

Foreign Account Tax Compliance Act (FATCA) Fact Sheet

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The English version of this Fact Sheet shall prevail whenever there is any discrepancy between the English and the Chinese versions.

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1.	What is FATCA?	<ul style="list-style-type: none"> FATCA stands for the Foreign Account Tax Compliance Act provisions. FATCA is a United States (“U.S.”) legislation that primarily aims to prevent tax evasion by U.S. taxpayers using non-U.S. financial institutions and offshore investment instruments¹. FATCA impacts financial institutions and is implemented under a phased timeline commencing from 1st July 2014.
2.	Why is FATCA relevant to Hong Kong?	<ul style="list-style-type: none"> The Governments of Hong Kong and the U.S. signed an Inter-Governmental Agreement (“Hong Kong IGA”) on 13th November 2014 as a means of implementing FATCA in Hong Kong. The IGA seeks not only to lower overall compliance costs for the industry and safeguard the interests of these institutions and their customers, but also to demonstrate Hong Kong’s commitment to enhance tax transparency in the international arena. Unless exempted by the Hong Kong IGA, individual financial institutions (“FIs”) in Hong Kong including banks need to sign respective agreements with the U.S. Internal Revenue Service (IRS) covering their FATCA obligations pursuant to the Hong Kong IGA. The Hong Kong IGA essentially requires participating financial institutions to identify and report account information of Specified U.S. persons² to the IRS. In order to do so, FIs are required to ascertain the U.S. or non-U.S. tax status of their customers, and may need to obtain additional information or documentation from their customers to achieve this.
3.	Under what circumstances will customers be requested by their FIs in Hong Kong to provide FATCA related information or documents?	<ul style="list-style-type: none"> FIs are generally required to ascertain the U.S. or non-U.S. tax status of their new individual (e.g. personal, sole proprietor) and entity (e.g. company, trust) customers at account opening. FIs may obtain this information by asking customers to complete specific U.S. tax forms (known as IRS Forms W-8 / W-9) or bespoke Self-Certification Forms³, and other supporting documentation as required (collectively, “FATCA documentation”). FATCA documentation is kept by the FIs and not passed to the U.S. authorities. Existing individual and entity customers may also be contacted for FATCA documentation. Common scenarios include: <ul style="list-style-type: none"> (a) The FI identifies customer information on file that indicates a connection with the U.S. (e.g. a U.S. address); (b) <i>[Applicable to entity customers only]</i> The FI does not have sufficient customer information on hand to internally determine the customer’s classification under FATCA and/or that of the customer’s Controlling Persons⁴; (c) FATCA documentation previously provided by the customer has expired or is no longer reliable.
4.	What happens if a customer does <i>not</i> provide the required FATCA-related documents or information?	<ul style="list-style-type: none"> Under the Hong Kong IGA, FIs are required to report customers for which the FIs are unable to ascertain their U.S. or non-U.S. status to the IRS. For individual (e.g. personal, sole proprietor) and entity (e.g. company, trust) customers other than financial institutions, this will result in their aggregate year-end financial account balance held by this customer group being reported to the IRS. However, the IRS reserves the right to request specific customer information, such as the customer’s own aggregate year-end financial account balance, from FIs via the Hong Kong Inland Revenue Department (“HKIRD”). For financial institution customers, they will be classified as Nonparticipating Foreign Financial Institutions (NPFPI) and may be subject to 30% penalty withholding by the FIs on behalf of IRS. Further, their financial account information will be reported to the IRS. Please refer to Question 5 for information that will be reported by the FIs.

