



Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standard (CRS)

Client Training "Summer Seminar" , Frankfurt/Main, July 2016

Foreign Account Tax Compliance Act (FATCA) is one of many regulatory requirements to increase global tax transparency

FATCA Overview

- › On March 2010, FATCA became law in the U.S. The purpose of FATCA is to combat tax evasion by U.S. taxpayers
- › Objective: report information on financial accounts regularly to the U.S. Internal Revenue Service (IRS)
- › FATCA thereby confirms the trend of increasing international tax transparency

Short description of how FATCA works

Who is affected?

- › Financial institutions outside of the U.S., which hold financial accounts for the benefit of another person (Foreign Financial Institutions = FFIs)

What must be done?

- › FFIs are obligated to identify their U.S. customers and their financial accounts
- › Financial institutions have to register with the IRS to achieve a compliant status

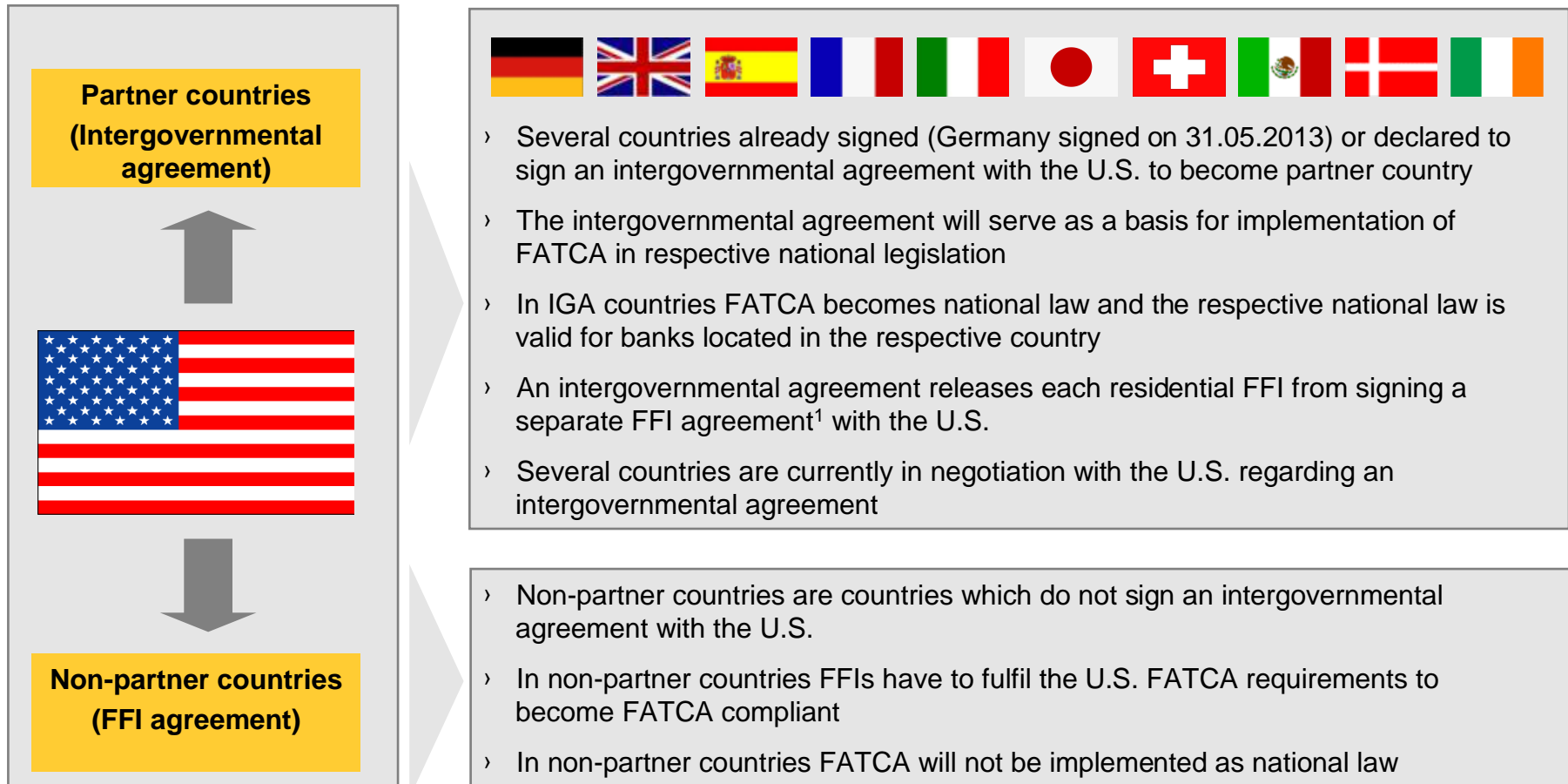
What is required?

- › Participating FFIs are obligated to report their U.S. customers and their financial accounts, including personal, account and income information

What happens in case of non-compliance?

- › FFIs which are not compliant would be subject to a 30% withholding tax on U.S. sourced income

Many countries have signed or are negotiating an intergovernmental agreement with the U.S.

