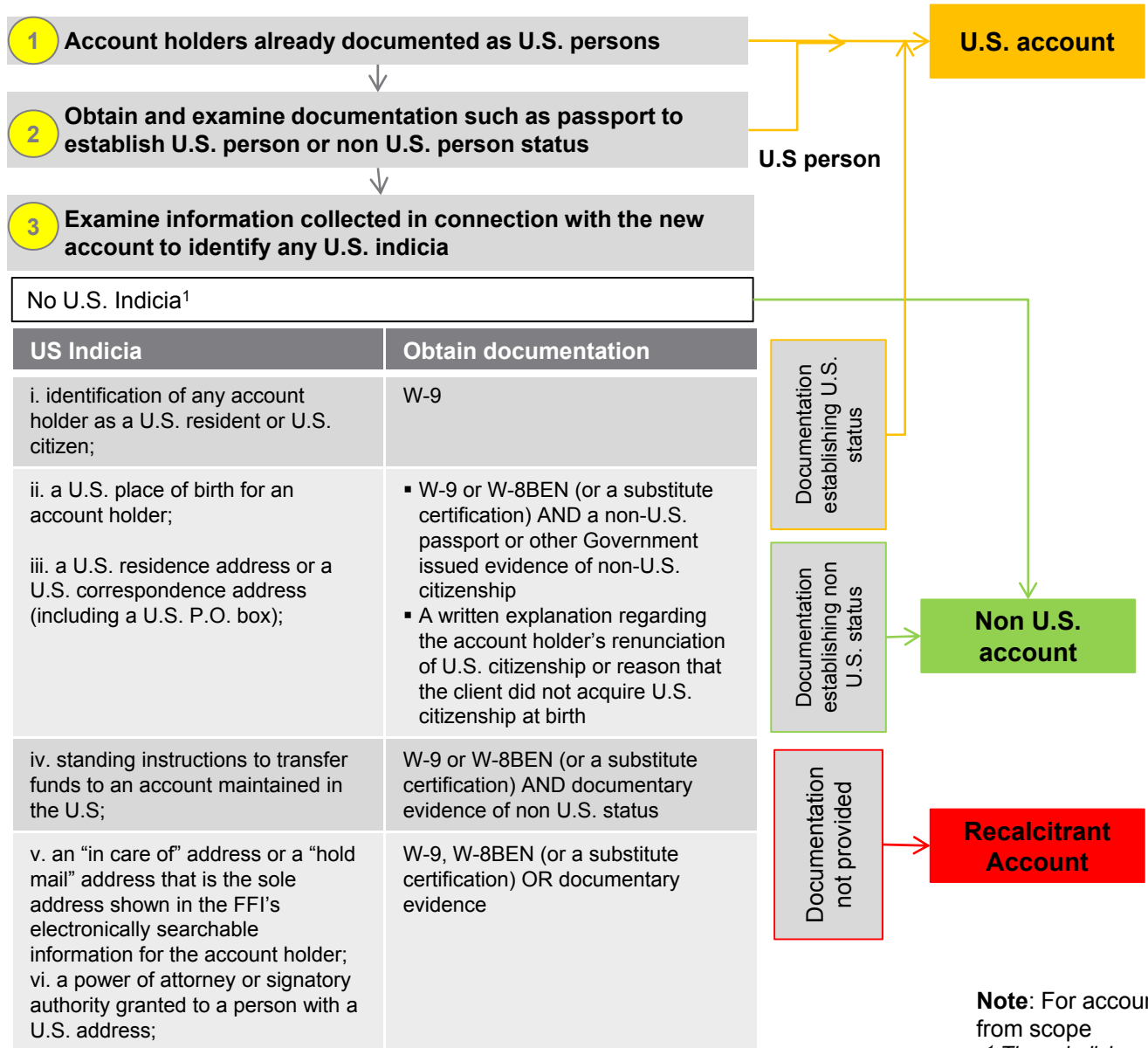
Our view of FATCA's impact on customers

Compliance with FATCA requires identification of all customers holding in scope products (subject to a de minimis of \$50,000, which only applies to individuals). Customer contact should only be required where necessary information is not held or where US indicia are identified as a part of implementation.



