

FOREIGN ACCOUNT TAX COMPLIANCE ACT FACT SHEET

海外賬戶稅收合規法案資料便覽

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1. 何謂FATCA?

- FATCA 全稱為“Foreign Account Tax Compliance Act”《海外賬戶稅收合規法案》。
- FATCA 是一項美國法案，其主要目的為防止美國納稅人利用非美國金融機構及海外投資工具逃避其應繳的美國稅款¹。
- FATCA 影響著金融機構，該法案於2014年7月1日起分階段實施。

2. FATCA為何與香港有關?

- 於2014年11月13日，香港政府與美國政府簽訂跨政府協議（香港跨政府協議），並以此協議作為根據，於香港實施FATCA。此協議不單協助銀行業減低合規成本、保障金融機構和其客戶的利益，亦展示香港對加強稅務透明度所作出的承諾。根據香港跨政府協

議，包括銀行在內的個別香港金融機構，除非獲得豁免，需要各自與美國國稅局（IRS）簽訂協議並根據香港跨政府協議履行其FATCA的職責。

- 香港跨政府協議中要求參與的金融機構必須識別及向美國國稅局申報特定美國人士²帳戶資料。因此，銀行可能需要客戶提供額外資料及文件以確認其美國或非美國納稅身份。

3. 在哪些情況下，銀行會要求客戶提供有關FATCA的資料及文件?

- 銀行一般需要在開戶的時候確認該新個人客戶（例如個人及獨資業務）或新實體客戶（例如公司及信託）的美國或非美國納稅身份。銀行可能要求客戶填寫美國稅表（稱為IRS W-8/W-9表格）或自我聲明³，及提供相關證明文件（統稱“FATCA文件”）。此等文件由銀行自行保存，並不需要向美國當局提交。
- 銀行亦有可能於以下情況向現有個人及實體客戶索取FATCA文件：
 - 銀行發現其客戶資料顯示該帳戶與美國有所聯繫（例如擁有美國地址）；
 - （只適用於實體客戶）銀行內部沒有足夠客戶資料以確認該客戶及/或其控權人⁴FATCA的分類；
 - 該客戶以往提供的FATCA文件已過期或不可靠。

4. 如果客戶未能向銀行提供FATCA相關文件或資料，會有什麼後果?

- 根據香港跨政府協議，當銀行未能確定其客戶的美國或非美國納稅身份時，銀行需要向美國國稅局申報該等客戶的特定資料。
- 就個人客戶（例如個人及獨資業務）及非金融機構實體客戶（例如公司及信託）而言，銀行會就該客戶群的年底財務帳戶總結餘向美國國稅局作出申報。然而，美國國稅局保留通過香港稅務局向銀行要求特定帳戶資料的權利，包括其年底的財務帳戶總結餘。

- 就金融機構客戶而言，銀行會將其界定為非參與海外金融機構。此類金融機構將可能面對30%的懲罰性預扣稅，由銀行代表美國國稅局收取。而且，其帳戶資料將被申報至美國國稅局。

關於申報至美國國稅局的資料，請參閱問題5

5. 銀行需要向美國國稅局申報哪些客戶資料?

銀行需要就以下客戶群向美國國稅局申報其財務帳戶資料：

- a) 個人及實體客戶為特定美國人士² — 申報資料包括某些帳戶擁有人資料及財務帳戶資料⁵
- b) 由特定美國人士控制⁴的實體客戶 — 申報資料包括某些帳戶擁有人資料，控權人資料及財務帳戶資料⁶
- c) 個人及實體客戶（不包括金融機構），而銀行未能確認其美國/非美國納稅身份（請參閱問題4） — 銀行需要就該客戶群的年底財務帳戶總結餘向美國國稅局作出申報。然而，美國國稅局保留通過香港稅務局向銀行要求特定帳戶資料的權利，包括其年底的財務帳戶總結餘。
- d) 非參與海外金融機構 — 銀行需要就2015及2016年度對其作出申報。申報資料包括帳戶名稱及地址（除非銀行未能獲得客戶同意申報此類資料），以及該年度向此類帳戶支付的金額。

如客戶並非以上任何一類的客戶，銀行並不會就FATCA將其資料申報至美國當局。

6. 客戶可從哪些途徑獲得更多關於FATCA的協助?

- 請注意，銀行不能向客戶提供任何稅務建議（包括客戶的稅務人身份或FATCA分類）。如有任何稅務疑問，客戶應就個人情況向專業法律及/或稅務顧問徵求意見或參閱美國國稅局網站。
- 客戶亦可瀏覽財經事務及庫務局網站FATCA常見問題或美國國稅局網站，以獲取更多FATCA相關資料。

7. 本公司沒有任何與美國有關的商業往來，為什麼銀行還要求我們填寫FATCA表格?

- 承問題3，銀行可能要求客戶提供W-8/W-9表格或自我聲明³，以確認客戶的美國或非美國實體納稅身份，亦即FATCA分類。
- 客戶可從以下網址瀏覽或下載W-8/W-9表格：
<https://apps.irs.gov/app/picklist/list/formsInstructions.html?value=w8&criteria=formNumber&submitSearch=Find>

8. 本人沒有任何與美國有關的聯繫，為什麼銀行還要求我填寫FATCA表格?

- 承問題3，銀行可能要求客戶提供W-8/W-9表格或自我聲明³，以確認客戶的美國或非美國納稅身份。
- 客戶可從以下網址瀏覽或下載W-8/W-9表格：
<https://apps.irs.gov/app/picklist/list/formsInstructions.html?value=w8&criteria=formNumber&submitSearch=Find>

9. 銀行向我發出要求填寫W表格的信件，請解釋何謂W表格?

