FATCA

Its Implications for the Financial Services Industry in Belize (A Banking Perspective)

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Introduction

The Foreign Account Tax Compliance Act (FATCA) was signed into law in the United States on March 18, 2010. The Act was a part of a general “jobs” bill known as the “Hiring Incentives to Restore Employment (HIRE) Act”.

The purpose of the Act is to rein in so called “United States Accounts” which have not been reported to the IRS.

The aim of FATCA is to close the loop on unreported US taxpayer information outside of the US with a view to increasing US tax revenue estimated at up to 450 billion USD annually.

This will be achieved by deputizing Foreign Financial Institutions (FFIs) to report to the IRS certain information about accounts held by US taxpayers or by foreign entities in which US taxpayers hold a substantial ownership interest and secondly to withhold against payments going to accounts held with non-cooperative FFIs or recalcitrant account holders

There is no getting around FATCA

It is here to stay!

It is the first of its nature in a global initiative by OECD countries to track down money held by tax payers in so called “tax havens”

FATCA is aimed at US Taxpayers but affects the entire world.

“Called ‘the worst law that most Americans have never heard of’ by Washington, DC lawyer James Jatras, FATCA is indeed one of the most arrogant and immoral pieces of legislation to ever emanate from the US capitol.

In a nutshell (the actual regulations comprise 577 pages), FATCA requires every financial institution (FI) *on the planet* to seek out any of its clientele who may be considered “US Persons” and to submit their names, account numbers, and account balances directly to the United States Internal Revenue Service (IRS).

It isn’t even required for these “US Persons” to be notified. But if the person is notified and will not give her permission for the transfer of information, her account will be deemed “recalcitrant” and will be closed.” Extracted from Article in “International Man, Jan. 16, 2015

The immediate Response to FATCA by countries was to seek to enter into Inter-governmental Agreements (IGAs) with the United States in order to insulate their banking sectors from direct relations with the United States Treasury.

These are known as either Model 1 or Model 2 IGAs. The IGAs are geared towards making it easier for partner countries to comply with the requirements of FATCA.

Model 1 IGA

In July 2012, the U.S. Treasury Department issued the first model for an IGA. Under this agreement, FFIs in these jurisdictions will be able to report information on U.S. account holders directly to their national tax authorities (among the first to sign were France, Germany, Italy, Spain and the United Kingdom). There are two types of Model 1 – Reciprocal and Non-reciprocating

Model 2 IGA

On November 15, 2012, the U.S. Treasury Department issued the second model of the IGA for complying with the FATCA provisions. The model 2 IGA reflects a compromise to address potential conflicts where national laws make it difficult, for financial institutions to comply with FATCA. Under this model countries have agreed with the US to enact legislation in due course which would enable compliance. There is no reciprocity for Model 2

IGA Countries

Model 1

Australia , Bahamas, Barbados, Belgium, Brazil, British Virgin Islands, Bulgaria, Canada, Cayman Islands, Costa Rica, Curaçao, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Gibraltar, Guernsey, Hungary, Honduras, Ireland, Isle of Man, Israel, Italy, Jamaica, Jersey, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mauritius, Mexico, Netherlands, New Zealand, Norway, Poland, Qatar, Singapore, South Africa, Spain, Slovenia, Sweden, United Kingdom, Turks and Caicos

Model 2 IGA

Austria, Bermuda, Chile, Hong Kong, Japan, Moldova, Switzerland

Countries that had reached an Agreement in substance but had not been finalized by the initial cut-off date of June 30, 2014

Model 1

Algeria, Anguilla, Antigua and Barbuda, Azerbaijan, Bahrain, Belarus, Cabo Verde, China, Colombia, Croatia, Dominica, Dominican Republic, Georgia, Greenland, Grenada, Guyana, Haiti, India, Indonesia, Kosovo, Kuwait, Malaysia, Montenegro, Panama, Peru, Portugal, Romania, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Saudi Arabia, Serbia, Seychelles, Slovak Republic, South Korea, Thailand, Turkey, Turkmenistan, Ukraine, United Arab Emirates, Uzbekistan, Angola, Cambodia, Greece, Holy See, Iceland, Kazakhstan, Montserrat, Philippines, Trinidad and Tobago, Tunisia