Process impact - New customers (to be in place by 1 July 2013)

Outlined below is a summary of process impacts arising from on-boarding process as required by FATCA

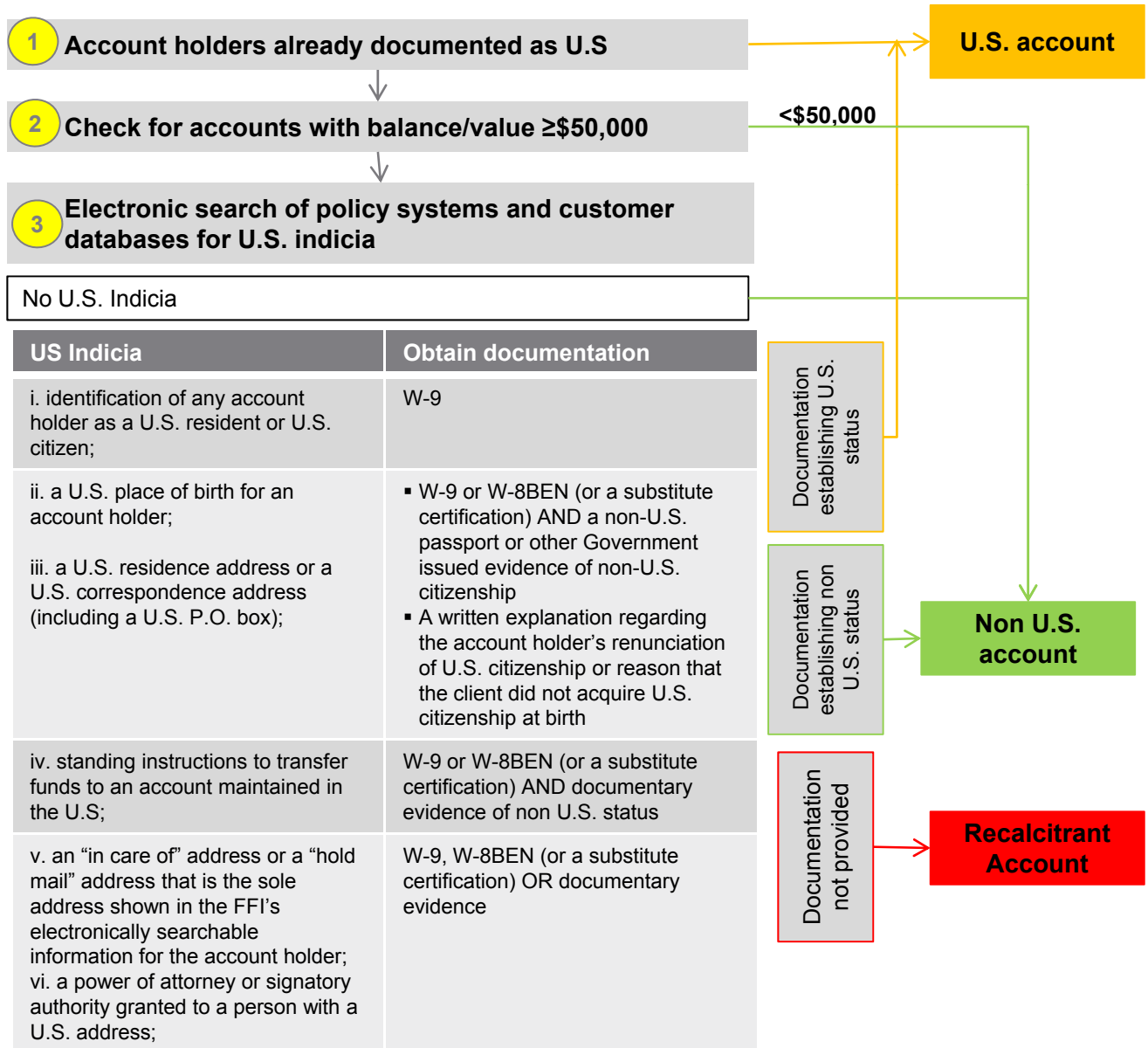


Note: For accounts with value \$50,000 or less there is an option to remove from scope

