

# *Planning for FATCA*

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*Investors' view of value has become wider. Performance still comes first, but factors such as competitive fees, strong infrastructure and transparency matter more than ever.*

June 2011



*Initiating a program now to identify and assess the critical business, tax, and operational impacts arising from FATCA will help to support compliance for January 1, 2013.*

## Planning for FATCA

*Pleas from the asset management industry for a 'carve-out' for widely held investment funds have so far fallen on deaf ears, so it is time to prepare for FATCA's arrival.*



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Initiating a program now to identify and assess the critical business, tax, and operational impacts arising from FATCA will help to support compliance for January 1, 2013. Although, we understand, the US Treasury has received more comments about FATCA than any other tax legislation, only a further Act of Congress could change the effective date. Given that the US Treasury views the legislation as preventing tax evasion by US citizens, this is unlikely to happen.

The asset management industry has lobbied extensively for a 'carve-out' for 'widely held' investment funds. When the US Treasury issued Notice 2011-34, on 8 April 2011, it proposed only a limited exclusion for certain collective investment vehicles deemed compliant. While it is possible there may be further amendments – for example a case is being made for a 'grand-fathering' provision for widely held collective investment vehicles – this is creating uncertainty for the asset management industry.

Taking into account the time required following the issuance of a Notice by the US Treasury to allow for consultation and assessment of comments, it is unlikely that further Notices can be issued in advance of the draft regulations, if they are to be published by the end of 2011. This means that the scope for further lobbying is limited and, in reality, fund advisers of all types – including hedge, private equity and real estate – would be well advised to start preparing.

### **Most private investment funds will need to comply**

Based on the Notices, it appears likely that most private investment funds will be required to comply with FATCA in order to avoid suffering the 30% tax on withholdable payments, which includes the gross proceeds of the sale of US securities.

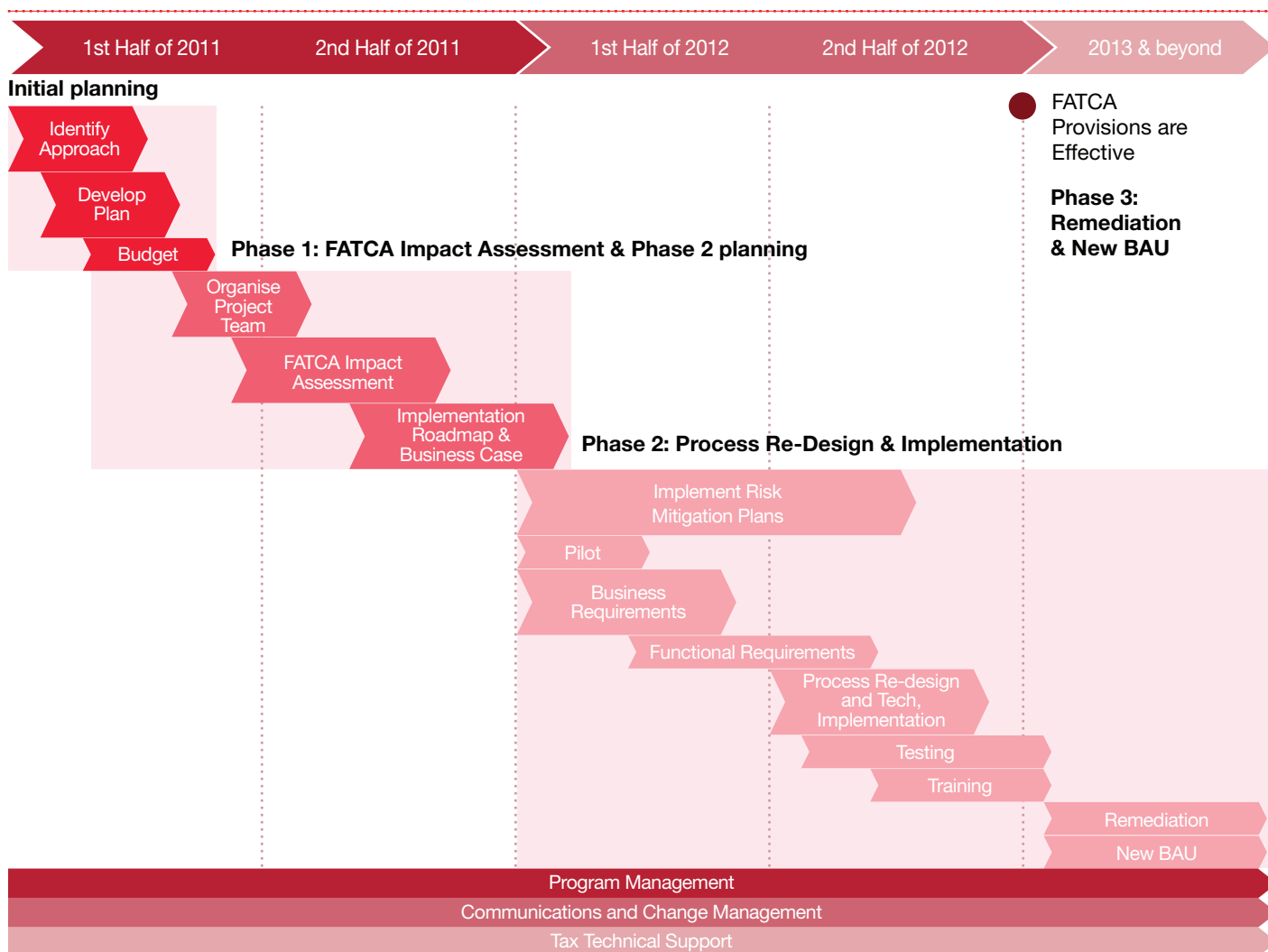
Those asset managers with no, or minimal, amounts of income from US sources that were considering ignoring FATCA should look at the guidance in Notice 2011-34 on 'Passthru payments' and reassess their positions. Under this rule, even a foreign financial institution (FFI) with no US investments could suffer US withholding. This is because participating FFIs may be required to withhold on 'Passthru payments' made to non-participating FFIs. This could be something as simple as depositing monies in an account with an institution that is an FFI.

