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通告 CIRCULAR

事項

Subject: Survey on the U.S. Foreign Account Tax Compliance Act

查詢

Enquiry: DCASS Hotline 2979 7222

Reference is made to the circular dated 31 December 2013 (Ref: [CD/DCO/DCASS/033/2013](#)) and the seminar held in March 2014 in relation to the U.S. Foreign Account Tax Compliance Act (FATCA).

Please note that the HKSAR Government has announced on 9 May 2014 that Hong Kong and the U.S. have substantially concluded discussions on a Model 2 Intergovernmental Agreement (IGA). Hong Kong is now included in the list of “Jurisdictions that have reached agreements in substance”. Please refer to the [Frequently Asked Questions prepared by the HKSAR Government](#) about FATCA compliance.

FATCA will become effective on 1 July 2014. Participants are requested to assess the potential implications of FATCA on their business operations (in consultation with their professional advisers if necessary) and, where appropriate, implement operational and system changes to comply with FATCA. In order to give HKCC and SEOCH a better understanding of Participants’ progress in preparing for FATCA, Participants are requested to complete and return the enclosed survey (**Attachment 1**) by fax to HKCC and SEOCH **on or before 30 May 2014**.

Further information on FATCA is available on the [U.S. Internal Revenue Service \(IRS\) website](#). Supplemental materials on FATCA, including Frequently Asked Questions prepared by HKEx, are available on the [HKEx website](#).

For any enquiries, please contact the DCASS hotline at 2979 7222.

Vicky Chan
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香港交易及結算所有限公司
Hong Kong Exchanges and Clearing Limited

Hong Kong Exchanges and Clearing Limited (HKEx) Survey on the U.S. Foreign Account Tax Compliance Act (FATCA)

HKCC and SEOCH are conducting a survey to better understand their Participants' readiness for FATCA, which will become effective on 1 July 2014. You are requested to fill in the survey below. Please refer to the glossary of terms at the end of this survey and to the [FATCA information contained on the HKEx website](#) for guidance.

Please respond to the below questions based on the fact that Hong Kong and the U.S. have substantially concluded discussions on a Model 2 Intergovernmental Agreement (IGA) (as disclosed in the [press release](#) issued by the HKSAR Government on 9 May 2014). You may wish to seek assistance from your staff who participate in FATCA implementation and/or professional FATCA advisors on completing this survey. Information collected will be kept confidential and used solely for the purpose stated above. **Please return the completed survey by fax to 2579-0085 or 2579-0136 on or before 30 May 2014 (Friday).** If you have any questions about this survey, you may contact the hotline at 2979-7222.

Please tick the appropriate checkbox(es) and / or fill in the spaces as required. Please answer all questions unless otherwise indicated below.

1. Have you assessed the impact of FATCA on your company (including but not limited to determining your company's FATCA status) and / or prepared any implementation plan for FATCA compliance purposes?
 Yes, through in-house staff
 Yes, through external consultant: _____
Please specify the name of the consultancy firm
 No
2. Are you expected to be a Foreign Financial Institution (FFI) for FATCA purposes?
 Yes (Answer Q.3 to Q.6) No (Go to Q.7)
3. What is your expected FATCA status? (Please choose one below)
 A Reporting Hong Kong FI¹
 A Reporting FI in a Model 2 or Model 1 IGA jurisdiction (except HK)
 A Non-Reporting Hong Kong FI
 A Non-Reporting FI in a Model 2 or Model 1 IGA jurisdiction (except HK)
 A Participating FFI or a Registered Deemed Compliant FFI in a non-IGA jurisdiction
 A Certified Deemed Compliant FFI in a non-IGA jurisdiction
 An Exempt Beneficial Owner
 A Nonparticipating FFI or Limited FFI

¹ As noted above, please answer on the basis that a Hong Kong Model 2 IGA is in place.

Glossary of FATCA terms²

Term		Meaning/Background
1.	Active NFFE	<p>An NFFE that meets one of the following criteria:</p> <ul style="list-style-type: none"> (i) less than 50% of the entity's gross income for the preceding period is passive income and less than 50% of the assets held by the entity during the preceding period produce passive income; (ii) the entity's stock is regularly traded on an established securities market or the entity is a related entity of the issuer of such stock; (iii) the entity is a non-U.S. government (or a political subdivision thereof), a public body meeting certain requirements, an international organization, a non-U.S. central bank, or an entity wholly owned by one or more of the foregoing, or the entity is organized in a U.S. Territory and additional conditions are met; (iv) substantially all of the activities of the entity consist of holding the stock of, or providing financing and services to, subsidiar(ies) that engage in trades or businesses other than the business of an FI; (v) the entity is not yet operating a business or, if the entity was an FI in the past five years, the entity is in the process of liquidation or reorganization, and in each case additional conditions are met; (vi) the entity primarily engages in financing and hedging transactions with or for non-FI related entities, and additional conditions are met; (vii) the entity is established by, and operated exclusively for, religious, charitable, scientific, artistic, cultural, athletic, or educational purposes, or the entity is a professional organization, business league, chamber of commerce, labor organization, agricultural or horticultural organization, civic league or an organization operated exclusively for the promotion of social welfare, and in each case additional conditions are met; or (viii) the entity is an "excepted NFFE" under the FATCA Regulations.
2.	Certified Deemed Compliant FFI	A certified deemed-compliant FFI is not required to register with the IRS.
3.	Exempt Beneficial Owner	<p>An entity that is described in Treas. Reg. §1.1471-6 as:</p> <ul style="list-style-type: none"> (i) a foreign government, a political subdivision of a foreign government, or a wholly owned agency or

² This Glossary provides general background on certain terms. FATCA rules are complex, and a number of aspects of such terms are not reflected in this Glossary. Participants should not rely on this Glossary and should consider the detailed FATCA rules on terms relevant to them.