¹ These indicia are from Notice 2011-34 for pre-existing accounts. It is assumed that these indicia will also be applied to new customers

Process impact – Existing customers

(to be in place by 1 July 2013)



Process impact – Existing customers with balance ≥ \$500,000 (to be in place by 1 July 2013)

1 Check for accounts with balance/value ≥ \$500,000

2 Diligent review of all account files associated with the account for U.S. Indicia

No U.S. Indicia

US Indicia	Obtain documentation
i. identification of any account holder as a U.S. resident or U.S. citizen;	W-9
ii. a U.S. place of birth for an account holder;	<ul style="list-style-type: none"> W-9 or W-8BEN (or a substitute certification) AND a non-U.S. passport or other Government issued evidence of non-U.S. citizenship A written explanation regarding the account holder's renunciation of U.S. citizenship or reason that the client did not acquire U.S. citizenship at birth
iii. a U.S. residence address or a U.S. correspondence address (including a U.S. P.O. box);	
iv. standing instructions to transfer funds to an account maintained in the U.S.;	W-9 or W-8BEN (or a substitute certification) AND documentary evidence of non U.S. status
v. an "in care of" address or a "hold mail" address that is the sole address shown in the FFI's electronically searchable information for the account holder;	W-9, W-8BEN (or a substitute certification) OR documentary evidence
vi. a power of attorney or signatory authority granted to a person with a U.S. address;	

Documentation establishing U.S. status

Documentation establishing non U.S. status

Documentation not provided

U.S. account

1

2

Non U.S. account

Recalcitrant Account

Note: Annual testing for accounts which increase in value and are at risk of exceeding the \$500,000 limit is required.

Information needed vs. information currently held

FATCA may require collection of information on customers such as:

Information needed	Information currently held
Is an account holder a US citizen, permanent resident, temporary resident?	A passport or drivers license copy in a non-US country
Place of birth or incorporation	Place where currently resident
Notice if the person has an address in the US	An address outside the US
Whether an entity account holder is an active business	Basic information on the business entity
US taxpayer identification number (if any)	Foreign taxpayer information
Information on US owners of an entity	Limited information through AML or KYC