- W表格是指美國國稅局W-8/W-9表格。此表格可讓銀行確認客戶的美國或非美國納稅身份。然而，有些銀行會要求客戶填寫自我聲明³來代替W表格。
- W表格的種類包括：
 - a) W-8BEN：供個人客戶聲明其非美國納稅身份
 - b) W-9：供美國納稅人（包括個人及實體客戶）填寫
 - c) W-8BEN-E/ W-8IMY/ W-8EXP/ W-8ECI：供實體客戶聲明其非美國納稅身份及FATCA分類

客戶可從以下網址瀏覽或下載W表格的說明：

<https://apps.irs.gov/app/picklist/list/formsInstructions.html?value=w8&criteria=formNumber&submitSearch=Find>

1 以上便覽根據美國財政部法規以及香港跨政府協議所撰寫

2 根據美國稅務條例7701(a)(30)章，美國納稅人定義為：

- 美國公民或美國外籍居民（例如：綠卡持有人或通過居住測試之個人）；
- 在美國或根據美國法律組織或成立的合夥業務、公司或組織；
- 遺產（符合“非美國遺產”定義的遺產除外）；或
- 一個美國法院可對其管理實施監管，並由一個或多個美國人士可以作出所有重大決定的信託

特定美國人士為除了在美國財政部法規第1.1473-1(c)章所描述的人士（例如股份在一個或多個既定證券市場持續交易之公司或其集團的成員，根據美國稅務條例第581章界定的銀行等）以外之所有美國人士

3 自我聲明是由銀行設計及提供的表格，用以代替W表格向客戶獲取FATCA資料。與W表格不同，各銀行的自我聲明格式並不統一

4 根據香港跨政府協議，控權人的定義為對實體有實際控制權的自然人。就信託而言，控權人包括財產受予人、受託人、保護人（如有）、受益人或某類別受益人的成員的個人，以及任何對該信託擁有最終實際控制權的自然人。在信託以外的法律安排下，控權人亦指擁有同等或相似地位的自然人

5 特定美國人士（包括個人及實體客戶）需被申報的資料包括：

- 帳戶持有人名稱、地址，及美國納稅識別號碼（“TIN”）
- 財務帳戶編號
- 帳戶結餘或價值；及
- 該年度支付予該帳戶的金額，例如利息及股利，及來自出售或贖回財務資產的總收益

6 控權人為特定美國人士的實體客戶需被申報的資料包括：

- 帳戶持有人名稱及地址
- 各控權人的姓名、地址，及美國納稅識別號碼（“TIN”）
- 財務帳戶編號
- 帳戶結餘或價值；及
- 該年度支付予該帳戶的金額，例如利息及股利，及來自出售或贖回財務資產的總收益

Important Notice

The contents of this Fact Sheet are for general reference purposes only. This Fact Sheet should not be considered as a comprehensive statement on any matter and should not be relied upon as such. It does not consider any particular customer requirements or treatments. Specific independent legal and/or tax advice about your treatment under FATCA for the purpose of both Hong Kong and United States laws and your obligation to make disclosures to your financial institution should always be sought separately before taking any action.

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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.

1. What is FATCA?

- 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?

- 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 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, banks 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 banks in Hong Kong to provide FATCA related information or documents?

- Banks 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. Banks 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 banks and not passed to the U.S. authorities.
- Existing individual and entity customers may also be contacted for FATCA documentation. Common scenarios include:
 - (a) The bank identifies customer information on file that indicates a connection with the U.S. (e.g. a U.S. address);
 - (b) *[Applicable to entity customers only]* The bank 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 not provide the required FATCA-related documents or information?

- Under the Hong Kong IGA, banks are required to report customers for which the banks 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 banks via the Hong Kong Inland Revenue Department (“HKIRD”).
- For financial institution customers, they will be classified as Nonparticipating Foreign Financial Institutions (NPFIs) and may be subject to 30% penalty withholding by the banks 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 banks.

5. Which customers and what information are banks required to report to the IRS?

Banks are required to report the financial accounts of the following customer groups to the IRS:

- (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 bank is unable to ascertain their US/non-US status (please refer Question 4) — banks 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 banks via the HKIRD.
- (d) NPFIs — banks 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 bank 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 banks will not pass their information to the US authorities under FATCA.

6. How and where can customers get additional assistance regarding FATCA?

- Please note that banks 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 banks asking my company to fill in the FATCA forms even if my company has no business relationships with the U.S.?

- As stated in question 3, banks 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 banks asking me to fill in the FATCA forms even if I have no relationships with the U.S.?

- As stated in question 3, banks 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 bank has issued a letter asking me to fill in the W Form, would you please explain what this form is about?

- The term “W Form” refers to IRS Forms W-8/W-9 which may be used by banks to ascertain the FATCA status of their customers, such as non U.S. or U.S. However, some banks may request customers to fill out a Self-Certification Form³ instead.
- The types of W Forms available include:
 - (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>

- The information of this fact sheet is based on U.S. Treasury Regulations and the Hong Kong Inter-Governmental Agreement (“IGA”).
- 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.
- Self-Certification Form is an alternative form to IRS W Form that is designed and provided by banks to request FATCA information of their customers. Unlike W Form, the format of Self-Certification Form is not standardised and likely vary amongst banks.
- 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.
- 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.
- 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.

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