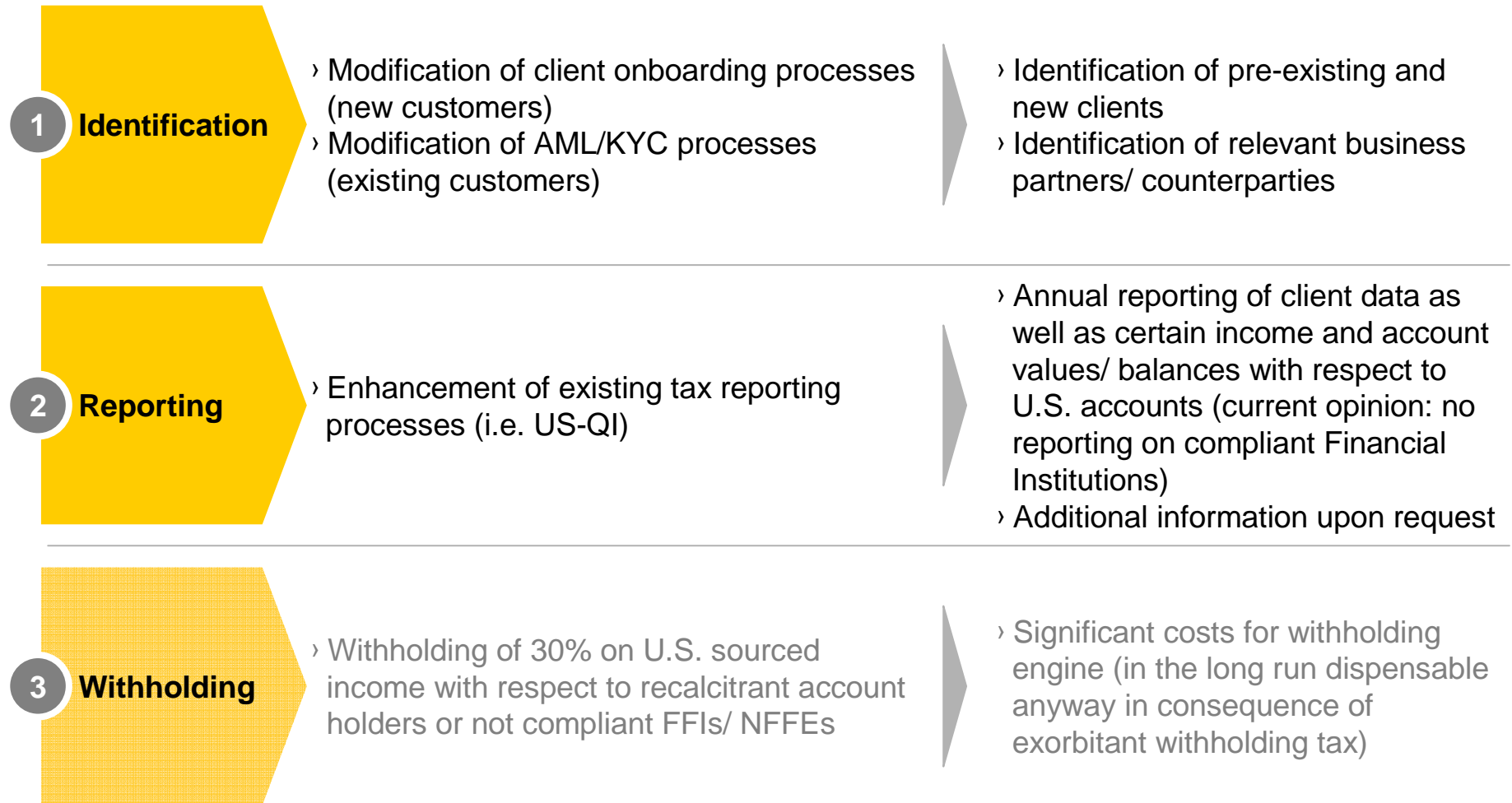


¹ except Partner countries with Model 2 IGA

The financial world has to deal with four significant questions with respect to FATCA

	Background	Challenges
<p>1 Qualification as FFI</p>	<ul style="list-style-type: none"> › Entities not qualifying as FFI are not subject to FATCA 	<ul style="list-style-type: none"> › Analysis of department, product & business with respect to status quo
<p>2 Identification of U.S. customers</p>	<ul style="list-style-type: none"> › Obtaining information on every account holder / investor / intermediary to identify US accounts 	<ul style="list-style-type: none"> › Affection of several systems › High manual effort › Method of storage › System ownership
<p>3 Reporting</p>	<ul style="list-style-type: none"> › Annual reporting of selected information to IRS › Additional data upon request 	<ul style="list-style-type: none"> › Availability of data › Involvement of external parties › Building of reporting systems
<p>4 Withholding</p>	<ul style="list-style-type: none"> › Deduction/withholding of 30% tax on all US sourced income with respect to recalcitrant account holders and nonparticipating FFIs 	<ul style="list-style-type: none"> › Release cycles › Competitive change requests › Availability of capabilities › Involvement of external parties

FATCA requires identification, documentation, and income reporting of liable U.S. tax payers in our customer base



FATCA/IGA implementation timeline

		2013	2014	2015	2016	2017 / 2018
Final Regulations / M-IGA 2	FFI Governance:	Aug 19 2013 until Apr 25 2014: IRS FATCA registration to appear on first IRS participating FFI list	June 02 2014: Release of first IRS participating FFI list			June 30 2017: End of first compliance certification period Dec 31 2017: First Certification of Compliance required
	Due diligence for preexisting accounts			June 30 2015: Complete identification and review of preexisting high value accounts	June 30 2016: Complete identification and review of all remaining preexisting individual and entity accounts	
	Withholding		July 1 2014: Begin withholding on US source FDAP income for new accounts, NPFFIs	July 1 2015: Begin FATCA withholding on any undocumented individual preexisting high value account	July 1 2016: Begin FATCA withholding on remaining undocumented preexisting accounts	Jan 1 2017: Begin withholding on gross proceeds. FATCA withholding is also expected to begin for foreign passthru payments
	Reporting			Mar 31 2015: Begin FATCA reporting for 2014.	Mar 31 2016: Reporting for 2015 includes income payments. Reporting must include foreign reportable amounts paid to NPFFIs during 2015 (also applies for 2016).	Mar 31 2017: Full FATCA reporting on begins for 2016. Mar 31 2018: Full FATCA reporting on Form 1042-S (potentially incl. foreign pass-thru payments for 2017)
M-IGA 1	FFI Governance:	Aug 19 2013 until Apr 25 2014: IRS FATCA registration to appear on first IRS participating FFI list	June 02 2014: Release of first IRS participating FFI list			
	Due diligence for preexisting accounts			June 30 2015: Complete identification and review of preexisting high value accounts	June 30 2016: Complete identification and review of all remaining preexisting account	
	Withholding		July 1 2014: Begin withholding on US source FDAP income for NPFFIs			
	Reporting			Prior to Sep 30, 2015: Reporting FATCA Partner FI will need to provide required information to Partner tax authority	2016: Reporting Partner FI reports to Partner country name and aggregate amount of payments made in 2015 and 2016 to NPFFIs	2017: Reporting FATCA Partner FI obtain and report TIN of each specified US account holder

