

# THE PERFECT TAX STORM

**FATCA - 2013 and Beyond  
Gearing UP**



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# Agenda

## ▶ FATCA introduction

- ▶ Current Climate of Aggressive IRS
- ▶ What does FATCA compliance mean?

## ▶ The scope

- ▶ Joint statements and bilateral agreements
- ▶ United Kingdom and Switzerland

## ▶ The details

- ▶ What is required?
- ▶ Timelines

## ▶ Israel and what's next

- ▶ Israel-US FATCA agreement and Israeli financial institutions' response
- ▶ Current US enforcement efforts
- ▶ “Son-of-FATCA”

# What the IRS is saying

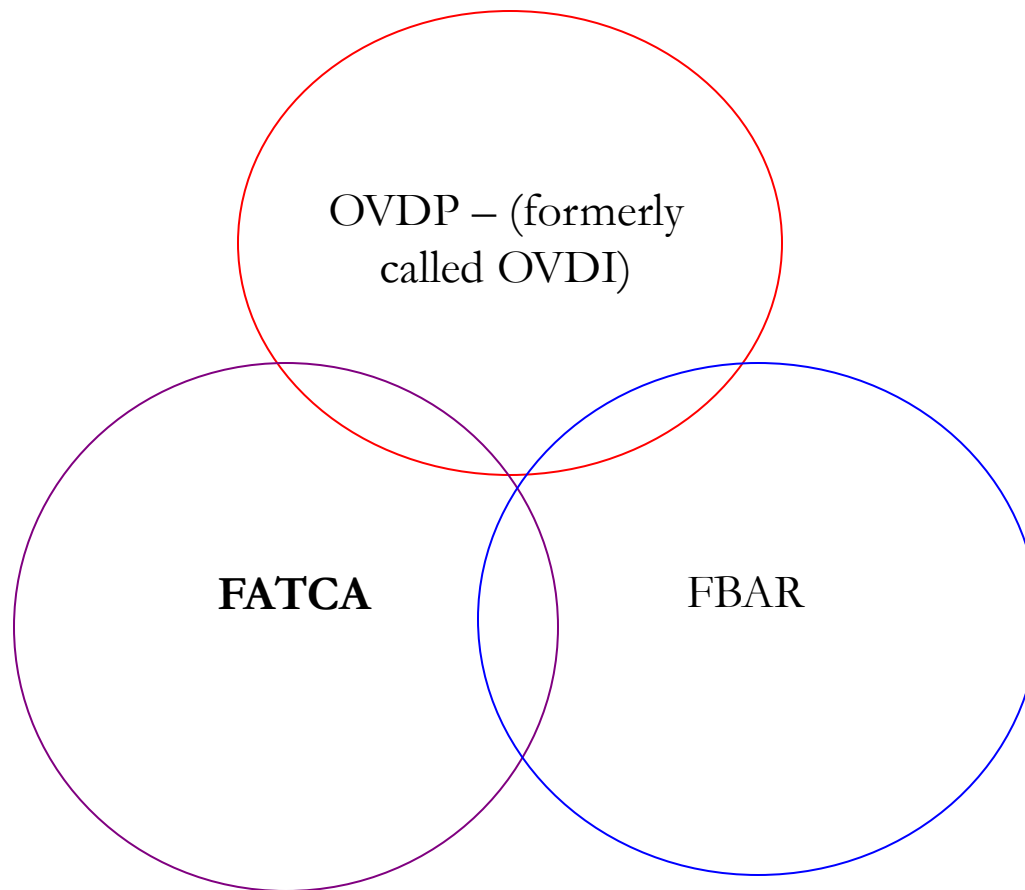
- ▶ IRS Acting Commissioner Steven Miller's December 6<sup>th</sup> remarks on cracking down on tax evasion
- ▶ Taxpayers can expect to see “continued aggressive enforcement” and “aggressive investigations of individuals, promoters, and banks”
- ▶ The IRS anticipates many more taxpayers joining the Offshore Voluntary Disclosure Program and the new “streamlined” program for foreign residents
- ▶ The IRS “is looking at quiet disclosures for examination” and “quiet disclosures are at risk”