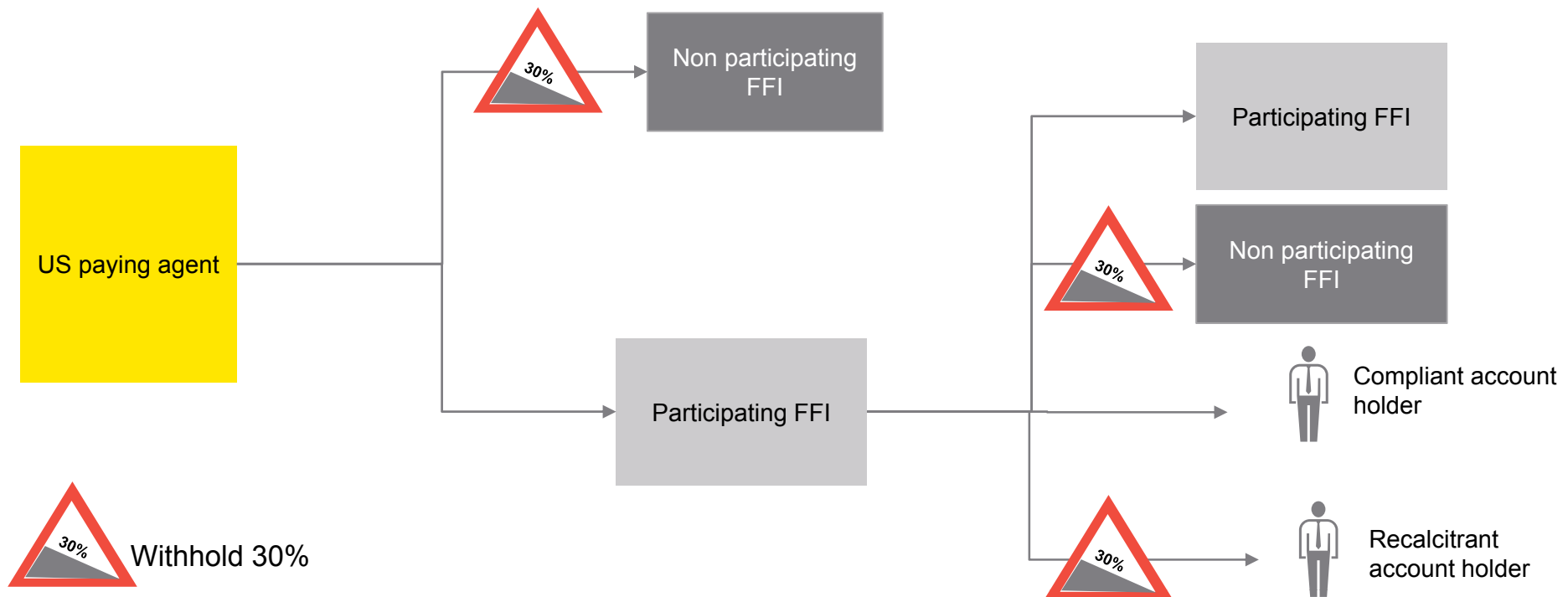


Section 3

Withholding

Withholding obligation and passthru payments

- ▶ All **Withholding Agents** must retain 30% of each 'withholdable payment' to a non-participating FFI.
- ▶ **Passthru payment:** all participating FFIs must retain 30% of each withholdable payment attributable to a recalcitrant account holder.
- ▶ **Recalcitrant account holder:** Any account holder that fails to comply with reasonable requests for information or fails to provide a waiver of privacy laws.



Withholdable payments

Under FATCA, withholdable payments are defined as

- ▶ US source fixed, annual or periodical income (FDAP) and
- ▶ The gross proceeds from the sale of assets which produce US source interest or dividends

FDAP payment types include:

- ▶ Dividends
- ▶ Interest
- ▶ Annuities

- ▶ Premiums
- ▶ Rent
- ▶ Salaries/wages

- ▶ Compensation
- ▶ Remuneration
- ▶ Emoluments

A greater range of payments will be subject to withholding than under current law. For example

- ▶ Gross proceeds on the sale or disposition of assets generating US source interest and dividends
- ▶ Payments from foreign branches of US financial institutions will be treated as US source income

FATCA withholding applies to non-participating FFIs even if the income and the recipient are eligible for a reduced or zero rate of withholding under a tax treaty or statutory position.

The beneficiary of a payment may file a claim for a credit or refund of amounts withheld but only if other requirements are met.

Definition of withholdable payment **excludes** effectively connected income (ECI).

Chief Compliance Officer certification

- ▶ Notice 2011–34 contains a requirement that the Chief Compliance Officer (or equivalent level individual) of an FFI will be asked to certify that the FFI has taken the necessary steps to identify its pre-existing individual accounts.
- ▶ The responsible officer will also have to certify that the FFI has not engaged in or have any policies in place between the date the Notice was published and the effective date of the FFI Agreement (starting 1 July 2013), that 'direct, encourage or assist' account holders to avoid FATCA.
- ▶ Such certification to the IRS is generally done under penalties of perjury.