The following indicia are to be considered to identify U.S. accounts of individuals

Indicia	Required documentation
a) Identification of U.S. resident or citizen	› Form W-9 and a waiver (if necessary)
b) U.S. place of birth	› Form W-9 and a waiver (if necessary) or › a Form W-8BEN and a non-U.S. passport or other governmental identification evidencing foreign citizenship › In addition, to establish the foreign status , PFFI must obtain - a copy of the individual's Certificate of the loss of U.S. Nationality, or - Form I-407, or - a reasonable explanation of renunciation of U.S. citizenship or the reason the account holder did not obtain U.S. citizenship at birth
c) U.S. address or U.S. mailing address U.S. Telephone number	› Either a Form W-9 and a waiver (if necessary), or › a Form W-8BEN and a non-U.S. passport or the governmental identification evidencing foreign citizenship
d) Standing instructions to transfer funds to an account maintained in the U.S.	› Either a Form W-9 and a waiver (if necessary), or › a Form W-8BEN and documentary evidence (1.1471-3(c)5) establishing foreign status
e) PoA or signatory authority granted to a person with a U.S. address; or an „in-care-of“ or “hold mail address“ as the sole address	› Either a Form W-9 and a waiver, or › a Form W-8BEN, or documentary evidence(1.1471-3(c)5) establishing foreign status

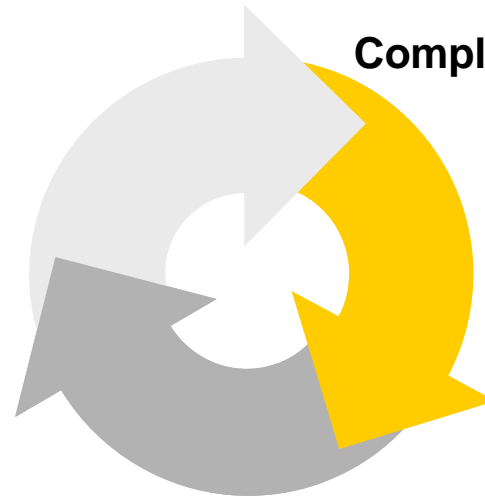


A participating FFI is entitled to rely on the documentation received from the account holders unless it knows or has reason to know that the information contained in such documentation is unreliable or incorrect

An appropriate implementation of FATCA within IT, processes and training will be a compromise between conflicting targets of...

Client relationship aspects

- › FATCA specialist for the client (?)
- › handling of forms
- › business opportunity or handicap?
- › how to address a tax issue



Compliance with FATCA requirements

- › breach of banking secrecy
- › penalties by IRS
- › external auditing
- › reputational concerns
- › business hindrance

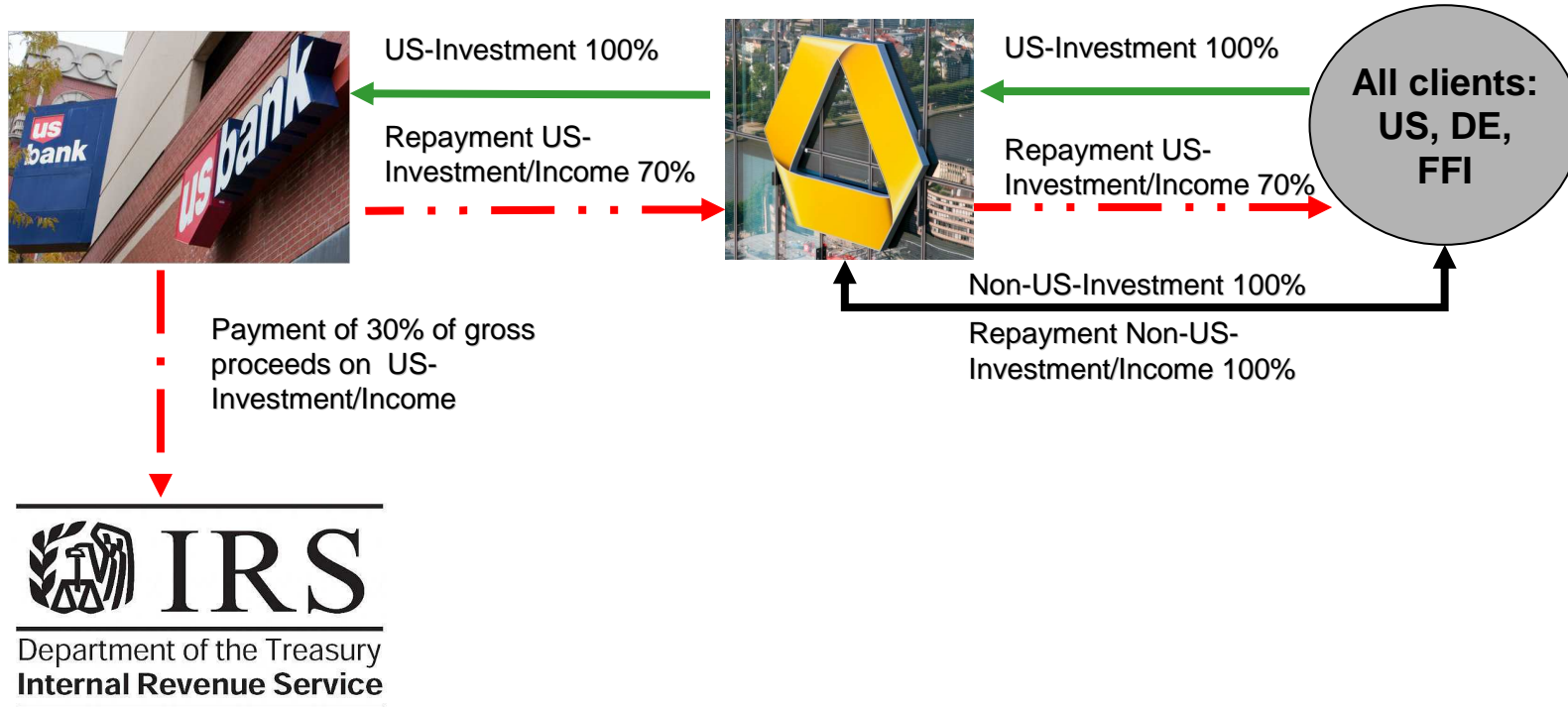
Cost efficiency, IT, training & processes