# Increased Information Sharing

- ▶ Coordination of the United States Offshore Voluntary Disclosure Program (“OVDP”) and other countries
- ▶ Effect of the IRS 2009, 2011 and 2012 OVDP – enormous database of information secured
- ▶ Increased Transparency and Information Sharing
- ▶ Non-compliance, then payment is subject to a 30% withholding



# Overlap



# FATCA

## Foreign Account Tax Compliance Act

- ▶ New Focus on Foreign Financial Institutions
- ▶ Increased asset and income disclosure requirements on US citizens and Green Card holders

# **FATCA – Foreign Account Tax Compliance**

- ▶ Introduced on March 18, 2010 as part of Hire Incentives to Restore Employment Act of 2010 (HIRE)
- ▶ Scope of FATCA is extremely broad
- ▶ Primary purpose to reduce the compliance burden while maintaining the policy objective of improved information reporting on US persons with assets invested in non-US jurisdictions

# **FATCA – Foreign Account Tax Compliance**

- ▶ **Effects almost every Foreign Financial Institution (“FFI”) including banks, custodians, brokers/dealers, private equity, hedge funds, insurance companies, certain pension plans, trust companies, some trustees and certain family offices (depending on the circumstances)**



# **FATCA – Foreign Account Tax Compliance**

- ▶ **Disclosure - certain FFI's are required to file the information reports for the 2013 and 2014 calendar years not later than March 31, 2015**
- ▶ **Withholding on payments (30%) to recalcitrant account holders or a non-participating FFI beginning in 2014**

# FATCA – Foreign Account Tax Compliance

- ▶ Information about income on US accounts must be reported to the US beginning in 2016 (for the 2015 calendar year)
- ▶ Complete information on US accounts including information about gross proceeds must be reported beginning in 2017 (for the 2016 calendar year)

# What is Required?

- ▶ FATCA will require foreign financial institutions (“FFIs”) to report certain information about financial accounts held by US taxpayers, or by foreign entities in which US taxpayers hold a substantial ownership interest
- ▶ To properly comply with these new reporting requirements, either (i) an FFI will have to enter into a special agreement with the IRS or (ii) Agreement between US and Foreign Country (“IGA”)
  - ▶ Model 1 and Model 2

# FATCA – Foreign Account Tax Compliance

- ▶ Treasury released a “joint statement” from the US, France, Germany, Italy, Spain and the UK announcing an agreement to explore “inter-governmental” cooperation thereby allowing FFI’s in each country to provide the information required by FATCA to that country’s tax authorities rather than to the IRS

# Joint Statement

- ▶ Goal is to improve international tax compliance
- ▶ The US is willing to reciprocate
- ▶ US will automatically share information on accounts held in US financial institutions
- ▶ Many countries are working towards a “common approach to FATCA”

# Treasury Announcement

- ▶ On November 8, 2012 Treasury announced that it is engaged with more than 50 countries around the world
- ▶ Treasury Assistant Secretary for Tax Policy Mark Mazur
  - ▶ *“We are intensifying our ability to combat tax evasion”*

# Model Agreements

- ▶ On July 25, 2012, Treasury published the Model Agreement to Improve Tax Compliance and to Implement FATCA (Model 1 – “the soft Model”)
  - ▶ The text of Model 1 is updated periodically
- ▶ On November 14, 2012, Treasury published the Model Intergovernmental Agreement for Cooperation to Facilitate the Implementation of FATCA (Model 2)

# Model 1 – Agreement between US and Foreign Government

- ▶ Issued: July 26, 2012
- ▶ Information is sent to the **local tax authorities** and **NOT** the IRS
- ▶ Information is exchanged between the Foreign-Partner Government and the US
- ▶ Consent of the account holders is **NOT** required
- ▶ Financial institution has 18 months from notification to resolve any non-compliance or the IRS will treat the institution as a non-participating FFI



# Model 2 – Agreement between US and Foreign Government

- ▶ Issued: November 15, 2012
- ▶ Information is sent directly by **FFI to the IRS**
- ▶ Consent of the account holders IS required
- ▶ FFIs required to report the numbers of accounts where no consent was given, and the US may request the identity of the account holders from the FATCA partner Government
- ▶ Financial institution has 12 months from notification to resolve any non-compliance or the IRS will treat the institution as a non-participating FFI

