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# *Responding to FATCA ICSA Seminar*

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## ***FATCA – an introduction***

*“You can always count on  
Americans to do the right thing -  
after they've tried everything else.”*

Winston Churchill

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# *Agenda*

Context and background

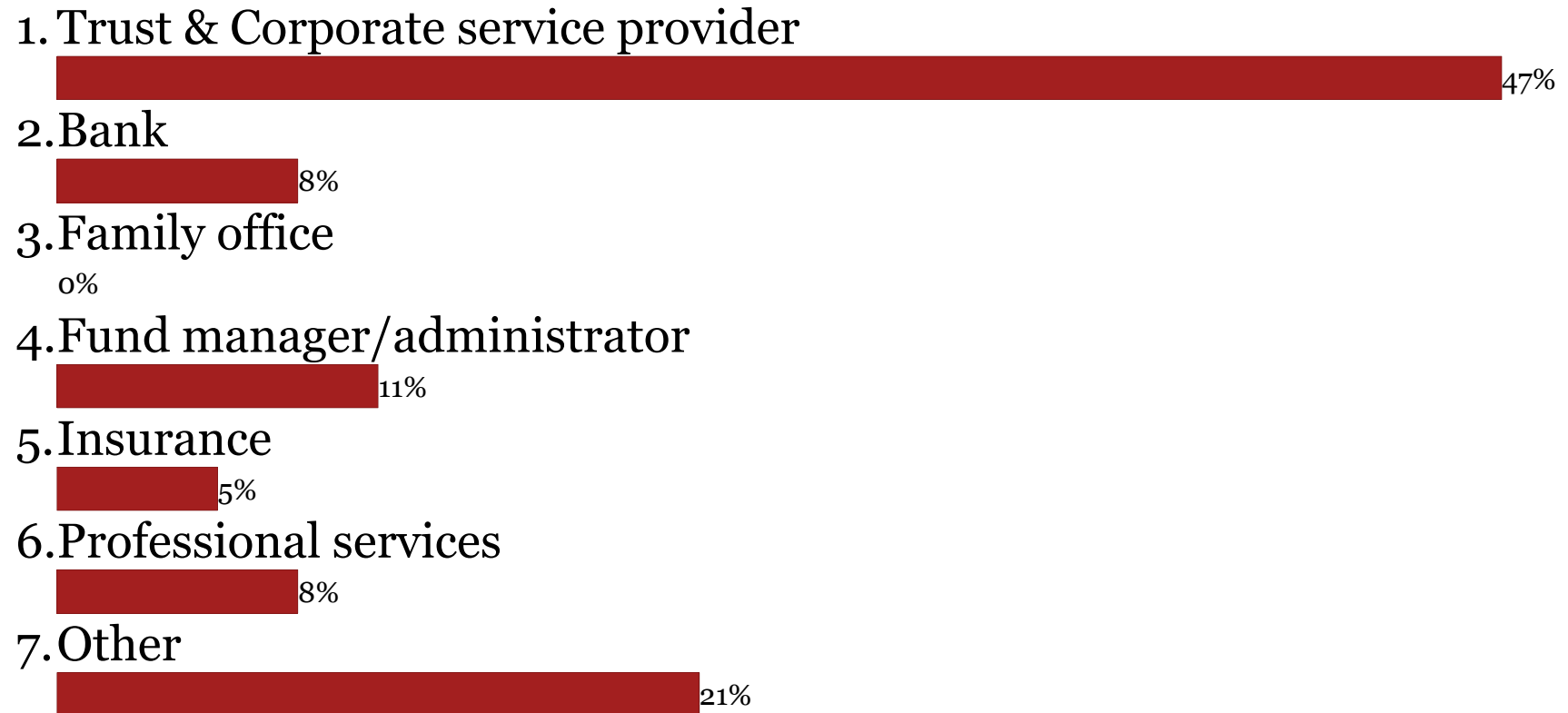
The current state of play

Application by FS industry sub-sector

What should you be doing now?

Q&A

## *What category of business do you fall into?*



## *Have you heard of FATCA before?*

1. No, this is my first time hearing about it  
23%
2. A bit, I've read about it but don't really understand how its going to impact my company  
58%
3. Quite a bit, my company has done an initial FATCA impact assessment  
19%
4. My company is FATCA conversant and we have a FATCA plan  
0%

***Does your company have US customers or hold US financial assets on behalf of others?***



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# *Context and background*

***1***

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# ***Transparency***

## **Targeted efforts to identify tax evasion**

Individual Taxpayers

Amnesties and disclosure facilities

Use of stolen information

Joint audits between nations

Institutions

Use of FS Sector to “police” the system

New or revised reporting regimes

New withholding regimes withholding





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## ***The Tax Gap and link to information reporting***

*“Each year, the United States loses an estimated \$100 billion in tax revenues due to offshore tax abuses.”*

US Senate Permanent Subcommittee on Investigations Staff  
Report on Dividend Tax Abuse, 11 September 2008

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# *The current state of play*

# 2

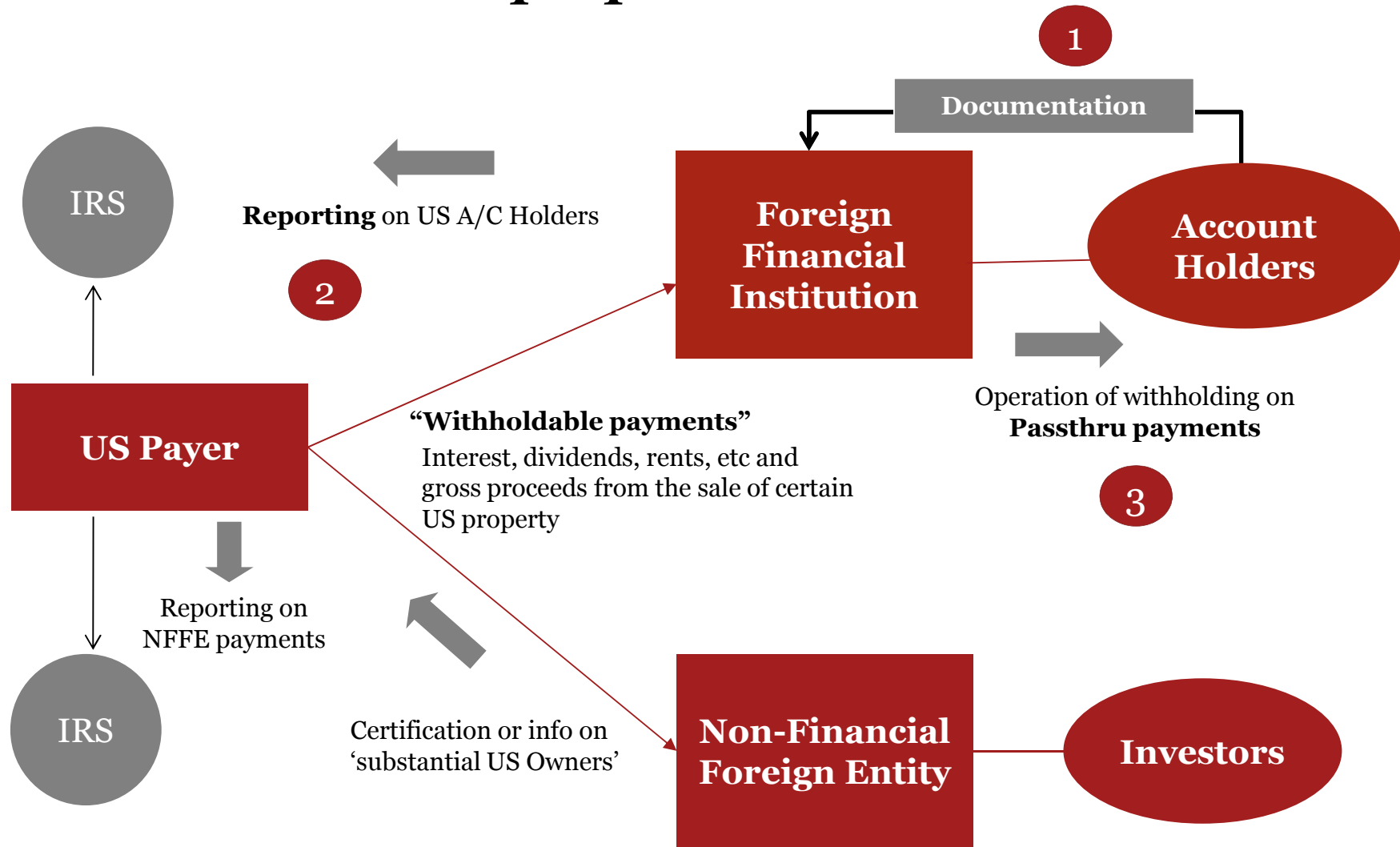
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## ***Introduction***