Model 2

Armenia, Iraq, Macao, Nicaragua, Paraguay, San Marino, Taiwan

FATCA's effect on banking in Belize

The top 5 Canadian Banks estimate that to date FATCA has cost them just over USD $700,000,000.00

Global estimates put the total cost of FATCA implementation at over 200 billion USD

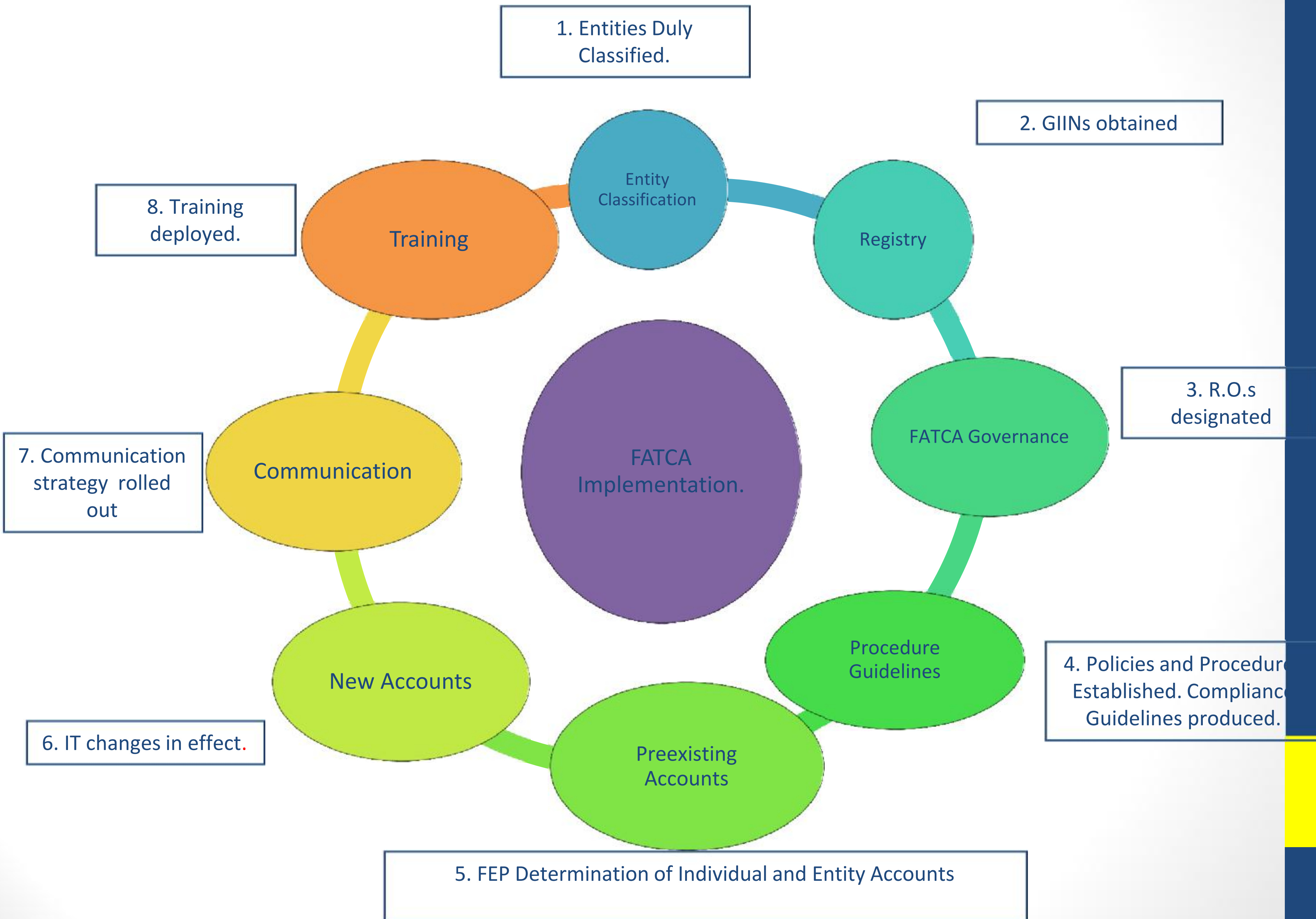
Since Belize did not enter into an IGA with the US our banks have direct agreements with the IRS which govern the implementation of FATCA.

FATCA prescribes specific rules of engagement for Banks by dividing accounts into two categories: Pre-existing Accounts and New Accounts with a cut-off date of June 30, 2014.