- › standard process AOP
- › one-off expenditure for preexisting accounts
- › revolving KYC routine for preexisting accounts

...detailed IRS compliance requirements on one hand and cost efficiency as well as relationship aspects on the other.

FATCA-Withholding – and why Commerzbank has to be compliant

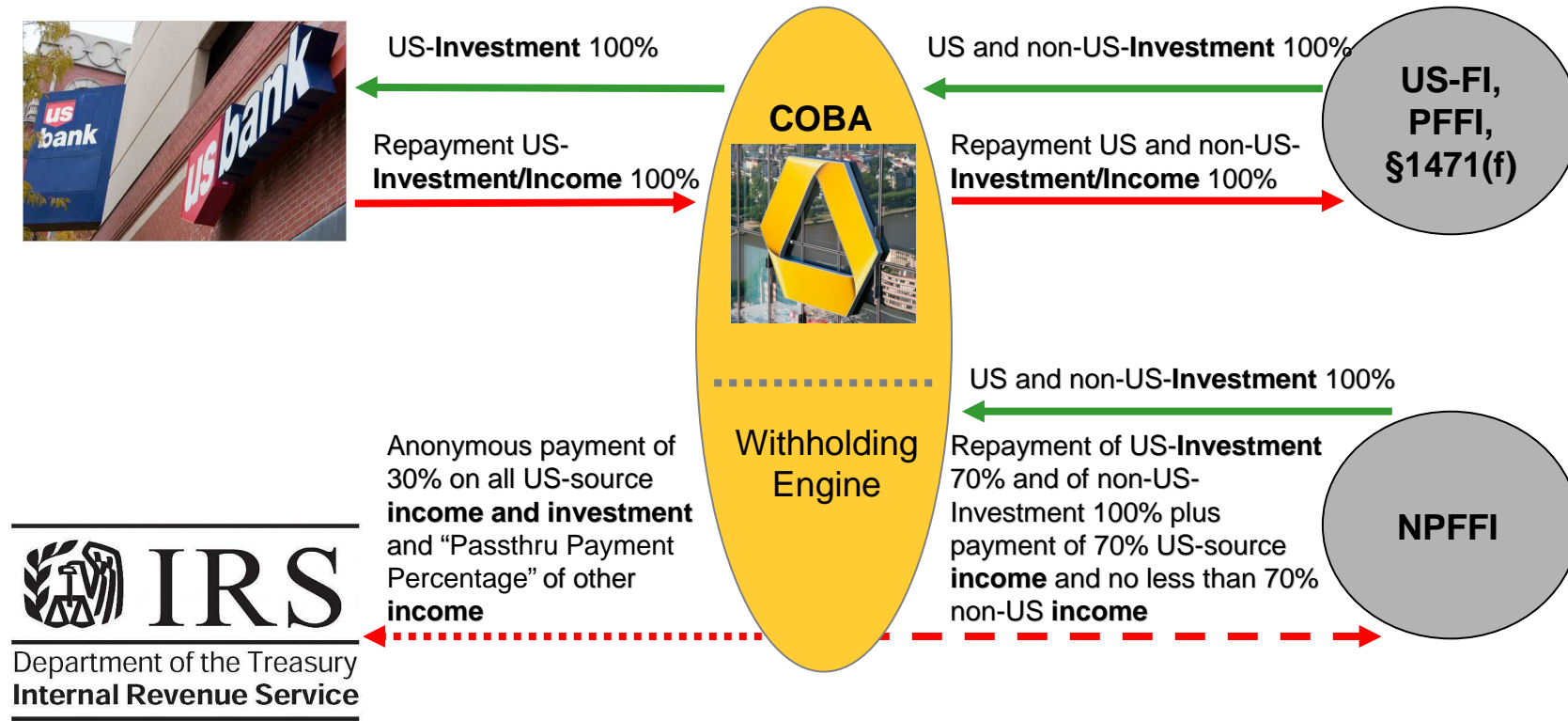
Case 1: COBA non-compliant (NPFFI)



→ Present interpretation: Payments for goods and services to/from “recalcitrants” are not subject to withholding.
 Question: Will U.S.-FIs continue to work with NPFFIs?

FATCA-Withholding – and why Commerzbank has to be compliant

Case 2: COBA compliant



- ➔ **Present interpretation: Payments for goods and services to/from "recalcitrants" are not subject to withholding.**
- ➔ **Question: Will U.S.-FIs continue to work with NPFFI-servicing FFIs?**

Our assumptions are based on available data and current FATCA publishings

- › **FATCA is relevant for all clients of MSB-Financial Institutions**
- › **Commerzbank might have to adapt the product range offered to nonparticipating FFIs**
- › **Identification requires client's cooperation for documentation (GIIN = Global Intermediary Identification Number and possibly further withholding certification)**

What could the appropriate processes look like?

For the convenience of our Financial Institutions clients we published our FATCA-compliance on our webpage



FATCA

Foreign Account Tax Compliance Act

On 1 July 2014 the Foreign Account Tax Compliance Act, commonly known as FATCA, has come into effect, with implications for financial institutions operating within the U.S., as well as abroad. FATCA expands the existing documentation, reporting, and withholding requirements related to U.S. taxpayers investing outside the U.S., in an effort to minimize U.S. tax evasion.