# Joint Statements

- ▶ **Joint Communiqué (by France, Germany, Italy, Spain, the United Kingdom and the United States) on the Occasion of the Publication of the Model Agreement (7-25-2012)**
- ▶ **Joint Statement from the US and Japan (6-21-2012)**
- ▶ **Joint Statement from the US and Switzerland (6-21-2012)**
- ▶ **Joint Statement from the US, France, Germany, Italy, Spain and the UK (2-7-2012)**

# **Signed Bilateral Agreements**

- ▶ **Bilateral Agreement between the US and Mexico (11-19-2012)**
- ▶ **Bilateral Agreement between the US and Denmark (11-19-2012)**
- ▶ **Bilateral Agreement between the US and the UK (9-12-2012)**

# **United Kingdom (Sept. 14, 2012)**

- ▶ **Treasury and the UK Sign a Bilateral Agreement to Improve Tax Compliance, Combat Offshore Tax Evasion and Implement FATCA**
- ▶ **The bilateral agreement is based on the model published in July of this year and developed in consultation with France, Germany, Italy, Spain, and the United Kingdom and marks an important step in establishing a common approach to combatting tax evasion based on the automatic exchange of information**

# United Kingdom (Sept. 14, 2012)

- ▶ Information that UK FFIs will generally be providing to the **UK government** includes:
  - ▶ Name, address and TIN of specified US account holder
  - ▶ Account number at the FFI
  - ▶ The name and identifying number of the FFI
  - ▶ Account value or balance at the end of the year
  - ▶ Gross interest paid to deposit accounts
  - ▶ Gross income produced by custodial account and gross proceeds credited to the account upon the sale of the securities

# US and Switzerland

- ▶ US and Switzerland have *initialed* an intergovernmental agreement
- ▶ The agreement was reached by both sides on December 3 in Washington D.C.
- ▶ Small, primarily local banks can be excluded (to keep down administrative costs)
- ▶ Full details and the text of the intergovernmental agreement will not be made public until the two countries have signed the agreement

# US and Switzerland

- ▶ **Swiss spokesman Mario Tuor has noted:**
  - ▶ Information will be directly between Swiss FFIs and the IRS instead of through a centralized government database in order to protect the information
  - ▶ If a US client refuses to authorize information transfer, the Swiss FFI will NOT automatically reveal the identify of the account holders
  - ▶ Instead, the IRS will have to make a “group request” under the US – Swiss double taxation agreement and identify certain patterns indicating suspected tax evasion

# Countries in the final stages of an agreement:

▶ Jurisdictions with which Treasury is in the process of finalizing an intergovernmental agreement and with which Treasury hopes to conclude negotiations by year end include:

- ▶ Canada
- ▶ Denmark
- ▶ Finland
- ▶ France
- ▶ Germany
- ▶ Guernsey
- ▶ Ireland
- ▶ Isle of Man
- ▶ Italy
- ▶ Japan
- ▶ Jersey
- ▶ Mexico
- ▶ Netherlands
- ▶ Norway
- ▶ Spain



# Countries that are actively moving to agreement include:

▶ Jurisdictions with which Treasury is actively engaged in a dialogue towards concluding an intergovernmental agreement (may conclude negotiations with several of these by year end):

- ▶ **Israel**
- ▶ Argentina
- ▶ Australia
- ▶ Belgium
- ▶ Cayman Islands
- ▶ Cyprus
- ▶ Estonia
- ▶ Hungary
- ▶ Korea
- ▶ Liechtenstein
- ▶ Malaysia
- ▶ Malta
- ▶ New Zealand
- ▶ Singapore
- ▶ Slovak Republic
- ▶ Sweden

# Countries with which Treasury are exploring options:

- ▶ The jurisdictions with which Treasury is working to explore options for intergovernmental engagement include:
  - ▶ Bermuda
  - ▶ Brazil
  - ▶ British Virgin Islands
  - ▶ Chile
  - ▶ Czech Republic
  - ▶ Gibraltar
  - ▶ India
  - ▶ Lebanon
  - ▶ Luxembourg
  - ▶ Romania
  - ▶ Russia
  - ▶ Seychelles
  - ▶ Saint Maarten
  - ▶ Slovenia
  - ▶ South Africa