For pre-existing accounts the Banks had to run queries of their electronic records in order to look for persons with US indicia.

After the cut-off date banks have had to implement FATCA specific on boarding requirements in order to capture US persons.

FATCAImplementation



Steps for individual and entity account holders.

Individuals

1. Indicia Identification
2. Indicia Query
3. Documentation to be requested
4. High Value Accounts enhanced review
5. Summary of Reportable Information

Entities

1. Entity Identification
2. Documentation to be requested
3. High Value Accounts enhanced review
4. Owners / Shareholders
5. Summary of Reportable Information

Individual Accounts

1

Direct FFI Agreement (i.e. Belize).

1. Identification as U.S. Citizen or Resident.

2. U.S. Place of Birth.

3. Current U.S. Residential or Mailing Address.

4. Current U.S. Telephone Number.

2

The user must review the information available within the electronic database in order to determine whether there are account holders with the mentioned U.S. Indicia.

Example 1

The user reviews account holder A's information and it contains no U.S. Indicia whatsoever. No further action must be taken, unless the account value surpasses $1 million.

Example 2

The user reviews account holder B's information and it contains a current U.S. address and telephone number, and due to this Indicia we must request the appropriate documentation to confirm B's Chapter 4 (FATCA) status.

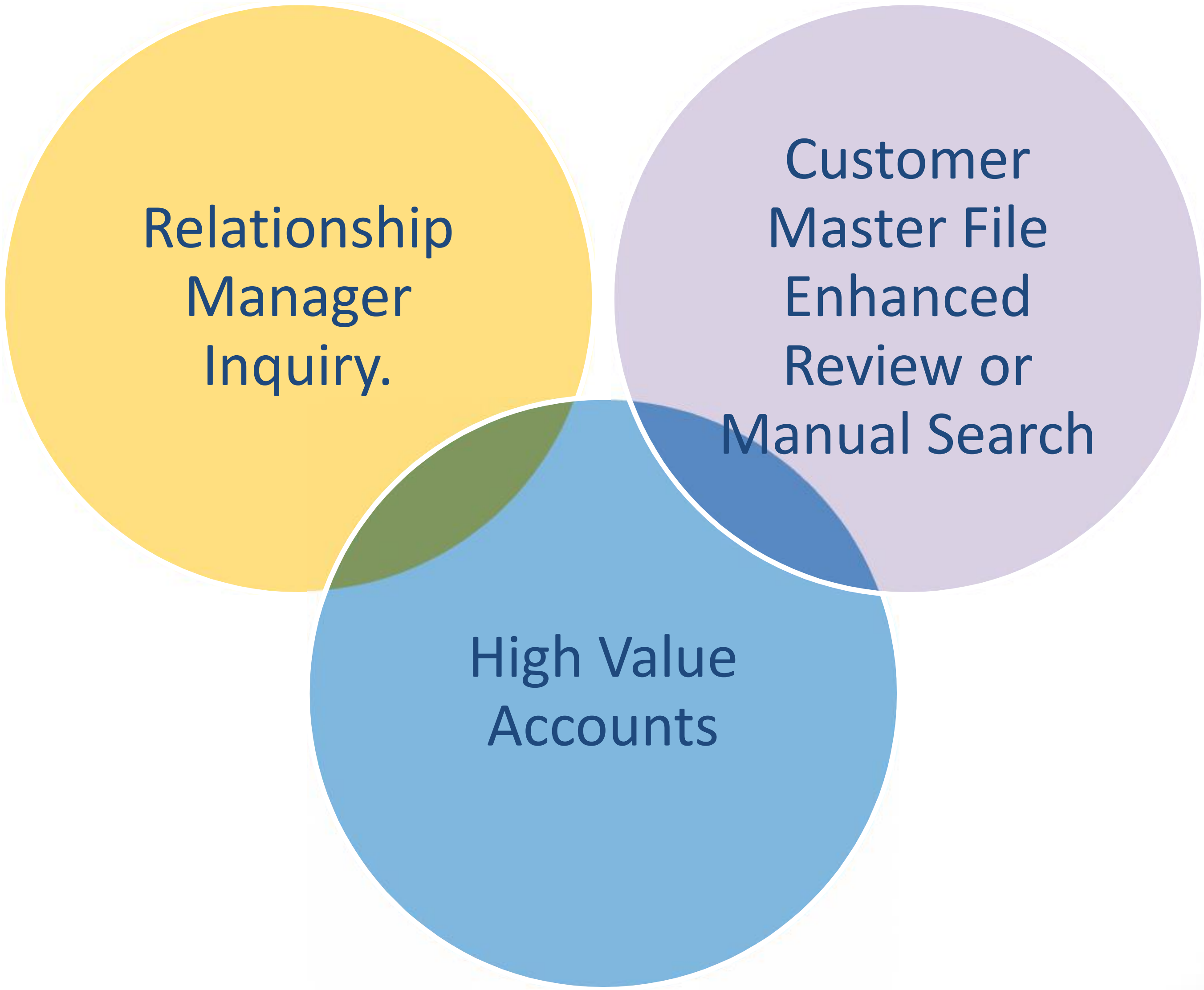
3

Documentation to be requested

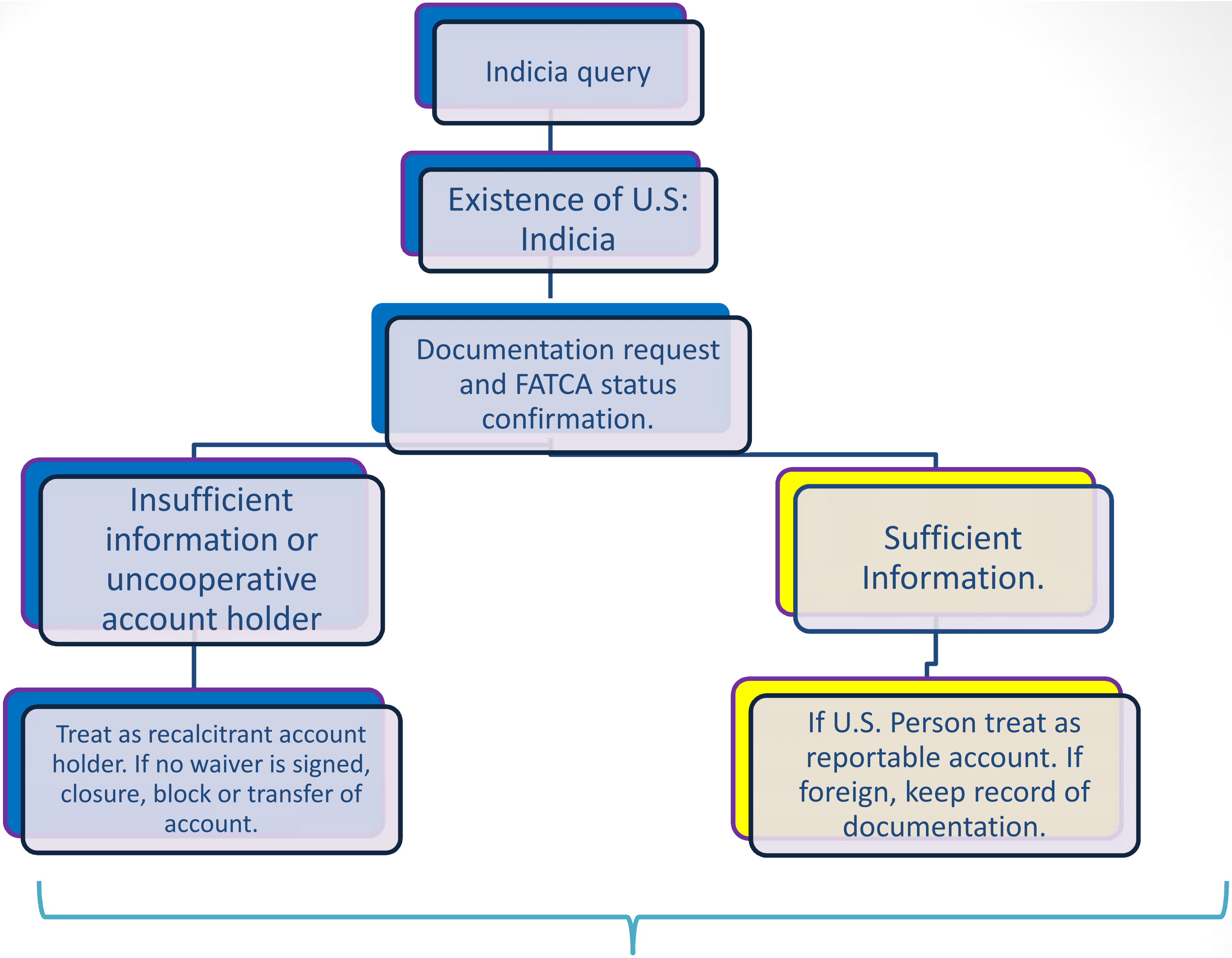
It is necessary to confirm the account holder’s FATCA status when U.S. Indicia is found.