In accordance with current guidance, many countries (Germany, Italy, the UK, Switzerland, and Japan, for example) have already signed so-called Intergovernmental Agreements (IGAs) with the U.S., allowing foreign financial institutions (FFIs) in those countries to comply with FATCA obligations without breaching national data protection laws.

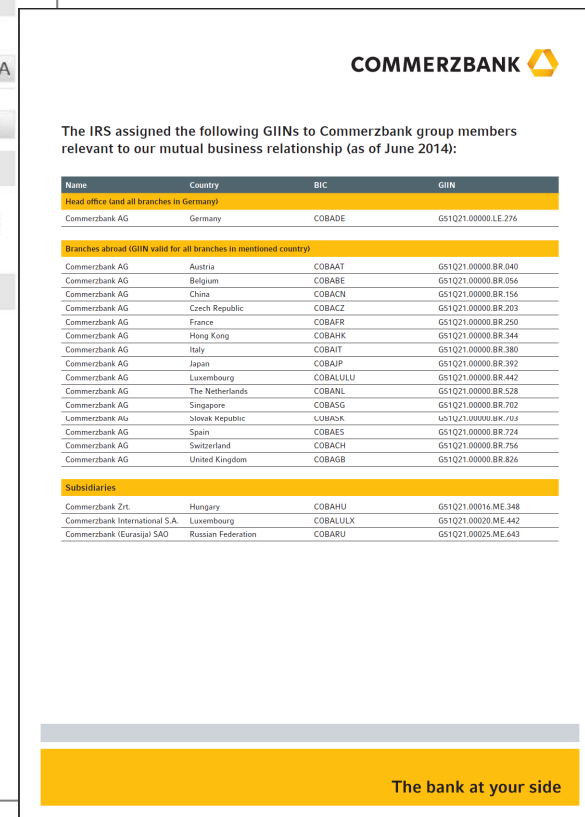
Commerzbank AG and its branches, affiliates and subsidiaries worldwide (collectively referred to hereinafter as Commerzbank) are fully committed to providing the required FATCA information under the U.S. Regulations and IGAs in order to help combat tax evasion. Commerzbank will therefore implement the requirements in accordance with FATCA regulations and respective national laws.

Commerzbank itself has already registered and obtained GIINs for group members. The IRS assigned the following GIIN to Commerzbank AG, Frankfurt, Germany: G51Q21.00000.LE.276

For a list of GIINs of Commerzbank branches and subsidiaries abroad please refer to the download section of this page.

The GIINs have been published by the IRS on the FFI List.

Source: https://www.commerzbank.com/en/hauptnavigation/institutions/FATCA/FATCA_2.html



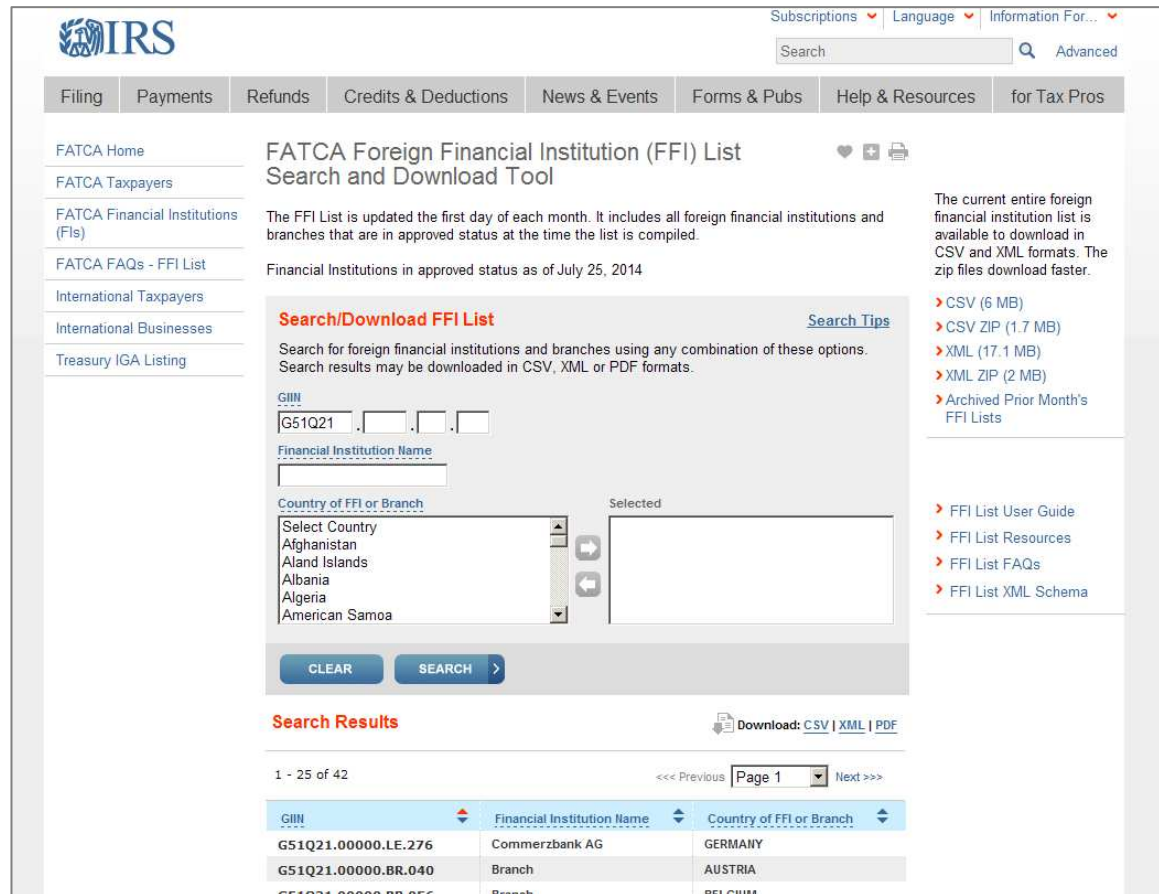
COMMERZBANK

The IRS assigned the following GIINs to Commerzbank group members relevant to our mutual business relationship (as of June 2014):