5.	Which customers and what information are FIs required to report to the IRS?	<ul style="list-style-type: none"> • FIs are required to report the financial accounts of the following customer groups to the IRS: <ul style="list-style-type: none"> (a) Individual and entity customers that are Specified US persons²—information to be reported includes certain account holder information and financial account information⁵ (b) Entity customers with US Controlling Persons⁴—reportable information includes certain account holder information, controlling person information, as well as financial account information⁶ (c) Individual and entity customers (excluding FI) for which the FI is unable to ascertain their US/non-US status (please refer Question 4) —FIs will need to report the aggregate year-end financial account balance held by this customer group to the IRS. However, the IRS reserves the right to request specific customer information, such as the customer’s own aggregate year-end financial account balance, from FIs via the HKIRD. (d) NPFFIs —FIs are required to report these customers for each of calendar years 2015 and 2016. Information to be reported includes account holder name and address (unless the FI could not obtain consent from the customer to report such information), and financial payments made to these customers during the year. • For customers that are not in the abovementioned customer groups, the FIs will not pass their information to the US authorities under FATCA.
6.	How and where can customers get additional assistance regarding FATCA?	<ul style="list-style-type: none"> • Please note that FIs should not offer any tax advice, notably the determination of tax residency or FATCA status, to their customers. As such, for any tax related questions, customers should seek advice according to their own circumstance from professional legal and/or tax advisors or refer to the IRS website. • Customers may also visit the FATCA FAQ on the Financial Services and the Treasury Bureau website or the IRS website for more FATCA-related information.
7.	Why are FIs asking my company to fill in the FATCA forms even if my company has no business relationships with the U.S.?	<ul style="list-style-type: none"> • As stated in question 3, FIs may need to obtain Forms W-8, W-9 or Self-Certification Form³ from their customers in order to ascertain the customer’s entity tax status (i.e. FATCA classification). • Customers can view or download the U.S. Forms W-8/W-9 from the URL below: https://apps.irs.gov/app/picklist/list/formsInstructions.html?value=w8&criteria=formNumber&submitSearch=Find
8.	Why are FIs asking me to fill in the FATCA forms even if I have no relationships with the U.S.?	<ul style="list-style-type: none"> • As stated in question 3, FIs may need to obtain Forms W-8, W-9 or Self-Certification Form³ from their customers to ascertain the customer’s non-U.S. or U.S. tax status. • Customers can view or download U.S. Forms W-8/W-9 from the URL below: https://apps.irs.gov/app/picklist/list/formsInstructions.html?value=w8&criteria=formNumber&submitSearch=Find

9.	My FI has issued a letter asking me to fill in the W Form, would you please explain what this form is about?	<ul style="list-style-type: none"> • The term “W Form” refers to IRS Forms W-8 / W-9 which may be used by FIs to ascertain the FATCA status of their customers, such as non U.S or U.S. However, some FIs may request customers to fill out a Self-Certification Form³ instead. • The types of W Forms available include: <ul style="list-style-type: none"> (a) W-8BEN: To be completed by individuals to self-certify their non-US status (b) W-9: To be completed by individuals and entities that are US persons (c) W-8BEN-E/ W-8IMY/ W-8EXP/ W-8ECI: To be completed by entities to self-certify their non-US status and FATCA classification. • Instructions to the W Forms may be viewed or downloaded from the URL below: https://apps.irs.gov/app/picklist/list/formsInstructions.html?value=w8&criteria=formNumber&submitSearch=Find
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¹ The information of this fact sheet is based on U.S. Treasury Regulations and the Hong Kong Inter-Governmental Agreement (“IGA”).

² A U.S. taxpayer refers to a U.S. person defined by U.S. Internal Revenue Code Section 7701(a)(30) as:

- an individual who is a U.S citizen or U.S. resident alien (e.g. green card holder or meets substantial presence test);
- a partnership, corporation, or association created or organized in the U.S. or under the laws of the U.S;
- an estate (other than a non-U.S. estate as defined); or
- a trust where a court within the U.S. is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all substantial decisions of the trust.

A Specified U.S. person is any U.S. person other than those prescribed in Treasury Regulations Section 1.1473-1(c) such as a corporation the stock of which is regularly traded on one or more established securities markets, including its member that is of the same expanded affiliated group; any bank that is defined in Internal Revenue Code Section 581; etc.

³ Self-Certification Form is an alternative form to IRS W Form that is designed and provided by FIs to request FATCA information of their customers. Unlike W Form, the format of Self-Certification Form is not standardised and likely vary amongst FIs.

⁴ Per HKIGA, the term “Controlling Persons” means the natural persons who exercise control over an Entity. In the case of a trust, such term means the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions.

⁵ Information to be reported for individual and entity customers that are Specified US persons include:

- Account holder’s name, address, and U.S. Taxpayer Identification Number (“TIN”);
- Financial account number(s);
- Account Balance or value of the account(s); and
- Payments made with respect to the account(s) during the year, e.g. interest and dividend, gross proceeds from the sale or redemption of property.

⁶ Information to be reported for Entity customers with US Controlling Persons include:

- Account holder’s name and address;
- Each Controlling Person’s name, address and U.S. TIN;
- Financial account number(s);
- Account Balance or value of the account(s); and
- Payments made with respect to the account(s) during the year, e.g. interest and dividend, gross proceeds from the sale or redemption of property.