

## FATCA Frequently Asked Questions (FAQs)<sup>1</sup>

### 1. *What is FATCA?*

Foreign Account Tax Compliance Act (“FATCA”) is a tax law enacted in the United States (“U.S.”) in March 2010 and became effective on 1 July 2014. FATCA aims at preventing U.S. tax evasion by U.S. taxpayers holding non-U.S. financial accounts.

According to the information published by the U.S. Internal Revenue Service (the “IRS”), FATCA requires foreign financial institutions (“FFIs”) to conduct certain due diligence procedures to identify and report to the IRS information in respect of financial accounts held by, among other things, (i) U.S. taxpayers; and (ii) certain foreign entities in which U.S. taxpayers hold controlling ownership interests or are otherwise treated as controlling persons. FFIs which do not comply with FATCA may be subject to withholding tax of 30% on certain payments received by them.

### 2. *Does FATCA replace the existing U.S. tax withholding and reporting regimes?*

No.

FATCA does not replace the existing U.S. tax withholding and reporting regimes. For example, Chapter 4 of the U.S. Internal Revenue Code (i.e. FATCA) does not replace Chapter 3 of the Internal Revenue Code (including the Qualified Intermediary (QI) regime). FATCA imposes additional documentation and reporting requirements.

### 3. *What is an FFI?*

FATCA generally defines Foreign Financial Institution (FFI) as follows:

	<b>A Foreign Financial Institution is a non-U.S. entity that:</b>	<b>Examples very generally:</b>
a)	<p><b>Holds financial assets for the account of others as a substantial portion of its business</b></p> <p>“Substantial portion” of a business if: 20% or more of the entity’s gross income during a testing period is attributable to the</p>	<ul style="list-style-type: none"> <li>• Custodians</li> <li>• Nominees</li> </ul>

<sup>1</sup> This FAQ is prepared on the basis that a Model 2 IGA intergovernmental agreement is in place for Hong Kong.

	<b>A Foreign Financial Institution is a non-U.S. entity that:</b>	<b>Examples very generally:</b>
	holding of financial assets and related financial services	
b)	Accepts deposits in the ordinary course of a <b>banking</b> or similar business	<ul style="list-style-type: none"> <li>• Banks</li> </ul>
c)	Conducts as a business (or is managed by an entity that conducts as a business) the following activities <b>for or on behalf of a customer: trading in securities</b> ; individual and collective portfolio management; or investing, administering or managing funds or money on behalf of other persons	<ul style="list-style-type: none"> <li>• Entities that conduct as a business for customers, trading in securities</li> <li>• ETFs</li> <li>• Hedge Funds and Private Equity Funds</li> <li>• Certain Investment Fund Managers</li> </ul>
d)	Is an <b>insurance company</b> (or its holding company) that issues or is obligated to make payments with respect to a cash value insurance policy or an annuity contract	<ul style="list-style-type: none"> <li>• Life Insurance companies</li> </ul>

The above is general background information only. Each legal entity should evaluate for itself whether it is an FFI under FATCA.

4. *What is an NFFE?*

An NFFE is a Non-Financial Foreign Entity. NFFE is defined as any foreign entity that does not meet the definition of an FFI, and very generally includes, among other things: non-financial entities meeting specified rules, professional services firms, and charitable organizations meeting specified rules.

5. *What is an Intergovernmental Agreement (IGA)? Has Hong Kong signed any IGA with the U.S. Government?*

IGAs are developed by the U.S. Government to facilitate the compliance and implementation of FATCA to remove the potential conflict-of-law issues in other jurisdictions. There are two distinct frameworks of IGAs, referred to as “Model 1” and “Model 2” frameworks.

The Government of the Hong Kong Special Administrative Region of the People's Republic of China (HKSAR Government) and the Government of the United States of America signed an inter-governmental agreement (IGA) on 13 November 2014 that will facilitate compliance with FATCA by financial institutions in Hong Kong.

As such, financial institutions should register with the IRS to obtain a Global Intermediary Identification Number (GIIN).

Please refer to the [IGA](#) published, and the [Frequently Asked Questions](#) prepared, by the HKSAR Government about FATCA compliance.