Name	Country	BIC	GIIN
Head office (and all branches in Germany)			
Commerzbank AG	Germany	COBADE	G51Q21.00000.LE.276
Branches abroad (GIIN valid for all branches in mentioned country)			
Commerzbank AG	Austria	COBAAT	G51Q21.00000.BR.040
Commerzbank AG	Belgium	COBABE	G51Q21.00000.BR.056
Commerzbank AG	China	COBACN	G51Q21.00000.BR.156
Commerzbank AG	Czech Republic	COBACZ	G51Q21.00000.BR.203
Commerzbank AG	France	COBAFR	G51Q21.00000.BR.200
Commerzbank AG	Hong Kong	COBAHK	G51Q21.00000.BR.344
Commerzbank AG	Italy	COBAIT	G51Q21.00000.BR.380
Commerzbank AG	Japan	COBAJP	G51Q21.00000.BR.392
Commerzbank AG	Luxembourg	COBALU	G51Q21.00000.BR.442
Commerzbank AG	The Netherlands	COBANL	G51Q21.00000.BR.528
Commerzbank AG	Singapore	COBAGS	G51Q21.00000.BR.702
Commerzbank AG	Slovak Republic	COBASK	G51Q21.00000.BR.702
Commerzbank AG	Spain	COBAES	G51Q21.00000.BR.724
Commerzbank AG	Switzerland	COBACH	G51Q21.00000.BR.756
Commerzbank AG	United Kingdom	COBAGB	G51Q21.00000.BR.836
Subsidiaries			
Commerzbank Zrt.	Hungary	COBAHU	G51Q21.00016.ME.348
Commerzbank International S.A.	Luxembourg	COBALULX	G51Q21.00020.ME.442
Commerzbank (Eurasija) SAO	Russian Federation	COBARU	G51Q21.00025.ME.443

The bank at your side

This is how our registration looks on the IRS webpage



FATCA Foreign Financial Institution (FFI) List Search and Download Tool

The FFI List is updated the first day of each month. It includes all foreign financial institutions and branches that are in approved status at the time the list is compiled.

Financial Institutions in approved status as of July 25, 2014

The current entire foreign financial institution list is available to download in CSV and XML formats. The zip files download faster.

- > CSV (6 MB)
- > CSV ZIP (1.7 MB)
- > XML (17.1 MB)
- > XML ZIP (2 MB)
- > Archived Prior Month's FFI Lists

- > FFI List User Guide
- > FFI List Resources
- > FFI List FAQs
- > FFI List XML Schema

Search/Download FFI List [Search Tips](#)

Search for foreign financial institutions and branches using any combination of these options. Search results may be downloaded in CSV, XML or PDF formats.

GIIN: G51Q21

Financial Institution Name: _____

Country of FFI or Branch:
 Select Country: Afghanistan, Aland Islands, Albania, Algeria, American Samoa

Selected: _____

CLEAR **SEARCH**

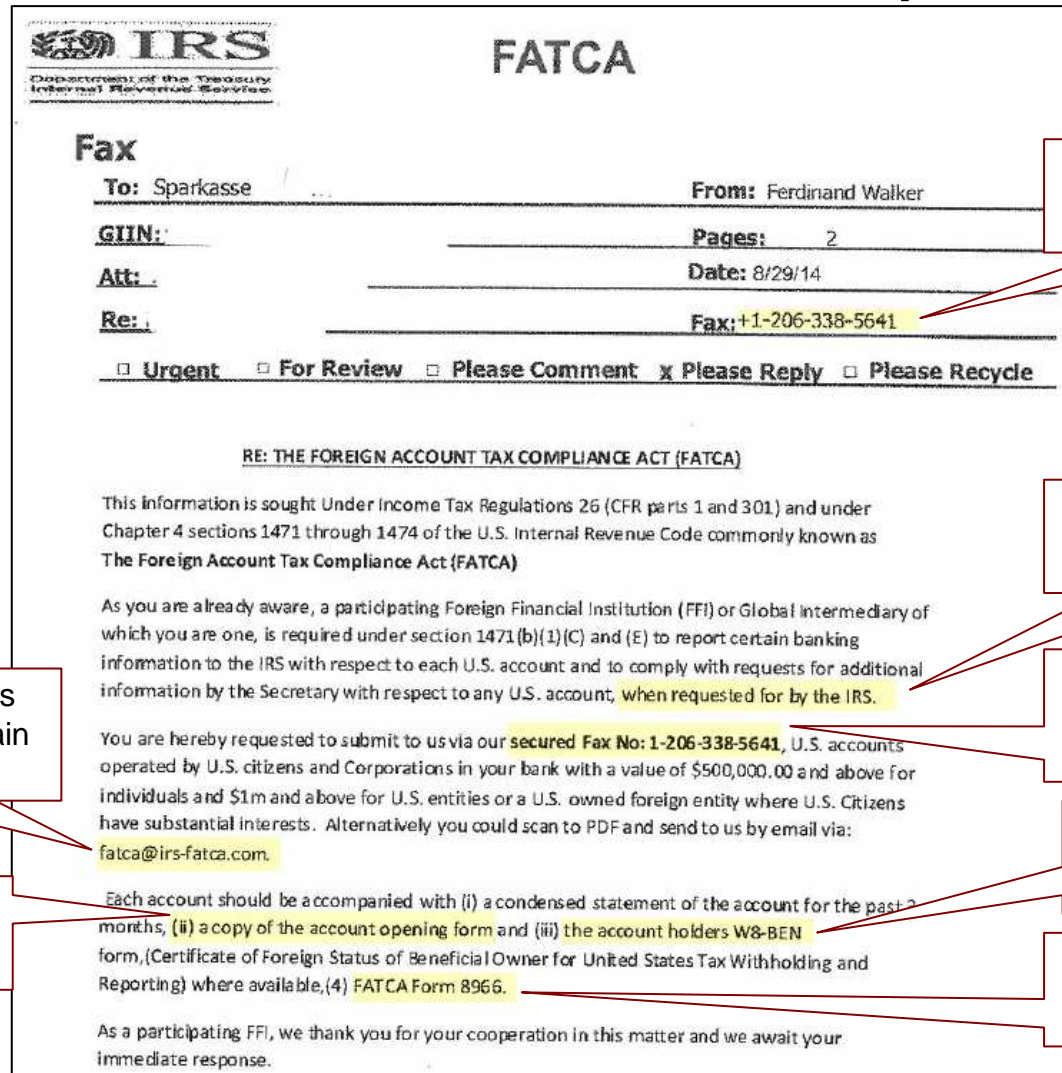
Search Results [Download: CSV | XML | PDF](#)