### ***What is FATCA?***

- FATCA refers to legislation enacted on 18 March 2010 as part of Hiring Incentives to Restore Employment (HIRE) Act
- The HIRE Act added several important international tax provisions, including:
  - Chapter 4 of the US Internal Revenue Code (IRC), creating a new reporting and withholding regime;
  - increased information disclosure requirements relating to foreign investments and applicable penalties; and
  - new rules treating certain substitute dividends and dividend equivalent payments like actual dividends for US federal income tax purposes.

# FATCA - The basic proposal



## ***FATCA's New Withholding & Reporting Requirements FFIs and NFFEs***

<b>An FFI is a foreign entity that either:</b>	<b>Examples:</b>	
<ul style="list-style-type: none"> <li>▪ Accepts deposits in the ordinary course of a banking or similar business; or</li> </ul>	<ul style="list-style-type: none"> <li>▪ Commercial banks</li> <li>▪ Savings and Loan Associations</li> </ul>	<ul style="list-style-type: none"> <li>▪ Credit unions</li> <li>▪ Co-operative banking institutions</li> </ul>
<ul style="list-style-type: none"> <li>▪ Holds financial assets for the account of others, as a substantial portion of its business; and/or</li> </ul>	<ul style="list-style-type: none"> <li>▪ Broker Dealers</li> <li>▪ Clearing Organisations</li> <li>▪ Trust Companies</li> </ul>	<ul style="list-style-type: none"> <li>▪ Custodial banks</li> <li>▪ Custodian of Employee Benefit Plan</li> </ul>
<ul style="list-style-type: none"> <li>▪ Is engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting or trading in securities, partnership interests, commodities or any interest in such assets (including derivatives such as forwards, futures or options)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Mutual Funds</li> <li>▪ Funds of Funds</li> <li>▪ ETF</li> <li>▪ Hedge Funds</li> <li>▪ Private Equity Funds</li> <li>▪ Venture Capital Funds</li> <li>▪ Sovereign Wealth Funds</li> </ul>	<ul style="list-style-type: none"> <li>▪ Commodity Pools</li> <li>▪ Managed Funds</li> <li>▪ Collective Investment Vehicles</li> <li>▪ Life Insurance companies/products</li> </ul>
<p><b>An NFFE is any foreign entity which is not an FFI.</b></p>		

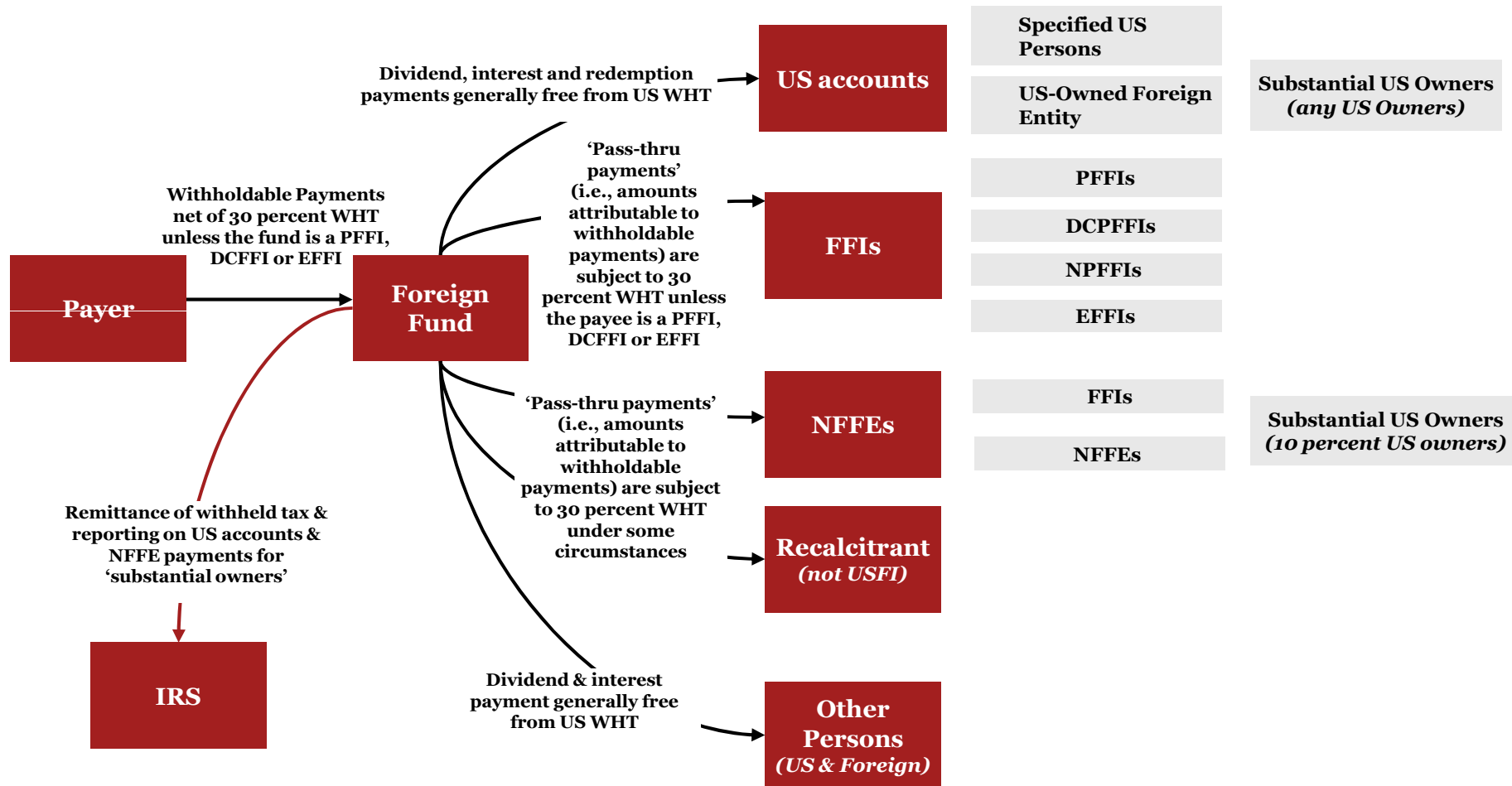
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## ***FATCA's New Withholding & Reporting Requirements Are Any Foreign Entities Exempted?***