In terms of suggested immediate next steps:

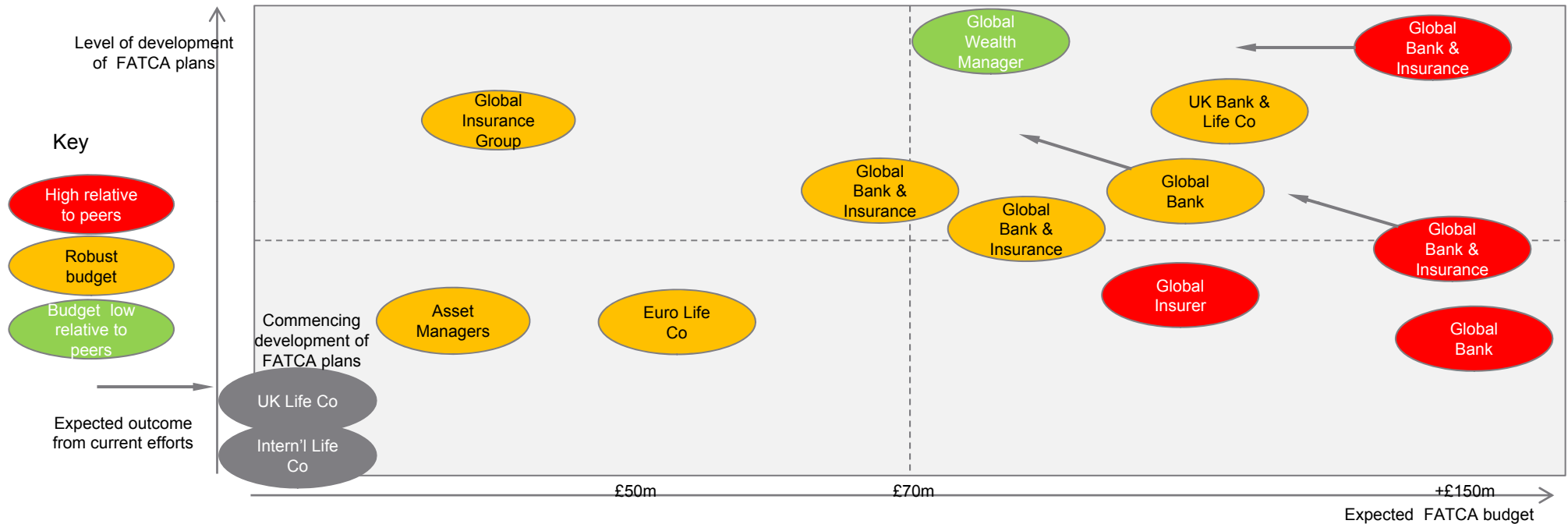
- ▶ Coordinate with your in-house legal department.
- ▶ Engage with internal risk, audit and/or compliance to raise awareness of the time sensitive requirements and start to consider who might sign-off.
- ▶ Identify existing policies and procedures and/or determine if the company may want to put in place in anticipation of the required certification to the IRS.
- ▶ Consider drafting a communication about these requirements to stakeholders within your company that may be impacted (i.e., those within compliance, risk, tax, relationship managers, financial advisors, etc.).



Section 4

Market intelligence

Current market insights – business response to FATCA



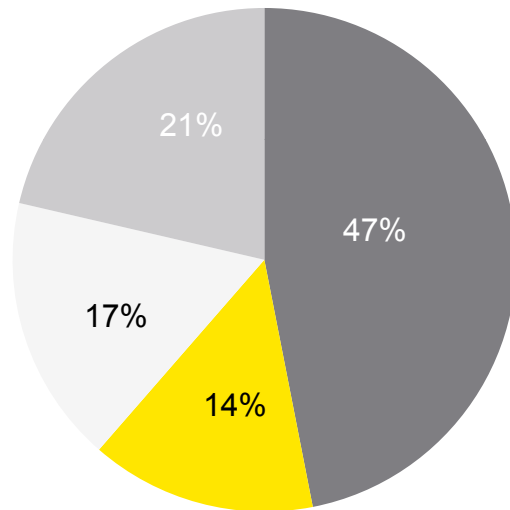
What are institutions doing across the market?