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GIIN	Financial Institution Name	Country of FFI or Branch
G51Q21.00000.LE.276	Commerzbank AG	GERMANY
G51Q21.00000.BR.040	Branch	AUSTRIA
G51Q21.00000.BR.056	Branch	BELGIUM

Source: <http://apps.irs.gov/app/FATCAFFiList/flu.jsf>

A warning: Criminals have discovered FATCA for phishing



IRS
Department of the Treasury
Internal Revenue Service

FATCA

Fax

To: Sparkasse **From:** Ferdinand Walker

GIIN: **Pages:** 2

Att: **Date:** 8/29/14

Re: **Fax:** +1-206-338-5641

Urgent For Review Please Comment Please Reply Please Recycle

RE: THE FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA)

This information is sought Under Income Tax Regulations 26 (CFR parts 1 and 301) and under Chapter 4 sections 1471 through 1474 of the U.S. Internal Revenue Code commonly known as The Foreign Account Tax Compliance Act (FATCA)

As you are already aware, a participating Foreign Financial Institution (FFI) or Global intermediary of which you are one, is required under section 1471(b)(1)(C) and (E) to report certain banking information to the IRS with respect to each U.S. account and to comply with requests for additional information by the Secretary with respect to any U.S. account, when requested for by the IRS.

You are hereby requested to submit to us via our secured Fax No: 1-206-338-5641, U.S. accounts operated by U.S. citizens and Corporations in your bank with a value of \$500,000.00 and above for individuals and \$1m and above for U.S. entities or a U.S. owned foreign entity where U.S. Citizens have substantial interests. Alternatively you could scan to PDF and send to us by email via: fatca@irs-fatca.com.

Each account should be accompanied with (i) a condensed statement of the account for the past 24 months, (ii) a copy of the account opening form and (iii) the account holders W-8-BEN form, (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting) where available, (4) FATCA Form 8966.

As a participating FFI, we thank you for your cooperation in this matter and we await your immediate response.

The IRS will not send these requests by fax.

FATCA reporting has not started yet!

IRS e-mail addresses have a different domain name: @irs.gov

The IRS will not request you to send confidential information by fax.

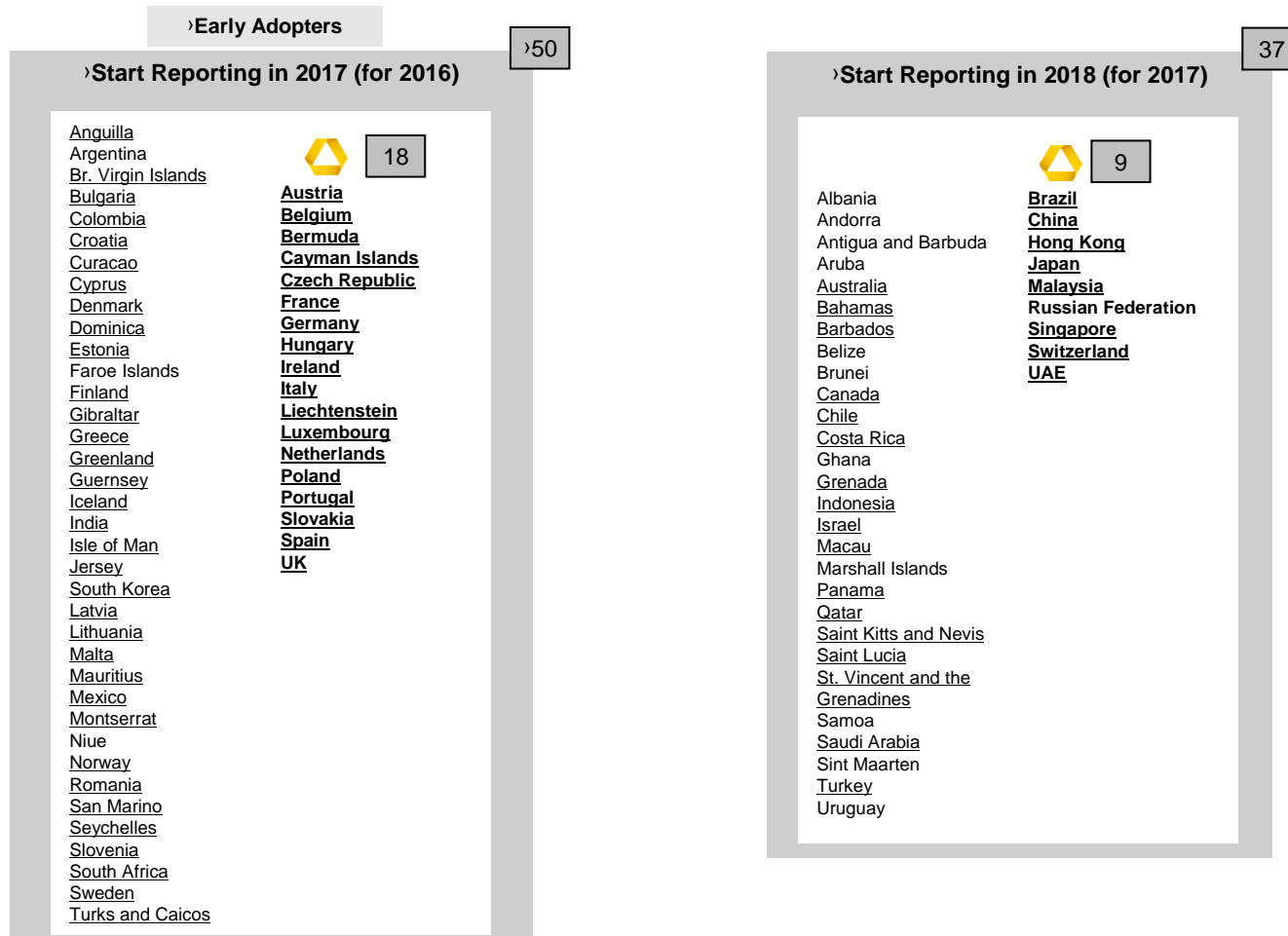
The IRS will not request that.