6. *How does an FFI comply with FATCA under a Model 2 IGA?*

An FFI needs to register with the IRS and be subject to the terms of an FFI Agreement. The obligations include, among other things, (i) registration with the IRS; (ii) conducting certain due diligence procedures; (iii) reporting to the IRS annually certain information concerning financial accounts held by U.S. taxpayers or foreign entities in which certain U.S. taxpayers hold controlling ownership interests; (iv) reporting to the IRS information about the number and aggregate balance of non-compliant FFIs and of "Non-Consenting U.S. Accounts"; (v) obtain the consent of relevant parties for reporting their information to the IRS; and (vi) withholding of certain amounts paid to non-compliant FFIs.

7. *What are the main types of FATCA-compliant FFI classifications?*

An FFI that is FATCA-compliant in a Model 2 IGA jurisdiction will generally be a Reporting Financial Institution (FI) complying with due diligence requirements as described in Annex I of the IGA, or a Non-Reporting FI (including certain FFIs described in Annex II of the IGA and certain other deemed-compliant or exempted FFIs).

If the FFI is in a jurisdiction that has not entered into an IGA, the FFI will have to enter into an FFI Agreement with the IRS and comply with the U.S. FATCA Treasury Regulations. Such an FFI would be treated as a Participating FFI (PFFI).

8. *What are the consequences to an FFI of not complying with FATCA?*

Non-compliance potentially carries a penalty of a 30% withholding tax applied to withholdable payments received by the FFI. This penalty applies to not only the FFI's own assets but also assets held for customers.

Withholdable payments generally include, among other things:

- a) U.S. dividend income and U.S. interest income paid after 30 June 2014; and
- b) Gross proceeds from any sales occurring after 31 December 2018 of any property, such as U.S. stocks, U.S. Treasuries and other U.S. debt securities, that can produce U.S. dividends or U.S. interest income.

Also, under a Hong Kong IGA, Hong Kong financial institutions are directed to comply with FATCA.

*9. Who can be the Responsible Officer (“RO”) and what are the responsibilities of RO?*

RO of an FFI is responsible for the FATCA compliance program of the FFI and certifying on FATCA compliance to the IRS. The person to be appointed as RO should have sufficient authority to fulfill the duties of a RO, who may or may not be the responsible officer of a Licensed Corporation regulated by the Securities and Futures Commission. Major duties of a RO include:

- certification of FATCA compliance of the FFI to the IRS, including the completion of FATCA due diligence on existing clients;
- implementation of FATCA compliance program; and
- notification to the IRS of significant non-compliance with FATCA requirements.

*10. What is the timeline for FATCA compliance?*

• Registration and Renewal	
Ongoing	IRS FATCA Portal available for registration
24 October 2017	Reporting Model 2 FFIs and other certain relevant FFIs are required to renew their FFI Agreements on the IRS FATCA Portal by this date
• Due Diligence	
1 July 2014	New account due diligence procedures must be in place to establish the FATCA status of new individual accounts

31 December 2014	Need to complete due diligence on preexisting “prima facie FFI” accounts (including any “prima facie FFI” onboarded during the 1 July 2014 – 31 December 2014 period); and New account due diligence procedures must be in place to establish the FATCA status of new entity accounts
30 June 2015	Need to complete due diligence on preexisting high value accounts held by individuals
30 June 2016	Need to complete due diligence on all other preexisting accounts (including on entity accounts onboarded during the 1 July 2014 – 31 December 2014 period that are not “prima facie FFIs”)

• Reporting	
15 March 2015	Begin FATCA reporting of certain “withholdable payments” made for calendar year 2014
31 March 2015	Begin FATCA reporting for calendar year 2014 for (i) U.S. accounts; (ii) Passive NFFEs with Controlling U.S. Persons; and (iii) Non-Consenting U.S. Accounts
31 March 2016	Reporting of certain Nonparticipating FFIs to which certain payments were made for calendar year 2015
31 December 2017	End of first compliance certification period
1 July 2018	RO must be able to certify completion of identification and review for all preexisting individual and entity accounts and the first certification of compliance and effective internal controls required