- ▶ Global banks have been the first to react and most have completed initial impact assessments and are mobilising implementation
- ▶ Insurance related FATCA activity has seen a significant uptake in recent months and an increasing realisation and understanding of scale of impact as many begin assessments.
- ▶ The majority of asset managers have up to now adopted a wait and see approach for FATCA but are now launching FATCA projects
- ▶ The TPAs and Platforms have been closely monitoring FATCA but most have yet to start major work as they are waiting for communications from the Asset Managers

Financial institutions are finding that FATCA entails a significant cost, but as they get into the details, cost estimates often reduce

Client identification, redefining reporting and withholding processes are the major cost drivers for FATCA projects

Split of FATCA Implementation costs



- Clients identification, documentation & communication
- Withholding
- Reporting
- Other costs

Market insights

- ▶ **Client identification, documentation and communication costs constitute the main cost component of FATCA implementation projects (Average 47% of total costs)**
- ▶ **According to the sample estimations, setting up FATCA compliant reporting and withholding capabilities represents, on average 17% and 14% respectively, of total FATCA implementation cost**
- ▶ **The remaining 21% effort is provided for programme management costs, PMO, external legal advise and communication with IRS**
- ▶ **The level of detail available about cost allocation depends on the stage of FATCA Impact Assessment project**

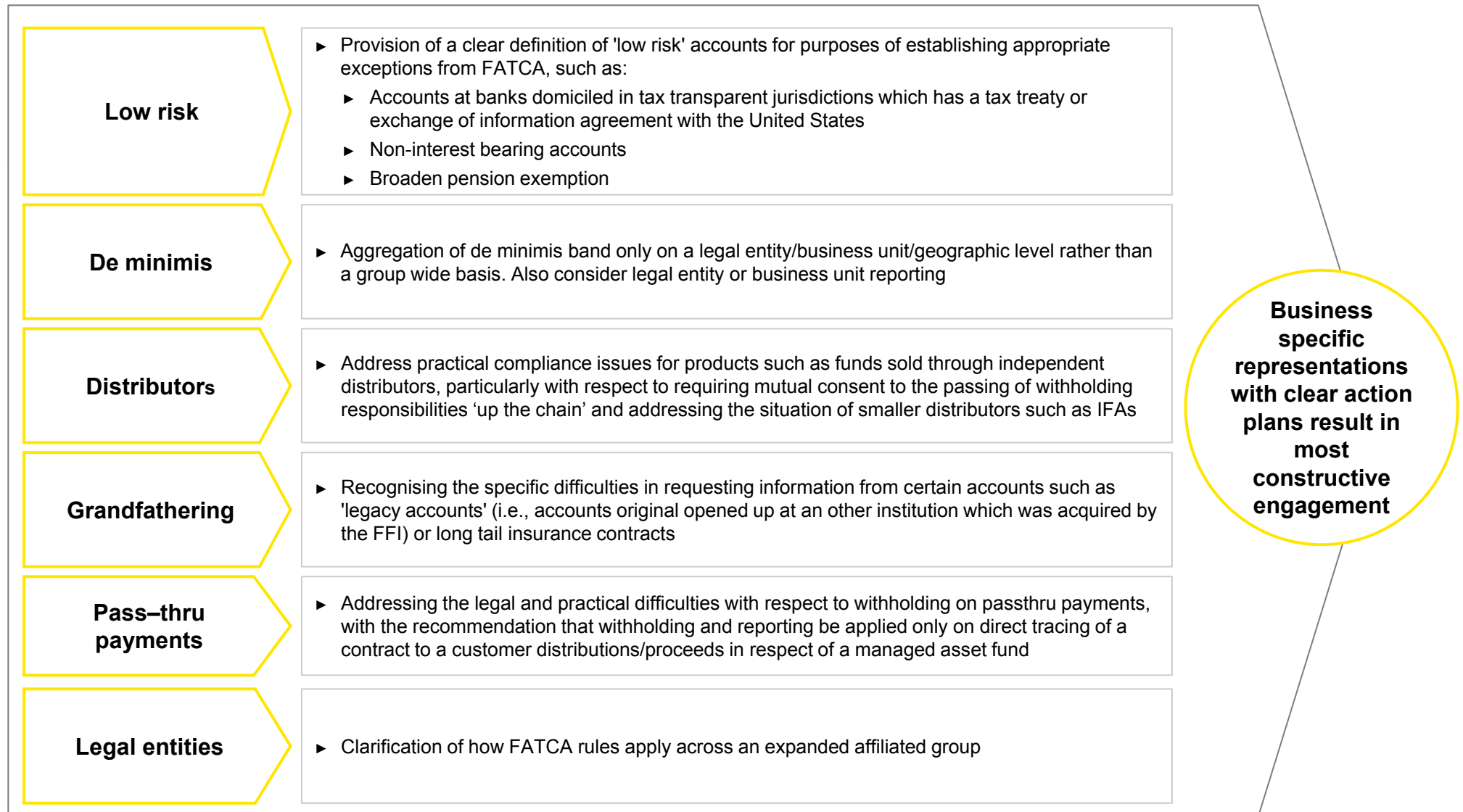
The average FATCA implementation cost per US account amounts to €1,250