Typing error: W-8BEN

The form has to be filed electronically.

Next level: “Common Reporting Standard” (CRS)

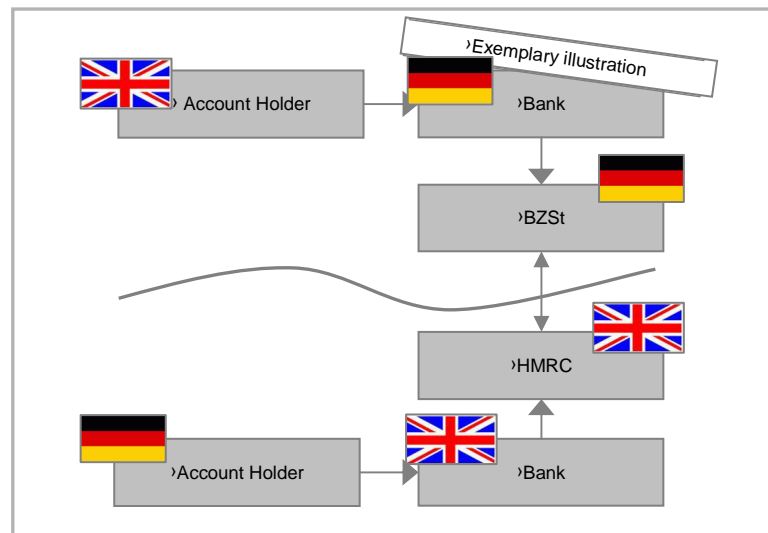
More than 90 Countries signed a multilateral CRS-Agreement - initially Commerzbank is affected in 27 countries.



Countries in bold: Commerzbank Legal Entities > 50% and branches

underlined countries: IGA in place or "treated as having an IGA in effect"

Automatic Exchange of Tax Information



- › The multilateral agreement activates the automatic exchange of tax information.
- › The OECD Global Forum on Transparency and Exchange of Information for Tax Purposes (123 member states) supports and supervises the implementation of the new standard within the Global Forum and wants to achieve that all countries realize the advantages of the new standard.
- › Financial Institutions will have to record the portfolio of preexisting accounts as per 31 Dec. 2015.
- › Financial Institutions will have to determine the tax residency of new customers starting 1 Jan. 2016.
- › The first automatic exchange of data for early adopters will happen in Sept. 2017. Financial Institutions will report to their local authority sooner (Germany: expected 31 July).
- › The USA will use FATCA for the automatic exchange of information.

Wilhelm Grethe

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FATCA Glossary (I/II)

AOP	Account Opening Process
AML	a. Anti-Money laundering b. Asset Management & Leasing = Commerz Real
FATCA	Foreign Account Tax Compliance Act - A U.S. federal tax law that was enacted in March 2010, and which imposes a new 30% withholding tax on certain payments made to FFIs and NFFEs that fail to disclose their U.S. customers and investors. FATCA also involves extensive due diligence procedures on accounts to determine whether a U.S. person has invested
FFI	<p>Foreign Financial Institution - a non-U.S. entity that engages in any of the following activities:</p> <ol style="list-style-type: none"> 1. Accepts deposits in the course of a banking or similar business; 2. Holds financial assets for the account of others; or 3. Engaged in the business of investing or trading in securities, commodities, options, futures and similar products. 4. Is an insurance company (or the holding company of an insurance company) that issues or is obligated to make payments with respect to a financial account <p>Examples of FFIs are: Mutual Funds, Hedge Funds, Trusts, Private Equity Vehicles and certain insurance products</p>
IRS	Internal Revenue Service
KYC	Know Your Customer
Legal Entity	Association, corporation, partnership, proprietorship, etc. that has legal standing in the eyes of the law. A legal entity has legal capacity to enter into agreements or contracts, assume obligations, incur or pay debts, sue and be sued in its own right, and to be held responsible for its actions.
NPFFI	Non Participating Foreign Financial Institution
NFFE	Non-Financial Foreign Entity - A non-U.S. entity that is not an FFI is an NFFE
PFFI	Participating Foreign Financial Institution
QI	Qualified Intermediary

FATCA Glossary (II/II)

Recalcitrant account holder	Non-cooperative client
TIEA	Tax Information Exchange Agreement
U.S. Person	Various types of persons are U.S. persons. For example, citizens and residents of the U.S. are U.S. persons. Entities (e.g. corporations, partnerships, trusts, etc.) that are incorporated or organized in the U.S. are also considered U.S. persons
U.S. Sourced Income	Income is from U.S. sources, generally, if it is paid by U.S. corporations or by entities formed in the U.S. For example, interest income paid by a U.S. corporation or the U.S. government is U.S. sourced income. Dividends paid by a U.S. corporation are also considered U.S. sourced income
U.S. FI	U.S. Financial Institution
Withholdable Payment	Withholdable payments include U.S. sourced income and gross proceeds from the sale of property that can produce U.S. sourced income. For example, a dividend paid on stock issued by a U.S. corporation is a withholdable payment. In addition, the proceeds from the sale of stock of a U.S. corporation is also a withholdable payment, FATCA imposes a 30% withholding tax on withholdable payments paid to certain FFIs and NFFEs