Term		Meaning/Background
		<p>instrumentality of any one or more of the foregoing;</p> <p>(ii) an international organization or a wholly owned agency or instrumentality thereof;</p> <p>(iii) a foreign central bank of issue;</p> <p>(iv) a government of a U.S. Territory;</p> <p>(v) a treaty-qualified retirement fund;</p> <p>(vi) a broad participation retirement fund;</p> <p>(vii) a narrow participation retirement fund;</p> <p>(viii) a fund formed pursuant to a plan similar to a US Internal Revenue Code section 401(a) plan;</p> <p>(ix) an investment vehicle used exclusively for retirement funds;</p> <p>(x) a pension fund of an exempt beneficial owner; or</p> <p>(xi) an entity wholly owned by exempt beneficial owners.</p> <p>The term “exempt beneficial owner” also includes any entity treated as an exempt beneficial owner pursuant to a Model 1 or 2 IGA.</p>
4.	FI	A depository institution, custodian institution, investment entity, or insurance company (or holding company of an insurance company) that issues cash value insurance or annuity contracts.
5.	Foreign Financial Institution (“ FFI ”)	Generally refers to an FI that is not organized in the U.S.
6.	Global Intermediary Identification Number (“ GIIN ”)	The identification number that is used to identify the FFI for FATCA purposes and that is issued by the IRS to the FFI upon registration.
7.	Intergovernmental Agreement (“ IGA ”)	An agreement between the U.S. and a non-U.S. government to implement FATCA.
8.	Limited FFI	An FI that due to local law restrictions cannot comply with the terms of an FFI Agreement, or cannot otherwise be treated as a PFFI or Registered Deemed Compliant FFI, and that has agreed to satisfy certain obligations for its treatment as a Limited FFI.
9.	Passive NFFE	An NFFE that is not an Active NFFE.
10.	Non-financial foreign entity (“ NFFE ”)	A non-U.S. entity that is not a foreign financial institution. The term also means a non-U.S. entity treated as an NFFE pursuant to a Model 1 IGA or Model 2 IGA.
11.	Nonparticipating FFI	An FFI other than a Participating FFI, a deemed-compliant FFI or an Exempt Beneficial Owner. There are additional rules on a Nonparticipating FFI under an IGA.



Term		Meaning/Background
12.	Non-Reporting FI	Any FI that is described in Annex II of a Model 1 or 2 IGA as a Non-Reporting Financial Institution or that otherwise qualifies as a deemed-compliant FFI or an exempt beneficial owner under relevant U.S. Treasury Regulations.
13.	Participating Financial Institution (“ PFFI ”)	An FFI that: <ul style="list-style-type: none"> (i) is an FI in a non-IGA jurisdiction that has registered with the IRS and entered into an FFI Agreement, (ii) is treated as a Reporting FI under a Model 2 IGA and that has agreed with the IRS that it will comply with the terms of an FFI Agreement, as modified by the terms of the applicable Model 2 IGA, or (iii) is a non-U.S. branch of a U.S. Financial Institution that has in effect a Qualified Intermediary Agreement with the IRS and that has also agreed to the terms of an FFI Agreement, unless such branch is treated as a Reporting FI under a Model 1 IGA.
14.	Registered Deemed Compliant FFI	<ul style="list-style-type: none"> (i) an FFI that has registered with the IRS to confirm that it meets the requirements to be treated as a local FFI, non-reporting member FI of a PFFI group, qualified collective investment vehicle, restricted fund, qualified credit card issuer, or sponsored investment entity or controlled foreign corporation (see Treas. Reg. §1.1471-5(f)(1)(i) for more information about these categories), or (ii) a Reporting FI under a Model 1 IGA that has registered with the IRS to obtain a GIIN, or (iii) an FFI that is treated as a Non-Reporting FI under a Model 1 or 2 IGA and, if applicable, that has registered with the IRS.
15.	Reporting Financial Institution (“ Reporting FI ”)	An FI in a Model 1 or 2 IGA jurisdiction that is not a Non-Reporting FI.

Certain information in this Glossary and other information in this Circular is derived from the IRS and the U.S. Treasury websites, and HKEx’s understanding of FATCA. While care has been taken to ensure accuracy of information provided, nothing in this Glossary or Circular is intended to be, or should be construed to constitute, legal or tax advice; and no information in this Glossary or Circular may be used or interpreted for the purpose of avoiding U.S. tax penalties. Participants should, if necessary, consult their own professional advisors on the implications of FATCA.

本詞彙表及通告內的若干資料是根據 IRS 和美國財政部網站，另加香港交易所對 FATCA 的理解而得出。雖然已經採取謹慎措施以確保所提供資料的準確性，但本詞彙表及通告並不旨在成為或被解釋為構成法律或稅務意見。本詞彙表及通告的任何信息不可以用作或解釋為逃避美國稅務罰款。參與者應就 FATCA 的影響徵詢其專業顧問意見。