- Exempted:
  - Foreign governments including political subdivisions, wholly owned agency or instrumentality
  - International organisations and wholly owned agency/instrumentality
  - Foreign central banks of issue
  - Entities organised under the laws of possessions of the US and wholly owned by residents of such possessions
- Other Exceptions:
  - Non-Financial Foreign Entities organised as corporations (and certain affiliates) that are regularly traded on an established securities market
  - Any other specifically-identified classed determined by the US IRS (including those posing a low risk of tax evasion).
    - Note: the last definition is a 'working definition'

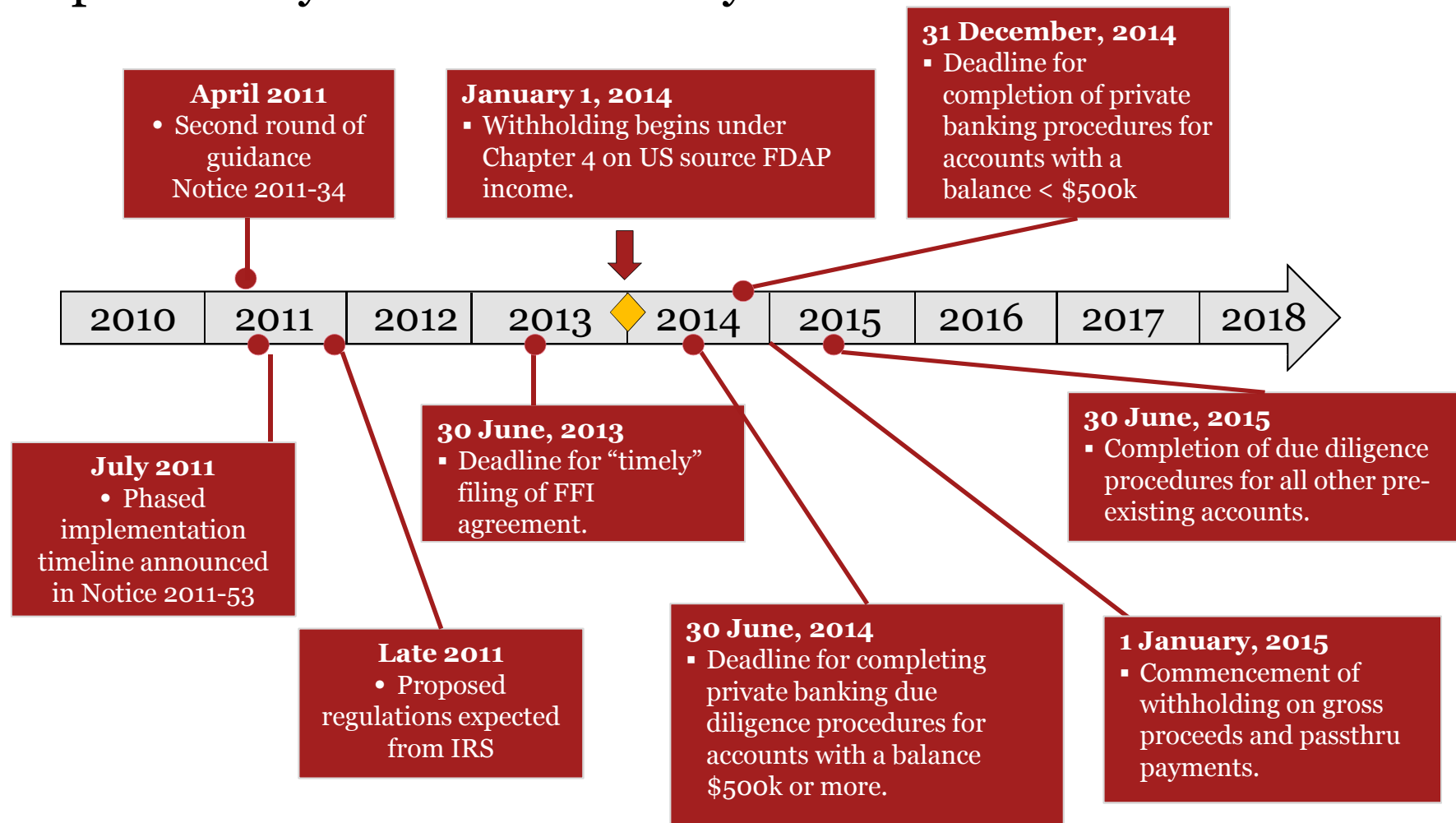
# FATCA's New Withholding & Reporting Requirements

## Withholding – Foreign Fund Illustration



# FATCA: TimeLine

## Expected Key Dates & Statutory Milestones





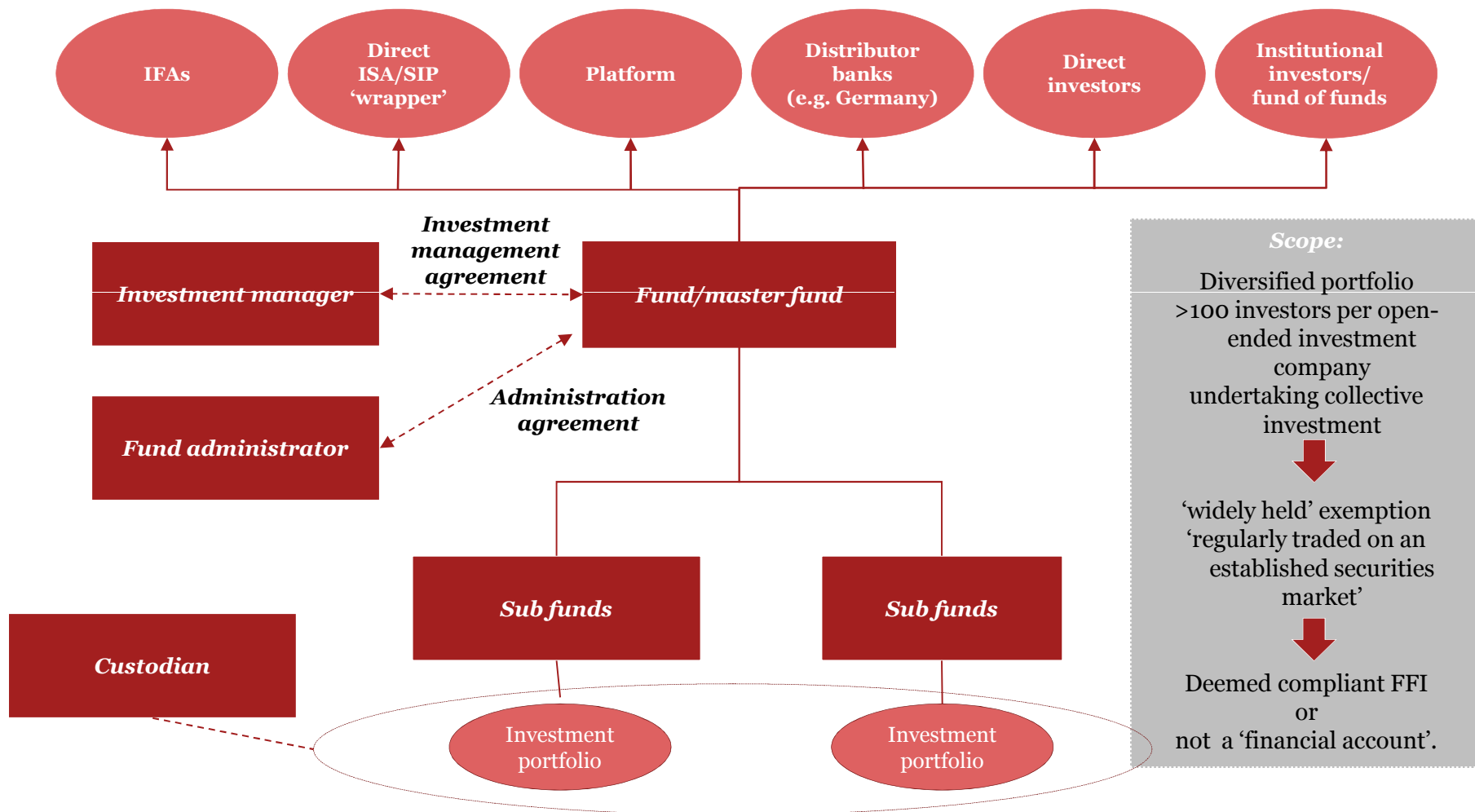
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# *Impact by industry sub-sector*