# What is Required?

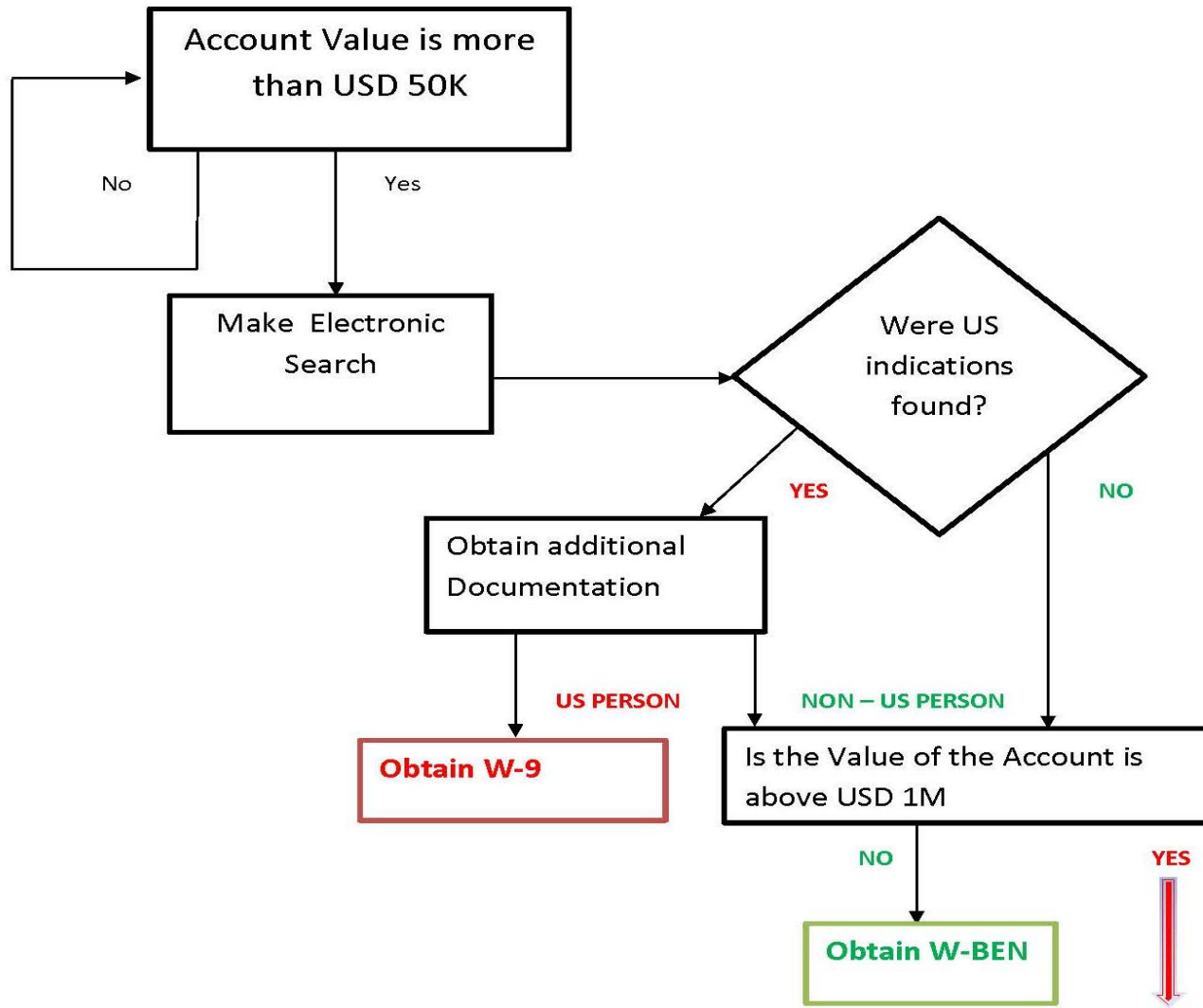
- ▶ Under the agreement a “participating” FFI will be obligated to:
  1. Undertake identification and due diligence procedures to identify US persons that are account holders;
    - (a) Pre-existing accounts
    - (b) New Account Procedures
    - (c) Grandfathered Accounts

