



# Ernst & Young's Hedgefund symposium 2011 - November 15, Wassenaar, The Netherlands

Tax update

Prof. dr. Ton Daniels, EY Amsterdam

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# Current topics

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FATCA - Foreign Account Tax Compliance Act

Alternative Investment Fund Managers Directive

The Netherlands – Budget 2012

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# Foreign Account Tax Compliance Act – “FATCA”

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Signed into law on March 18, 2010

Objective is to combat offshore tax evasion by U.S. persons who maintain

- ▶ Accounts with foreign financial institutions
- ▶ Investments in non-U.S. funds

Foreign financial institutions and non-U.S. funds are referred to as foreign financial institutions - “FFIs”

Accounts maintained directly or indirectly by U.S. persons are referred to as “U.S. Accounts”

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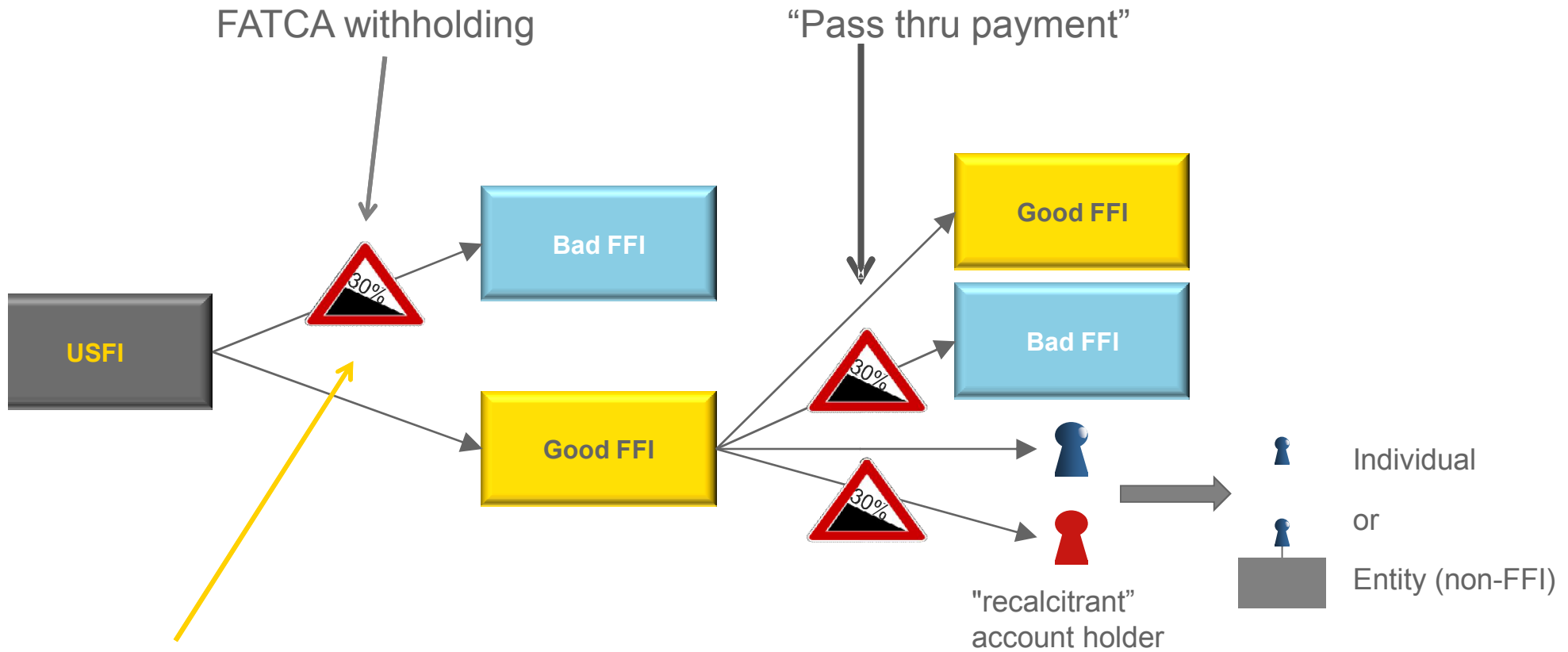
# **new 30% withholding tax per 1.1.2014 to be withheld by 3 Financial Institutions**

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To avoid 30 percent FATCA withholding, an FFI must enter an agreement with the IRS and perform the following tasks:

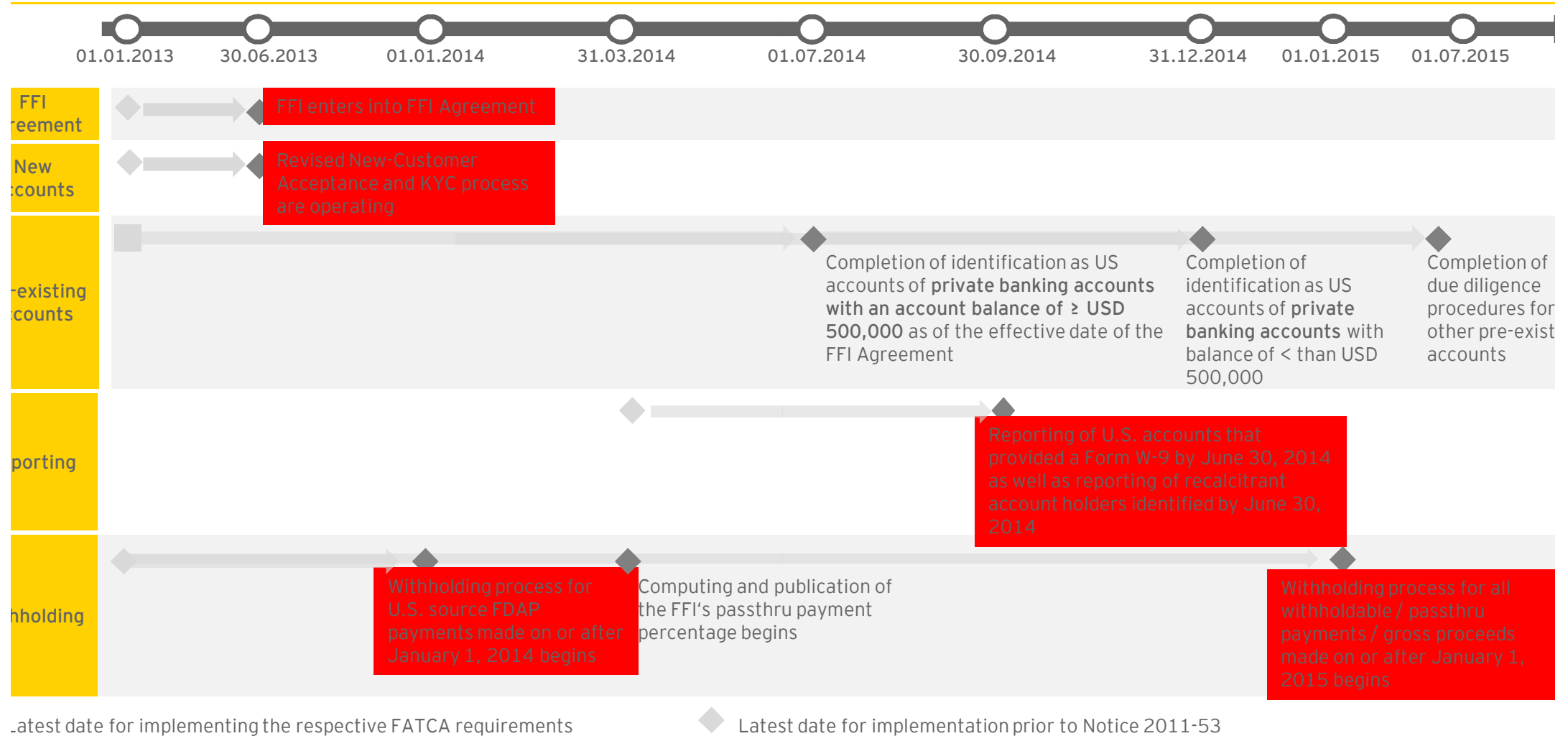
- ▶ Obtain information necessary to determine if each account is a U.S. account
- ▶ Comply with verification and due diligence procedures to be prescribed by Treasury
- ▶ File annual reports with the IRS on U.S. accounts
- ▶ Withhold and pay the IRS 30 percent on pass-thru payments made to recalcitrant account holders and non-participating FFI's

# FATCA in summary



March 18, 2012-grandfathering for certain bond issues

# ATCA timeline updated with Notice 2011-53



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[FATCAforfundadministrators@nl.ey.com](mailto:FATCAforfundadministrators@nl.ey.com)

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# FM Directive - June 6, 2011

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To be implemented in Member State legislation by July 22, 2013

Final advice from ESMA to European Commission – November 16, 2011

Current EU fund managers must submit request for authorisation prior to July 22, 2014

One aspect is the requirement for EU funds to have a depositary

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# Key duty's of the depositary

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## Safekeeping of fund assets

- ▶ custody of financial instruments
- ▶ record keeping for other assets

## Oversight

- ▶ Ex post controls of processes and procedures

## Cash monitoring

## Due diligence when delegating safekeeping

## Depositary liability – specifically in the event of loss of financial instrument

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# Netherlands Budget 2012

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Relaxing the rules for not taxing offshore funds with 5% stakes in Netherland entities

## Dividend withholding tax

- ▶ Introducing 15% withholding tax for tax avoidance Cooperatives with passive investors
- ▶ Introducing a refund entitlement for non-EU pension plans and sovereign wealth funds

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