3

# Retail and alternative asset management

## Typical structure



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## ***Retail and alternative asset management***

### **Impact**

Will the fund vehicles be deemed compliant FFIs? What will this mean in terms of reporting and withholding obligations?

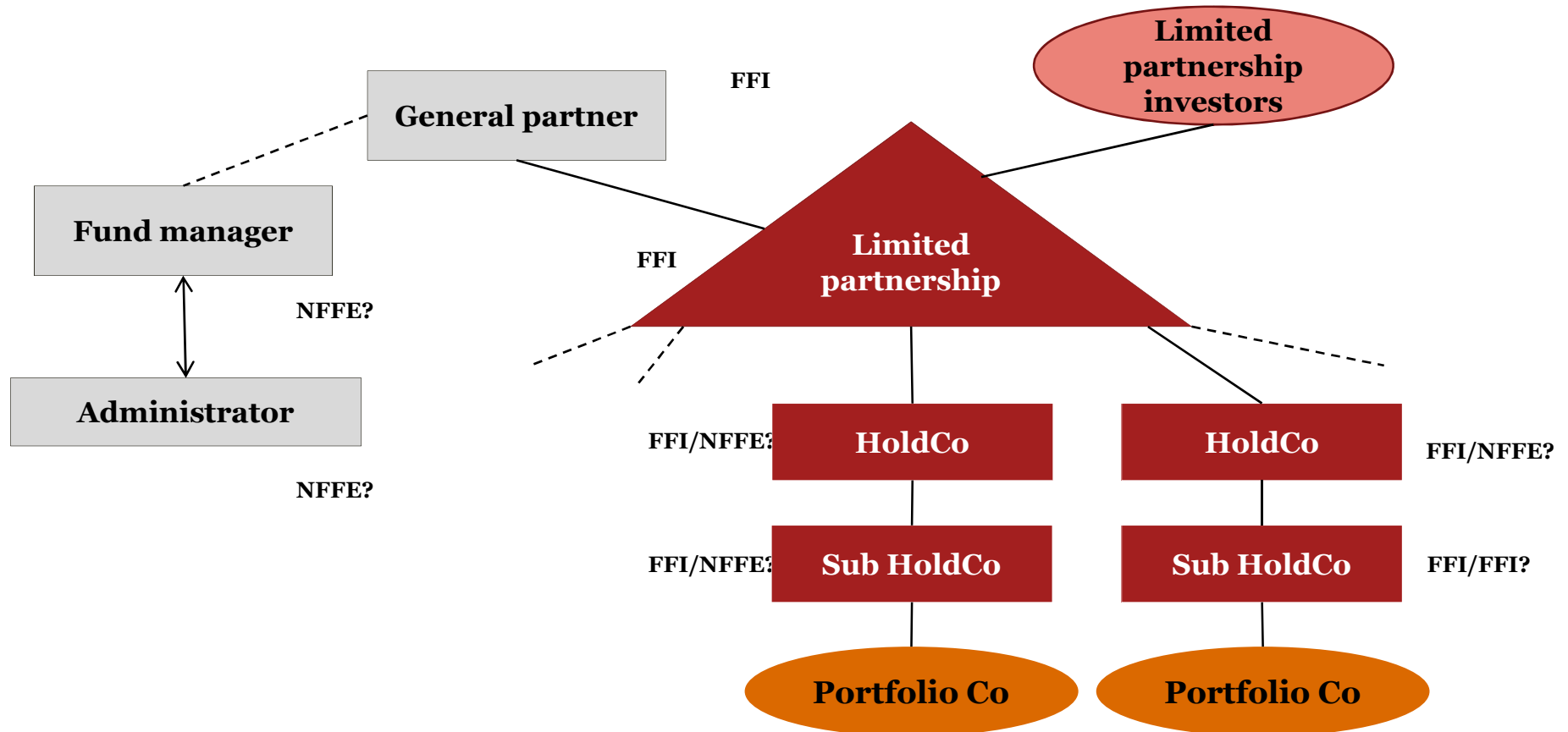
Interaction with reporting and withholding obligations of other FFIs in the chain?

Distribution channels influence investor information collected by the fund – e.g. for IFAs and distributor bank often no underlying investor information will be held.

Understanding who contractually/commercially will be responsible for reporting and withholding obligations.