In the sample, we have calculated the following:

- ▶ Average FATCA implementation cost: €179m
- ▶ Average number of clients: 26 million
- ▶ Average number of US accounts: 62.000
- ▶ Average FATCA implementation cost per client: €3,57
- ▶ Average FATCA implementation cost per US account: €1.250

Much of FATCA is left to the IRS and Treasury to implement through regulations – examples:





Section 5

How to approach FATCA

Why start now – six clear reasons

FATCA is current law. The question is not ‘if’ or ‘when’ FATCA is coming – rather the question is ‘how’ you are going to meet the requirements and mitigate the risk of incurring significant costs and penalties for failure to comply.

1 Engage the US tax authorities

Early and structured engagement with the Treasury and IRS to provide details of practical experiences may help to develop practical rules that are appropriately tailored to achieve the tax compliance goals.

2 Reduce risks that businesses, customers, or activities are overlooked upon implementation

Delivering complete and accurate customer data to the IRS will be highly complex given the diversity of business. An early start will reduce the risks that customers, businesses, or activities are overlooked.

3 Identify synergies with other client data projects and information gathering for new clients

Take advantage of other projects with similar client data requirements (e.g., AML). Early integration of solutions may save duplicative and significant costs when considered in conjunction with new and existing customers.

4 Enable effective communication strategies

The identification of customers most likely to be impacted – directly and indirectly through entities – needs to be sized quickly to enable an effective communication strategy to be put in place. Confirm that internal and external communication is consistent.

5 A global and cross divisional project

Cross–divisional projects are by their nature difficult to deliver. The earlier FATCA implementation starts in a controlled and well governed way the more likely the project will run smoothly.

6 Manage contemporaneous implementation of FATCA

FATCA compliance will be implemented simultaneously with other programs. Companies will need to begin early to ensure that all projects can be adopted by companies smoothly.

Project initiation and next steps

Typically, FATCA projects have taken the following approach in project initiation:

Project initiation

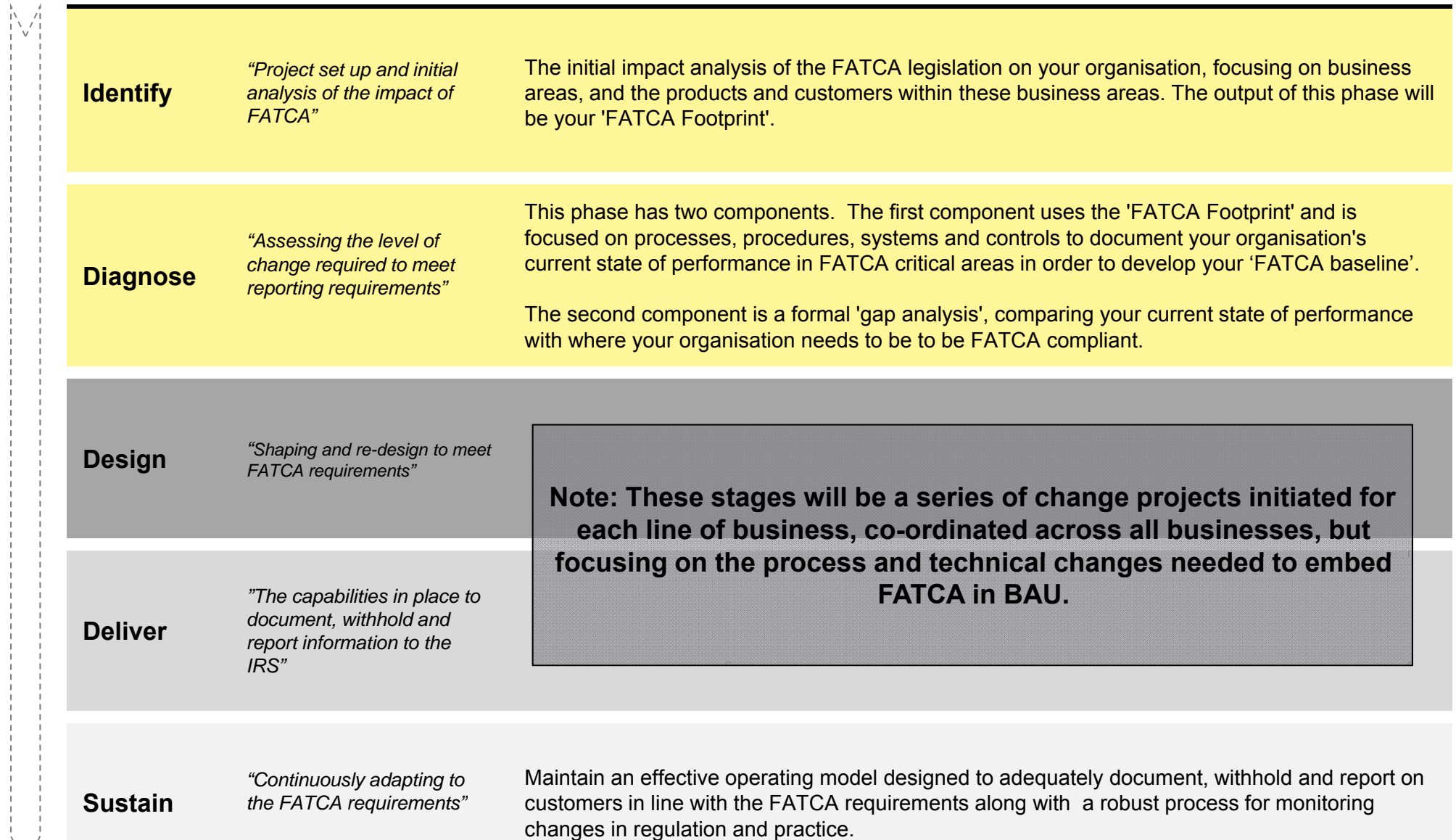
1. The tax department picks up, understands and analyses at a high level the impact of the FATCA provisions looking broadly at business units.
2. Cascade the message to the wider business – identify key stakeholders within business units and explain the impact of FATCA to them.
3. Develop that core stakeholder list to include the right people from business units.
4. Embed a common view that although this is a tax-driven change, it needs to be a business-led process.
5. Appoint a project leader and project management team.
6. Appoint a steering committee from the key stakeholders



Next steps

- ▶ Conducting a detailed impact assessment – typically working through customer and product offerings to develop a 'heatmap' showing the areas of the business most affected by change.
- ▶ Starting 'no regrets' planning to identify the key steps that will need to take place to implement each proposal.

Project Plan - Overview



Business and Operational Challenges – ‘A View of the Top 12’

Theme	Challenge
External	1. Will the timelines change?
	2. Do I have to comply?
	3. What are others doing?
	4. How best do we influence the IRS collectively and individually?
Operational	5. How should I assess the impact of FATCA on my business?
	6. How do I manage the uncertain business requirements?
	7. How will Passthru Payments & Withholding work in practice?
Organisational	8. How should I organise my Programme (eg, Central v Local)?
	9. What should I do now versus later?
	10. Who should own FATCA now and post implementation?
	11. What skills and resources will I need?
	12. How do I estimate the cost of implementation & compliance?

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