Additionally, those funds that are treated as Deemed Compliant FFIs (DCFFIs) will still have to comply with standards and procedures prescribed in the final regulations. These will need to make sure that such funds do not have direct or indirect US investors. DCFFIs must apply for such status, obtain an identification number and certify every three years that they continue to satisfy the requirements for such treatment.

### **Analysis and planning**

Overall, we conclude that asset managers need to start to analyse the business impact that FATCA will have on their funds and operational functions. This will allow them to be sure that they can move quickly once the regulations are published. Additionally, large institutional investors may want to see evidence that fund sponsors are preparing for FATCA before they will commit to further investment.

**Figure 1: Overview of FATCA implementation approach**



Source: PwC

FATCA compliance, particularly by offshore funds focused on alternative investments, will likely present substantial business and operational challenges, from the identification and documentation of investors, to the fund's portfolio and IT systems, which may effect multiple functions (tax, legal, back-office administration, operations, IT, etc.) and take substantial time and resources to address. Asset managers that complete a timely assessment of the critical business, tax and operational impacts to their funds and operational functions will increase their opportunity to address the issues through a complete, effective, timely and cost-efficient implementation programme. As a result, offshore funds with long or synthetic, direct or indirect,

exposures to US capital markets should begin to prepare for FATCA as soon as possible.

### **Conclusion**

While there are many unanswered questions – and judgements will have to be made on how to interpret the regulations – asset managers must make sure that they prepare for the rules in consistent ways across their organisations. If organisations take different approaches in different territories, the Internal Revenue Service will ask why did you not get this right in every territory?

Initiating a programme now to identify and assess the critical business, tax and operational impacts arising from FATCA will permit full compliance by 1 January 2013 (the effective date of FATCA's new documentation requirements, due diligence procedures and reporting obligations).

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*Asset Management News is produced by experts in their particular field to address important issues affecting the asset management industry. If you would like to discuss any aspect of this document, please speak to your usual contact at PwC or a member of our global or territory leadership team.*

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