# Private Equity

## Typical structure



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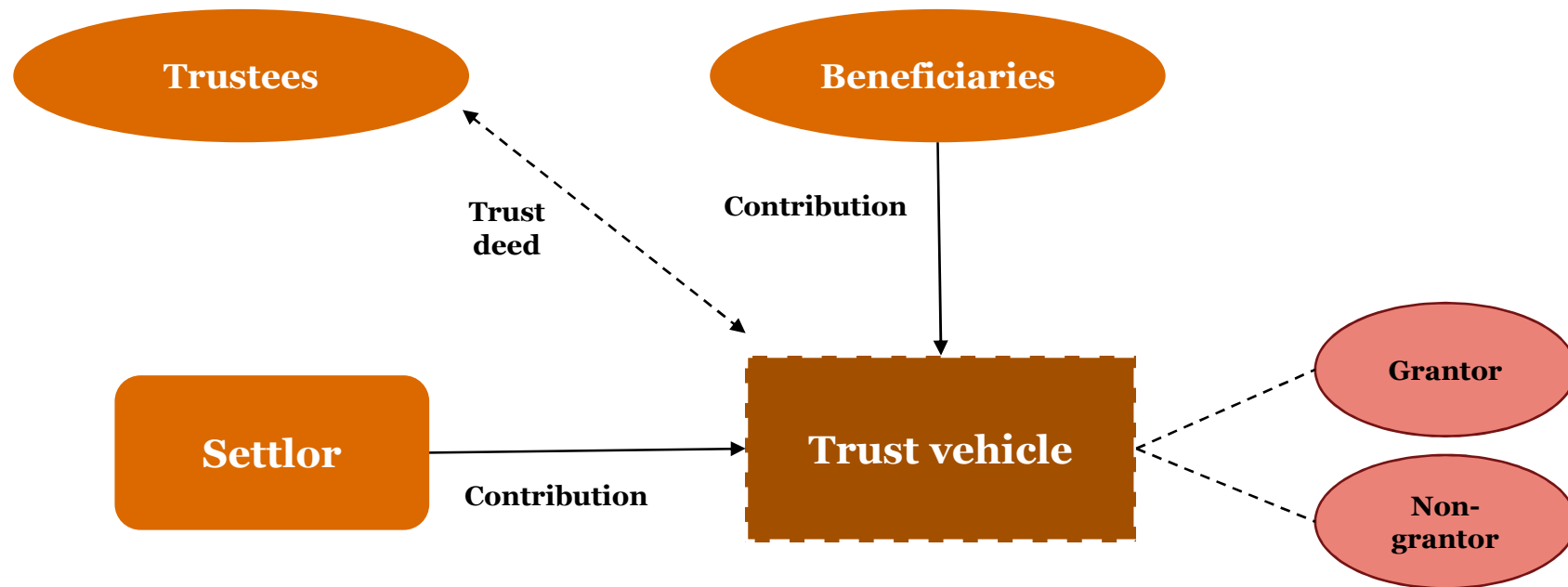
## ***Private Equity***

### Impact

- Multi-tiered structures: determining whether entities are FFIs or NFFEs.
- Terms and conditions – relevance of restrictions on US investors 1933 Act v s.7701 (a) (30), IRC.
- Exit level - e.g. sub holdco v portfolio co – does the disposal involve US debt securities or US equities.
- Role of administrator in the private equity sector.
- Limited partnership investors may themselves be fund or fund-of-fund vehicles.
- Notice 2011-34: impact of passthru payment percentage.
- Leveraging K1 reporting

# *Trusts and trustees*

## Typical structure



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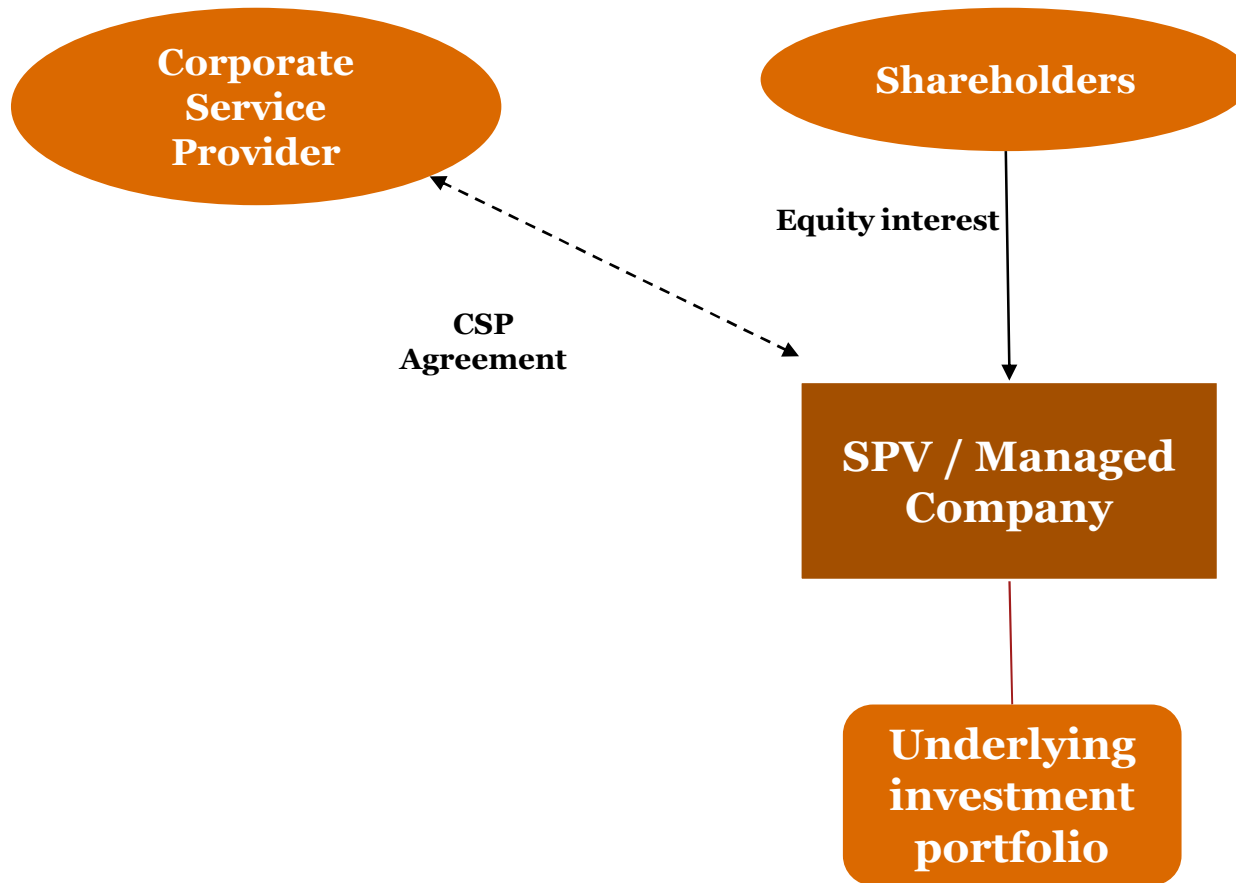
## ***Trusts and trustees***

### Impact

- Is the trust vehicle an FFI? Does it hold financial assets on behalf of others or invest in securities, commodities, partnerships or interests in such investments?
- Is the trust vehicle carrying on a business? What level of activity is required in order to meet requirements (B) or (C)? To what extent do you take into account activity of other entities in the group?
- Who ‘owns’ the trust where the trust is discretionary?
- How to deal with changes in the beneficiaries’ share of assets or the position where beneficiaries are unknown?
- What information is available to the trustees? Nominee Cos?
- Notice 2010-60 comments regarding family benefit trusts.
- Use of trust assets – deemed distributions?
- Operating model with separate trustee and nominee companies

