



2015

IRSNationwide

TaxFORUM

Withholding Agent Compliance

(LB & I: FPP 7.7.2015)



Agenda

- Foreign Payments Practice (FPP) Organizational Update
- IRC Ch. 3, Ch. 4, and Notice 2015-10
- FATCA Overview
- FATCA Resources



2015

IRSNationwide

TaxFORUM



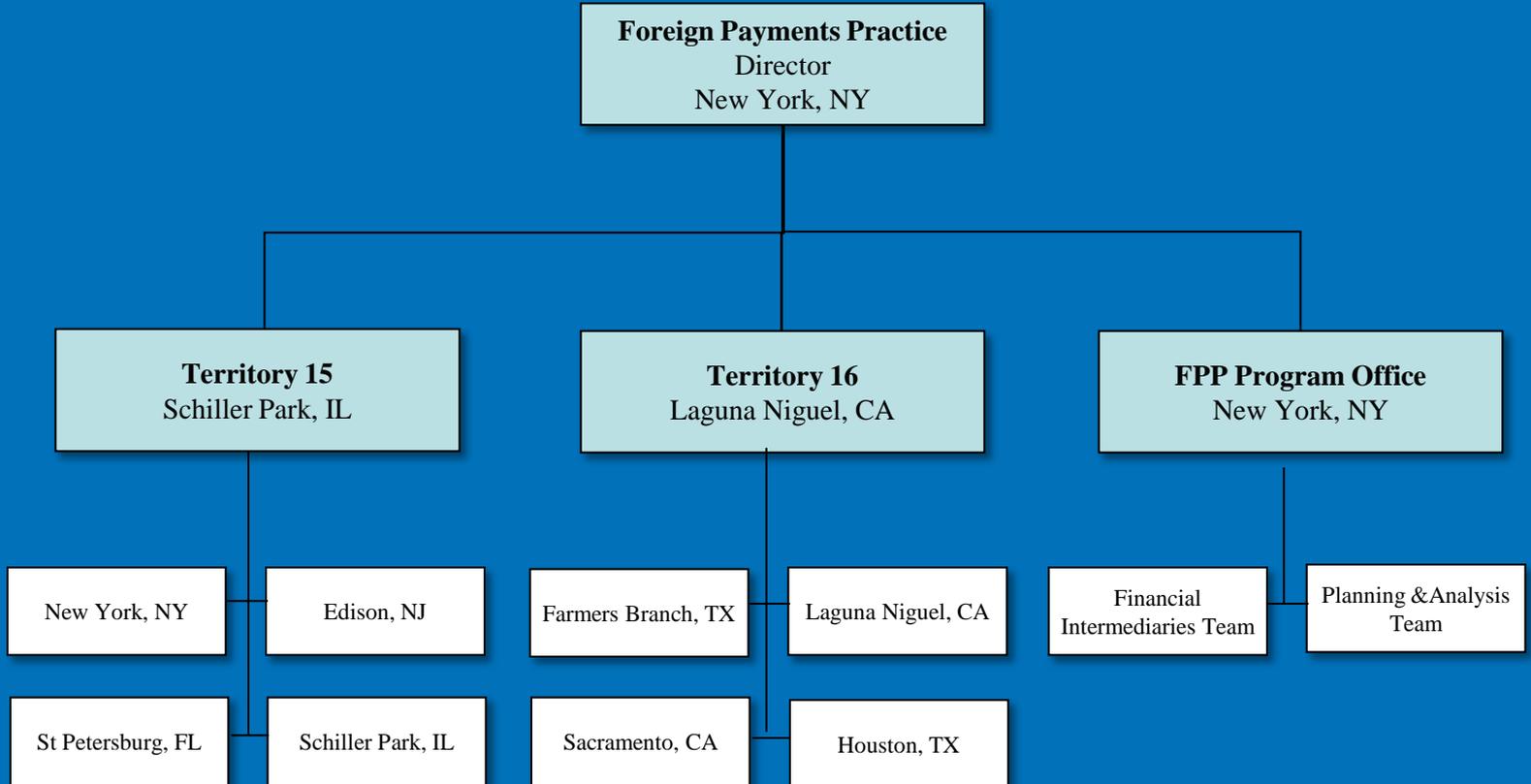
FPP Org Structure



2015

IRSNationwide

Tax FORUM



Chapter 3 Withholding

- Establishes a 30% withholding tax rate for payments of U.S. source income to Nonresident Aliens (NRAs). The 30% rate of withholding can be reduced by treaty or statute.
- Requires a withholding agent making any U.S. source FDAP (*e.g.*, dividends, interest, royalties, etc.) payments to report and withhold on such payments.
- Withholding Agents are required to file a Form 1042 with the IRS and file Form 1042-S with the IRS and provide a copy to the recipient receiving such payments.