# What is Required?

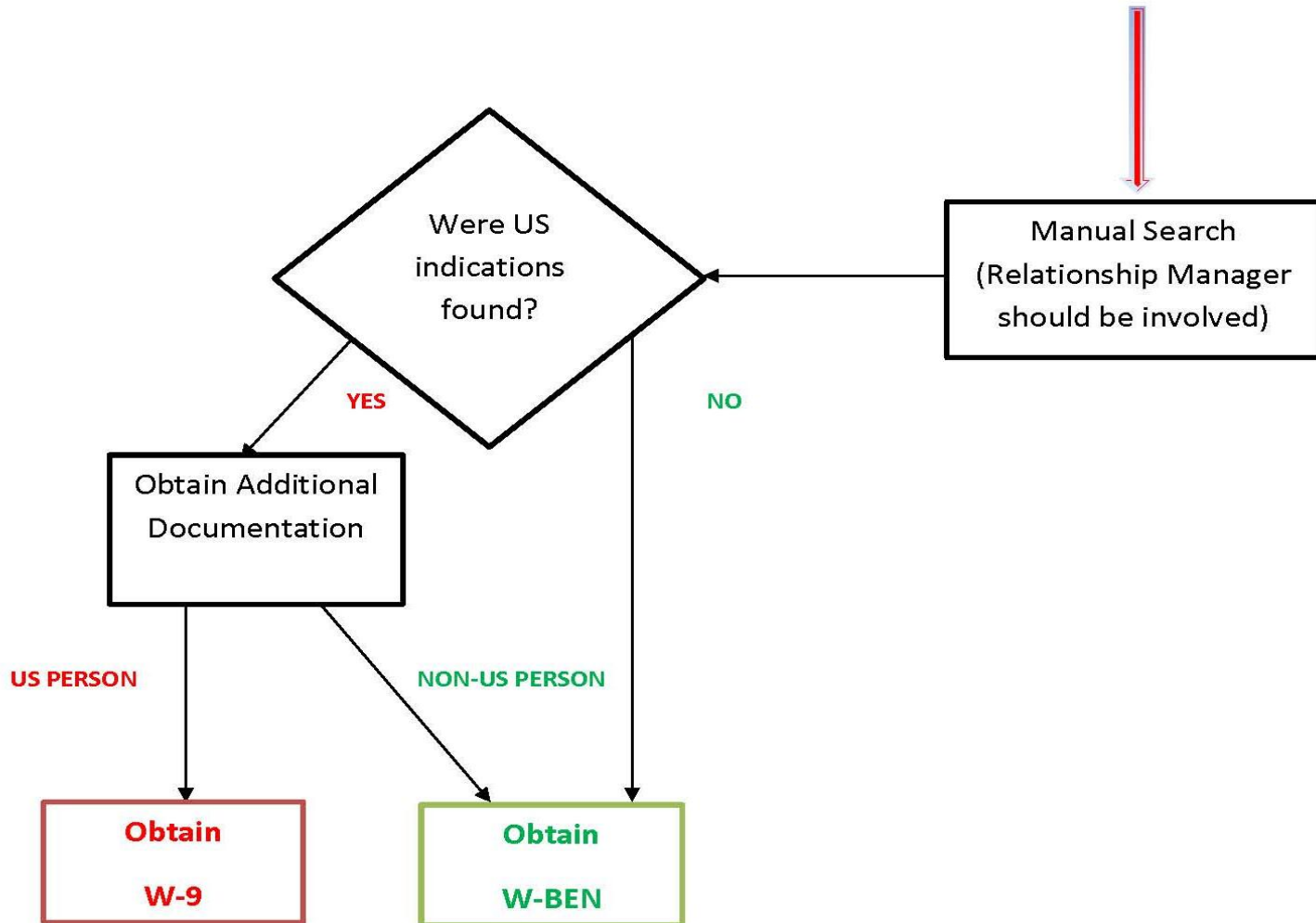
2. Report annually to the IRS (or local foreign government) on its accountholders who are US persons or foreign entities with substantial US ownership; pre-existing other high value accounts

3. If non-compliant, withhold and pay over to the IRS 30% of any payments of US source income, as well as gross proceeds from the sale of securities that generate US source income, made to certain entities

# Pre-existing Individual Account



## Pre-existing Individual Account – Cont.



# Israel and FATCA

- ▶ Israel is moving closer to reaching an agreement with the US
  - ▶ Israel Tax Authority director general Doron Arbeli met with IRS Action Commissioner Steven Miller last week
  - ▶ Israeli banks reportedly prefer a Model 1 FATCA agreement (the soft model)
    - ▶ The banks would only deal with the Israeli authorities
    - ▶ But the banks would have to share the identity of their clients