# *SPVs and Managed Companies*

## Typical structure





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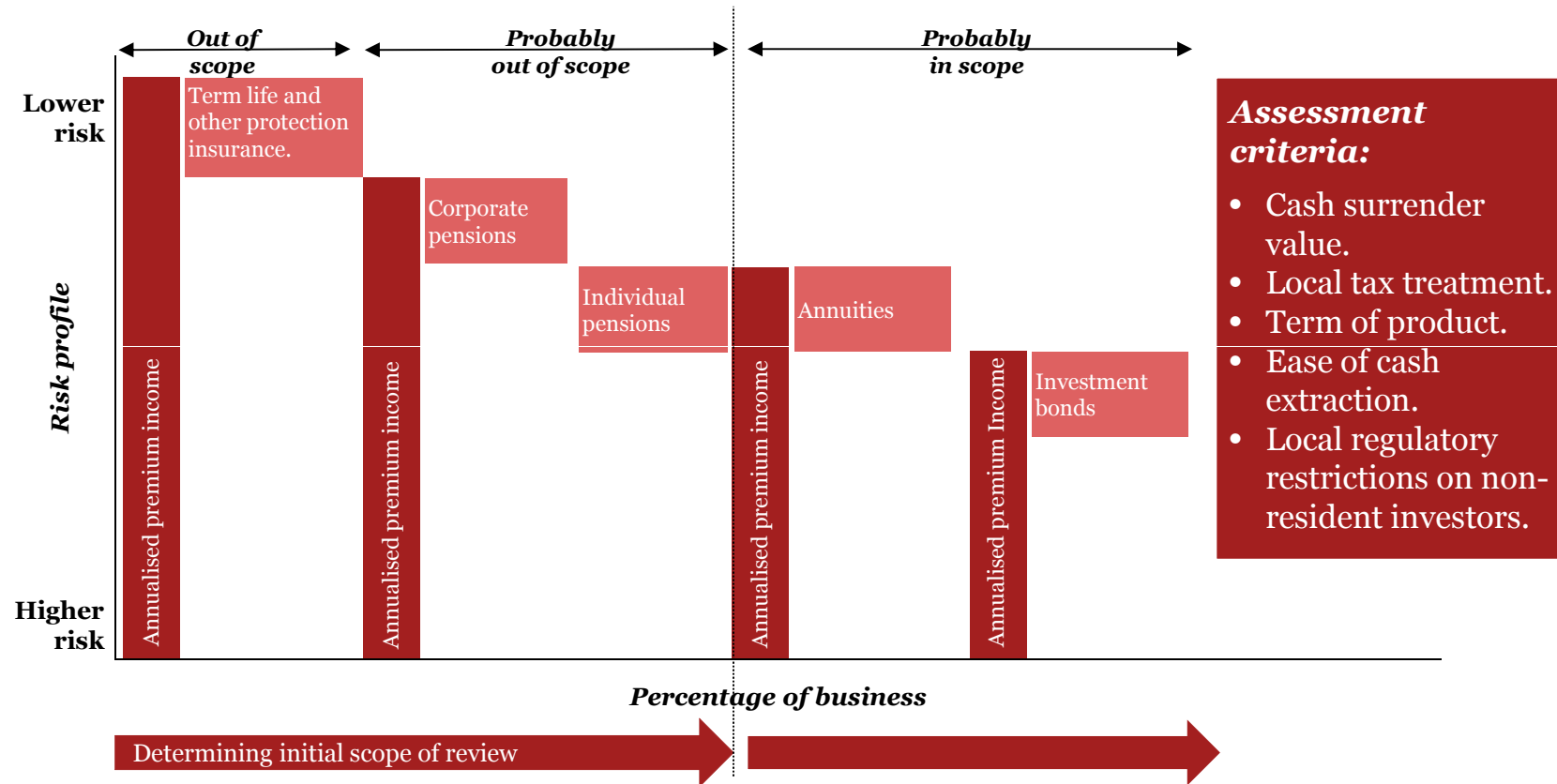
## ***Insurance sector***

### Scope

- The statutory definition of FFI is broad enough to include certain insurance companies.
- Notice 2010-60 states that the US IRS and Treasury will issue regulations reflecting that:
  - Insurance or reinsurance contracts without cash value are out of scope for FATCA.
    - Property and casualty contracts.
    - Term life contracts.
    - Companies that solely issue such contracts to be considered NFFEs.
  - Insurance contracts with cash values combine insurance protection with an investment component and will be subject to the rules.
    - Cash value life insurance contracts.
    - Variable annuities.
- Notice 2011-34 comments relating to private placement insurance.

# Insurance sector

## Impact

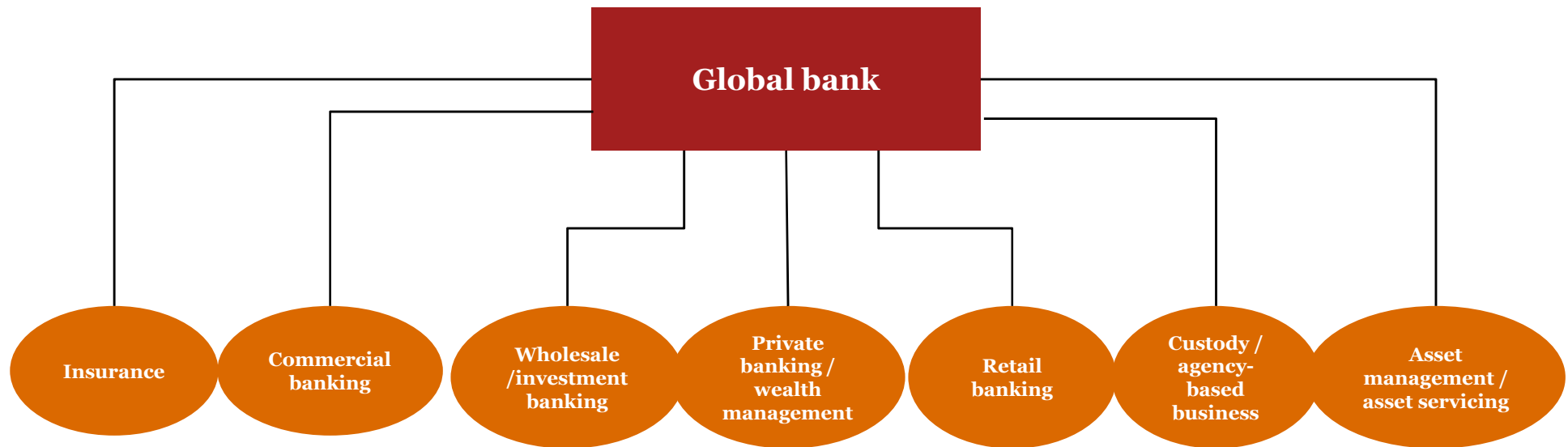


*Define products likely to be in scope for the insurance business against an assessment criteria to enable prioritisation. The impact is likely to be limited and narrow in scope.*

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# ***Banking***

Impact... depends on business line



## ***Banking - impact assessment by business line (1)***

	<b>Customer profile</b>	<b>Specific challenges/issues</b>
<b>Commercial banking</b>	<ul style="list-style-type: none"> <li>• Customer base primarily companies carrying on ‘active trade or business’.</li> </ul>	<ul style="list-style-type: none"> <li>• How to evidence ‘active trade or business’ – possible use of standard industry classification (SIC) codes – to satisfy notice 2010-60 guidance.</li> </ul>
<b>Wholesale/investment banking</b>	<ul style="list-style-type: none"> <li>• Typically other FFIs.</li> </ul>	<ul style="list-style-type: none"> <li>• How to identify whether account holder is a participating, non-participating or deemed compliant FFI.</li> <li>• Review of products to identify which create ‘financial accounts’ under FATCA and which give rise to ‘passthru payments’ – e.g. how to deal with collateral margin?</li> </ul>
<b>Private banking</b>	<ul style="list-style-type: none"> <li>• High net worth individuals, trust companies.</li> <li>• Largest proportion of clients likely to be potentially in scope.</li> </ul>	<ul style="list-style-type: none"> <li>• Marked difference in practice across institutions for onboarding procedures in the private banking industry. It is likely that less data will be ‘electronically searchable’.</li> <li>• Privacy and data protection laws likely to be more acute given regional hub locations for private banking activity.</li> <li>• Greater prevalence of nominee companies and trusts – need for remediation of existing data given zero or 10% threshold for determining ‘substantial US owners’.</li> <li>• Notice 2011-34 requirements regarding relationship manager’s review of all information for clients with a ‘private banking relationship’.</li> </ul>