• Withholding	
1 July 2014	FATCA withholding commences on certain withholdable payments
1 January 2019	FATCA withholding commences on gross proceeds on the sale of U.S. stock and U.S. securities
To be determined	FATCA withholding may be required for “foreign pass-through payments”, which are expected to be the subject of future U.S. guidance

*11. What are the consequences to an FFI of having an individual account that has indicia of U.S. status?*

If an account has “indicia” of U.S. status described below, the FFI may have to obtain additional documentation to confirm the status (as either U.S. or non-U.S.) of the account holder. If documentation is not obtained to establish non-U.S. status, the FFI may be required to report the account to the IRS as either a U.S. account or a Non-Consenting

U.S. Account. The following are the 7 U.S. indicia:

- a) Identification of the individual as a U.S. citizen or resident (e.g. U.S. passport or U.S. green card);
- b) A U.S. place of birth for the individual;
- c) A current U.S. residence address or U.S. mailing address (including a U.S. post office box);
- d) Current U.S. telephone number;
- e) Standing instructions to transfer funds to an account maintained in the U.S.;
- f) A current power of attorney or signatory authority granted to a person with a U.S. address; and
- g) An “in care of” address or a “hold mail” address that is the sole address identified for the individual.

12. *How are the Hong Kong affiliates in the Hong Kong Exchanges and Clearing Limited (“HKEX”) group preparing for FATCA?*

Clearing houses of HKEX group are considered as FFIs under FATCA. The 4 clearing houses are “Reporting Financial Institutions under a Model 2 Intergovernmental Agreement” with their respective GIIN numbers as below:

Clearing House	GIIN
1. Hong Kong Securities Clearing Company Limited	7ENI1T.00000.LE.344
2. HKFE Clearing Corporation Limited	7ENI1T.00002.ME.344
3. The SEHK Options Clearing House Limited	7ENI1T.00003.ME.344
4. OTC Clearing Hong Kong Limited	7ENI1T.00004.ME.344

HKEX strongly recommends Participants to assess the potential continuing implications of FATCA on their business operations and clients, and, for Participants that are FFIs, to continue to comply with FATCA.

13. *What are the stocks cleared and settled by HKSCC as of today that generate U.S. source dividend income?*

Currently, there are certain stocks cleared and settled by HKSCC that generate U.S. source dividend income. Subject to further changes, the list may be updated on this FAQ.

	Security Code	Security Name
1.	04332	<u>Amgen Inc.</u>
2.	04333	<u>Cisco Systems, Inc.</u>

3.	04335	<u>Intel Corporation</u>
4.	04336	<u>Applied Materials, Inc.</u>
5.	04337	<u>Starbucks Corporation</u>
6.	04338	<u>Microsoft Corporation</u>
7.	04362	<u>iShares MSCI South Korea Index Fund</u>
8.	04363	<u>iShares MSCI Taiwan Index Fund</u>
9.	06388	<u>Coach, Inc. - RS</u>

Participants are encouraged to consult their own professional advisors as to which stocks and other traded products may generate withholdable payments under applicable FATCA and U.S. tax rules.

*14. Can I avoid FATCA by not participating in the U.S. securities markets?*

No.

For example, under FATCA, U.S. stock includes shares issued by U.S. formed companies traded/ listed worldwide instead of shares listed in the U.S. security markets. Therefore, FATCA withholdable payments will also include certain payments related to some stock traded in securities markets outside the U.S securities markets.

Moreover, as discussed in Q5 above, under a Hong Kong IGA, a Hong Kong financial institution is directed to comply with FATCA.

*15. Can I avoid FATCA if I do not have any U.S. account holders?*

No.

Even if you do not have any U.S. account holders, FATCA will require you, if you are an in scope FFI, to perform and undertake due diligence on your existing and new client accounts to identify their FATCA statuses.

Certain information in this FAQ is derived from the IRS and the U.S. Treasury websites, and HKEX's understanding of FATCA. While care has been taken regarding the accuracy of information provided, nothing in this FAQ is intended to be, or should be construed to constitute, legal or tax advice; and no information in this FAQ may be used or interpreted for the purpose of avoiding U.S. tax rules, tax liabilities, interest or penalties. Participants should consult their own professional advisors on the implications of FATCA.