U.S. Indicia Found	Database Field where Indicia can be found.	Documentation to confirm FATCA status.
1. U.S. Citizenship or Residency	ID type, Nationality, questions regarding U.S. tax contribution.	To confirm U.S. status Form W9, waiver and documentary evidence. To confirm foreign status Form W8BEN, waiver and documentary evidence proving foreign status of account holder. If the client is not a permanent resident anymore he/she must present an I-407 Form.
2. U.S. Place of Birth.	Place of Birth	(i) Form W8BEN, waiver and (ii) Certificate of Loss of Nationality or (ii) (i)Form W8BEN and waiver, (ii) documentary evidence and (iii) reasonable explanation for renouncing or not obtaining U.S. citizenship.
3. Current U.S. Residential or Mailing Address.	Address	Form W8BEN, waiver and documentary evidence proving foreign status of account holder.
4. U.S. Telephone Number.	Telephone fields.	Form W8BEN, waiver and documentary evidence proving foreign status of account holder.

High Value Accounts



Due Diligence Flow Chart-Individuals



High Value Accounts	
Relationship Manager Inquiry	Customer Master File search

Entity Accounts

Entity Identification

1. <u>Entities with substantial U.S. owners</u>: Entities with U.S. citizens or residents with 10% or more ownership.
2. <u>Specified U.S. Persons</u>: Entities organized within the U.S. and defined in IRS regulations.
3. <u>Foreign Financial Entities and Insurance Companies:</u> If the account holder is a Participating FFI, Registered Deemed Compliant FFI or Insurance company it must provide its Global Intermediary Identification Number (GIIN) and must be verified in the IRS website. <u>If it does not appear in the IRS' FFI list or it cannot provide a GIIN, then such account must be treated as Non- Participating FFI.</u> If it is determined the account holder is a Certified Deemed Compliant FFI, Excepted FFI or Exempt Beneficial Owner it must provide appropriate documentation.

U.S. Indicia for Entities
U.S. Residence.
Current U.S. residential or mailing address.
Standing instructions to pay amounts to an account in the U.S.
Current U.S. telephone number if no other telephone number is on file.
Power of attorney for a person with U.S. address.

Owners / Shareholders

Owners are FATCA relevant when they are U.S. Persons citizens/residents and own 10% or more of the entity.

Pre-existing accounts meeting the applicable thresholds must be reported upon.

Banks technically have a deadline of March 2017 to contact those persons found to have US Indicia in order for them to "purge" themselves of the suggestion that they are US persons or confirm their status as US persons.

Banks will have to obtain waivers in order to report information without breaching confidentiality considerations.

Those persons who refuse to provide information should be treated as recalcitrant accountholders and will be subject to withholding on payments into their accounts.

When establishing accounts on or after July 1, 2014 Banks have had to implement sufficient safeguards to satisfy the IRS that US persons will be identified. Many institutions have taken the decision to include a requirement in the forms for opening of accounts for persons to state whether they have any obligations as US taxpayers.

Key FATCA dates

- **July 1, 2014**
- Requirement to implement new individual account onboarding procedures for U.S. Withholding Agents, Participating FFIs, and Registered Deemed-Compliant FFIs
- **January 1, 2015**
- Requirement to implement new entity account onboarding procedures for U.S. Withholding Agents, Participating FFIs, and Registered Deemed-Compliant FFIs
- **March 31, 2015**
- Reporting commences for individual accounts on US owners, account information and balance reporting(with respect to the 2014 calendar year)
- **June 30, 2015**
- Participating FFIs must document preexisting high value individual accounts by June 30, 2015.

- **March 31, 2016**
- Reporting on individual and entity accounts for calendar year 2015.
- **March 31, 2017**
- reporting on individual and entity accounts for calendar year 2016 and pre-existing accounts