## Banking - impact assessment by business line (2)

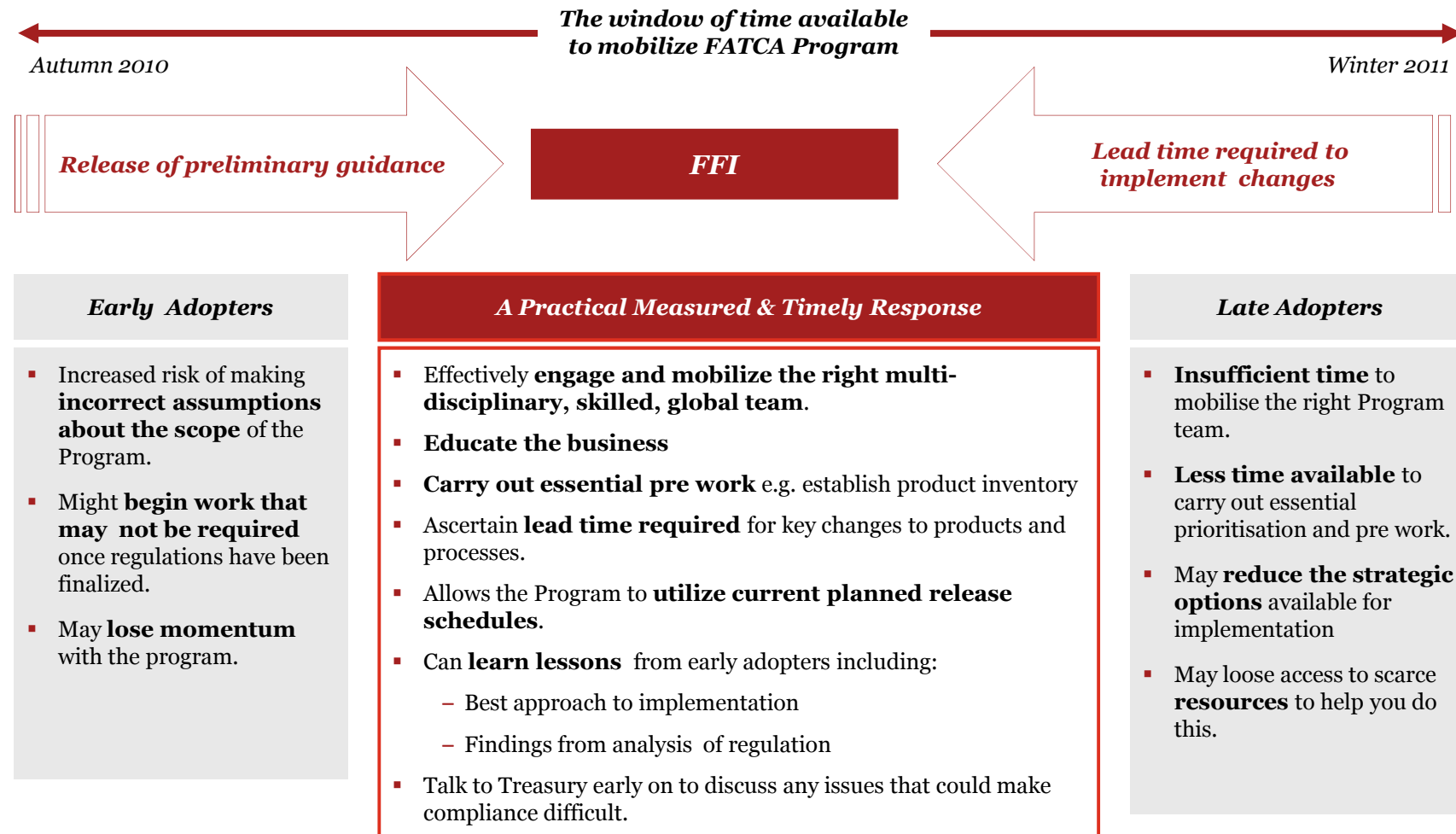
	Customer profile	Specific challenges/issues
<b>Retail banking</b>	<ul style="list-style-type: none"> <li>• Most accounts likely to fall within \$50k de minimis exception provided per entity.</li> <li>• Premier banking products may exceed \$50k limit and therefore more attention required on this population.</li> </ul>	<ul style="list-style-type: none"> <li>• Systems to track \$50k limit and need to monitor with other 'financial accounts' customer holds with FFI or potentially enterprise-wide.</li> <li>• Volume of accounts.</li> </ul>
<b>Custody and agency-based business</b>	<ul style="list-style-type: none"> <li>• Depends on degree of institutional client base – likely to be a mix of FFIs, NFFEs and individuals.</li> </ul>	<ul style="list-style-type: none"> <li>• Already likely to have systems in place under existing qualified intermediaries regime.</li> <li>• Look to leverage QI data where appropriate and adapt form 1099 reporting on US taxpayers.</li> </ul>
<b>Asset management/asset servicing</b>	<ul style="list-style-type: none"> <li>• A range of retail and institutional investors.</li> <li>• Retail investors may invest through nominee companies or through 'wrappers' (e.g. tax-efficient ISAs) or distribution through independent financial advisers (IFA).</li> </ul>	<ul style="list-style-type: none"> <li>• Interaction with distributors, third party management companies and administrators.</li> <li>• Role in undertaking and administering passthru payment percentage requirements outlined in Notice 2011-34.</li> </ul>

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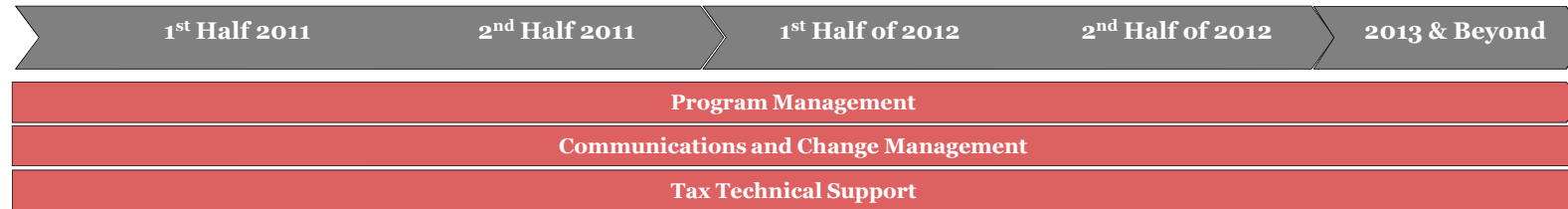
*How should you respond?*

**4**

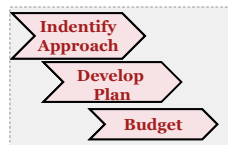
# Our Recommended Approach to FATCA Strategic Options ... When to Respond?