2015

IRSNationwide

TaxFORUM



Chapters 3 and 4 Requirements

- Chapter 3: Report and withhold (if required by law) any U.S. source payments made to nonresident aliens (i.e., individuals and entities).
- Chapter 4: FATCA. Report and withhold a tax equal to 30% on any withholdable payment made to any non-compliant FFI and certain NFFEs.
- Withholding Agents will be required to file a Form 1042 under both Chapters 3 and 4 of the Internal Revenue Code.



2015

IRSNationwide

TaxFORUM



W-8 Documentation

- Withholding certificates (Forms W-8) are used for both Chapter 3 & Chapter 4.
- Forms are provided by non-U.S. persons.
- W-8BEN is now two forms: W-8BEN (Individuals) & W-8BEN-E (Entities).
 - Numerous entity classifications and corresponding certifications required under FATCA were added.
 - Foreign identification number is now required in certain cases.



1441 Sourcing Rules

- **U.S. Source FDAP.** Payments of U.S. source “fixed or determinable annual or periodical” (FDAP) income to non-U.S. persons is generally reportable on Form 1042-S and includes:
 - Interest (including interest on debt that meets the portfolio debt interest exception under IRC § 871(h));
 - Dividends paid by issuers organized in the U.S.;
 - Royalties / licensing fees for use or consumption in the U.S.;
 - Fees for services performed in the U.S. including management fees & payments to consultants



2015

IRSNationwide

TaxFORUM



Notice 2015-10

- Refund claims under chapters 3 and 4 where withholding agent has deposited tax reported as withheld.
- Pro-rata allocation of the amount available for a refund claim where a withholding agent has partially satisfied the deposit requirements.



2015

IRSNationwide

TaxFORUM



What is FATCA?

- **HIRE Act:** FATCA provisions were enacted in March 2010 as part of the Hiring Incentives to Restore Employment (HIRE) Act.
- FATCA created Code sections 1471 – 1474.
- Aims to reduce tax evasion by U.S. taxpayers holding assets in non-U.S. financial accounts.
- Goal of FATCA is to collect information on U.S. accounts, not withhold tax.

2015

IRSNationwide

TaxFORUM

FATCA *continued*

- Foreign Financial Institutions (FFIs) with U.S. account holders are required to report these accounts to the IRS.
- Withholding agents making any payments to an FFI with a U.S. account will be required deduct and withhold a tax equal to 30% on any withholdable payment made to any non-compliant FFI and certain non-financial foreign entities (NFFEs).
- Withholdable payments include U.S. source FDAP (*e.g.*, dividends, interest, royalties, etc.).



2015

IRSNationwide

TaxFORUM



What is an FFI?

Includes foreign entities that:

- Accept deposits
- Hold financial assets for the benefit of others
- Are investment firms
- Are insurance companies that issue contract with an investment component
- Are holding companies and treasury centers

Some examples include:

- Banks
- Certain trusts
- Brokers/Dealers
- Certain insurance companies
- Fund management companies
- Certain advisor companies

FATCA Drivers/Overview

Key Drivers

- Underreporting
- Subject Matter Complexity

Tools

- IRS's Voluntary Disclosure Program
- John Doe Summons
- Withholding

Guidance Overview

- HIRE Act
- Government-to-Government Negotiations
- Foreign Financial Institution (FFI) Reporting
- Individual Reporting



2015

IRSNationwide

TaxFORUM



Stakeholder Requirements

- FFIs – Register and report to the IRS and collect account holder documentation.
- Non-financial Foreign Entities (NFFEs) – May be required to disclose substantial U.S. owners.
- Withholding Agents – Withhold on withholdable payments as appropriate.
- U.S. Taxpayers – Disclose foreign financial assets and offshore accounts to the IRS.



Withholding Tax

- 30% withholding tax on certain U.S. source payments made to certain FFI and NFFE.
- FATCA withholding is effective for FDAP payments made after June 30, 2014.
- FATCA withholding may expand to cover other items (e.g., gross proceeds).



Withholding Exceptions

- Income effectively connected with the conduct of a U.S. trade or business.
- Interest on outstanding accounts payable arising from the acquisition of goods or services.
- Performance of personal services.
- Office and equipment leases, software licenses, transportation, gambling winnings, awards, prizes and scholarships.



FATCA Resources

Types of Guidance on FATCA website:

<http://www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-FATCA>

- Regulations & Other Guidance
- FFI Registration
- International Data Exchange (IDES)
- International Compliance Management Model (ICMM)
- FATCA FAQs
- Summary of FATCA Timelines



2015

IRSNationwide

TaxFORUM



Points of Contact

- Name and contact information
- <http://www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-FATCA>



2015

IRSNationwide

TaxFORUM