# Israel and FATCA – cont.

- ▶ Under a FATCA agreement, the US will also give information to Israel
- ▶ At this point in the negotiations, the US will be required to give *less* information to Israel than Israel gives to the US



# Israel and FATCA – cont.

- ▶ Compare to the US-UK agreement
  - ▶ The US is providing the UK with “a wider scope of information on individual accounts” than the UK is providing the US
  - ▶ Model 1 agreement includes a commitment by the US to achieve equivalent levels of the information automatically exchanged

# **Israeli FFI's response in anticipation for FATCA**

- ▶ Executed Form W-9/W-8BEN;
- ▶ Confirmatory letters signed by accountholders (and beneficial owners) confirming that they are compliant with applicable US tax laws and that they have disclosed the existence of foreign bank accounts to the IRS;
- ▶ Deed of Indemnity.

# **Israeli FFI's response in anticipation for FATCA - Cont.**

- ▶ **Israeli Banks have blocked accounts of recalcitrant US persons;**
- ▶ **Israeli Banks have sent information of US accounts to Israeli AML authority of recalcitrant account holders.**

# **Israeli FFI's response in anticipation for FATCA - Cont.**

- ▶ **Bank Transfers to the US beneficiary solely;**
- ▶ **Bankers' check to the beneficiary (mentioning "US Person").**

# **Israeli FFI's response in anticipation for FATCA - Cont.**

- ▶ **Completed extensive questionnaire detailing existence of a US person whether directly or indirectly related to an account (even if the account holder is a non US related entity)**

# Timeline: New Accounts

	<b>New Individual and Entity Accounts (Implementation of new account opening procedures)</b>
<b>Withholding Agents other than Participating FFIs and Deemed-Compliant FFIs</b>	By January 1, 2014
<b>Withholding Agents that are Participating FFIs</b>	By later of January 1, 2014, or effective date of FFI agreement
<b>Withholding Agents that are Registered Deemed-Compliant FFIs</b>	By later of January 1, 2014, or date of registration

# Timeline: Preexisting Accounts

	<b>Preexisting Accounts of Prima Facie FFIs (Date by which due diligence must be completed for all accounts)</b>	<b>Preexisting Accounts of Entities other than Prima Facie FFIs</b>	<b>Preexisting High Value Accounts of Individuals</b>	<b>Preexisting Accounts of Individuals other than High Value Accounts</b>
<b>Withholding Agents other than Participating FFIs and Deemed-Compliant FFIs</b>	By June 30, 2014	By December 31, 2015	N/A	N/A
<b>Withholding Agents that are Participating FFIs</b>	By the later of June 30, 2014, or 6 months after the effective date of the FFI Agreement	By the later of December 31, 2015, or two years after the effective date of the FFI Agreement	By the later of December 31, 2014, or one year after the effective date of the FFI Agreement	By the later of December 31, 2015, or two years after the effective date of the FFI Agreement
<b>Withholding Agents that are Registered Deemed-Compliant FFIs</b>	N/A	N/A	N/A	N/A

# Latest US Tax Compliance and Enforcement Efforts

- ▶ Continued criminal indictments/prosecutions relating to Foreign Accounts; will policy on extradition change over time?
- ▶ 2 recent situations where people were stopped by US immigration officials regarding outstanding tax liabilities



# **Latest US Tax Compliance and Enforcement Efforts**

- ▶ **Pending bill in Congress to deny entry if significant tax compliance issues**
- ▶ **Still no ability for foreign lien or levy attachments- will this change with FATCA ?**
- ▶ **Because of FATCA, there is increased dialogue between banks doing business in the US and the Treasury Department**

# Son-of-FATCA

- ▶ Other countries are expected to “piggy-back” on FATCA and sign “Son-of-FATCA” information sharing agreements with each other
  - ▶ The United Kingdom and Isle of Man announced Dec, 7 an agreement to exchange information with each other modeled on the US-UK FATCA agreement
  - ▶ Exchequer Secretary to the Treasurer David Gauke:
    - ▶ “Our groundbreaking agreement with the US sets a new standard in international tax transparency”
    - ▶ “[The] agreement between the UK and Isle of Man . . . is the next step in this process”