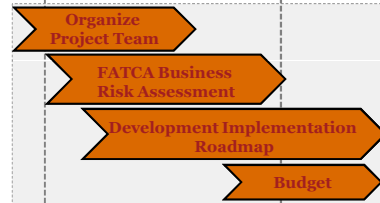
# Overview of FATCA Implementation Approach



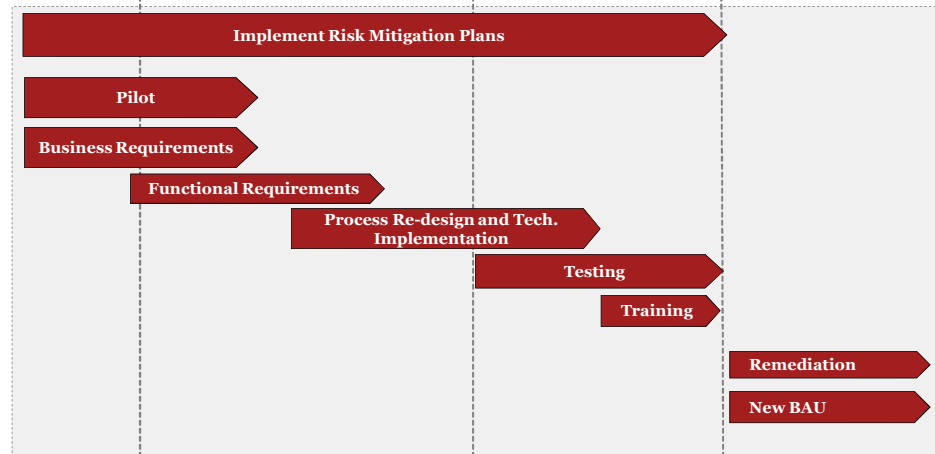
## Initial Plan



FATCA Business impact assessment, Phase 2 planning, etc.



## PHASE 2: Process Re-Design & Implementation



FATCA Provisions are Effective

PHASE 3: Remediation & New BAU

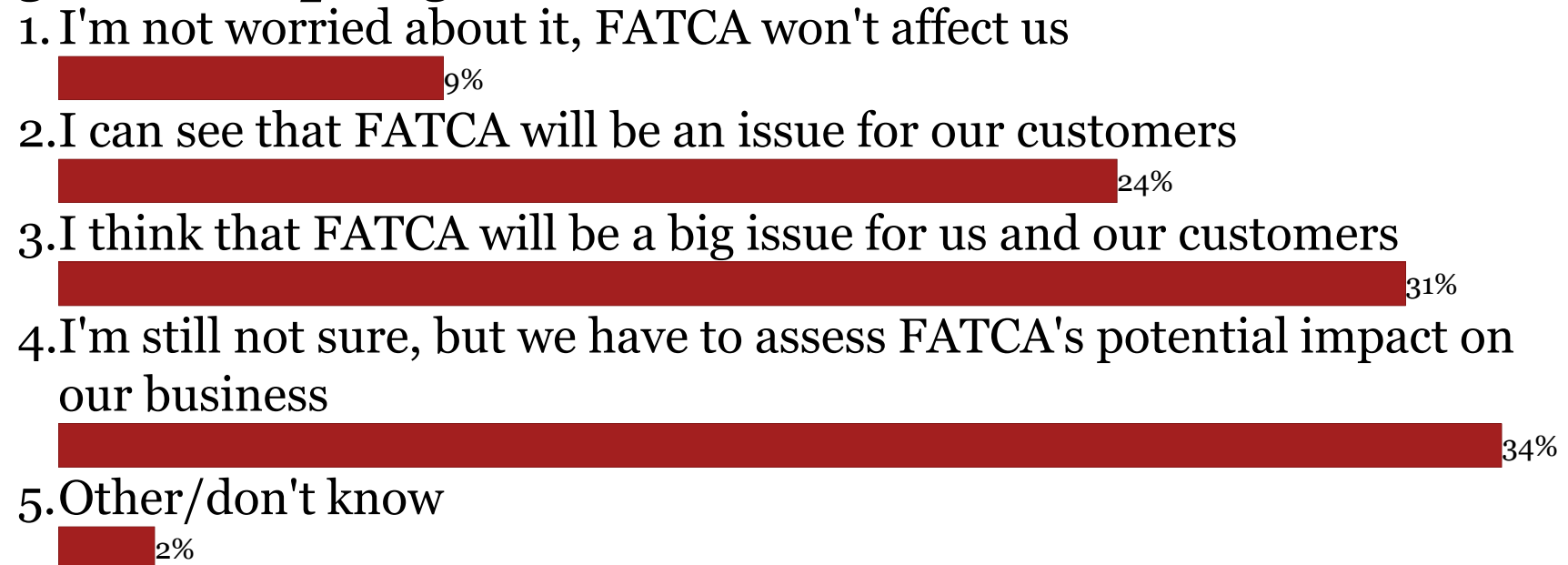


## ***Due Diligence– Indicia of Potential U.S. Status***

<b>Indicia of Potential U.S. Status (Pre-Existing Accounts &amp; New Accounts)</b>	<b>Required Documentation to Establish as a U.S. Account</b>
<ul style="list-style-type: none"> <li>▪ Identification of any account holder as a U.S. resident or U.S. citizen;</li> </ul>	<ul style="list-style-type: none"> <li>▪ Form W-9.</li> </ul>
<ul style="list-style-type: none"> <li>▪ A U.S. address associated with an account holder of the account (whether a residence address or a correspondence address);</li> </ul>	<ul style="list-style-type: none"> <li>▪ Form W-9 establishing U.S. status or Form W-8BEN <b>and</b> documentary evidence establishing non-U.S. status (e.g., non-U.S. passport or other similar evidence of non-U.S. non-U.S. citizenship).</li> </ul>
<ul style="list-style-type: none"> <li>▪ A U.S. place of birth for an account holder of the account;</li> </ul>	
<ul style="list-style-type: none"> <li>▪ An “in care of” address, a “hold mail” address, or a P.O. box address that is the sole address on file with respect to the account holder;</li> </ul>	<ul style="list-style-type: none"> <li>▪ Form W-9 establishing U.S. status or Form W-8BEN <b>or</b> documentary establishing non-U.S. status of the individual account holder. (e.g., non-U.S. passport or other similar evidence of non-U.S. non-U.S. citizenship).</li> </ul>
<ul style="list-style-type: none"> <li>▪ A power of attorney or signatory authority granted to a person with a U.S. address; or</li> </ul>	
<ul style="list-style-type: none"> <li>▪ Standing instructions to transfer funds to an account maintained in the U.S., or directions received from a U.S. address.</li> </ul>	

***Participating FFI is entitled to rely on the documentation received from account holder unless it knows or has reason to know that the information contained in such documentation is unreliable or incorrect.***

***Having heard me today, what do you now think about FATCA and the impact that it might have on your company?***



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# *Any questions?*

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