

# Foreign Account Tax Compliance Act (FATCA) Fact Sheet

## **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. This Fact Sheet does not take into account the specific requirements of any individual bank in implementing their FATCA protocols. 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.*

## FATCA Fact Sheet

1	What is FATCA?	<ul style="list-style-type: none"> <li>• FATCA stands for the Foreign Account Tax Compliance Act provisions.</li> <li>• 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 instruments<sup>1</sup>.</li> <li>• FATCA impacts financial institutions and is implemented under a phased timeline commencing from 1st July 2014.</li> </ul>
2	Why is FATCA relevant to Hong Kong?	<ul style="list-style-type: none"> <li>• The Governments of Hong Kong and the U.S. signed an Inter-Governmental Agreement (“Hong Kong IGA”) on 13<sup>th</sup> 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.</li> <li>• The Hong Kong IGA essentially requires participating financial institutions to identify and report account information of Specified U.S. persons<sup>2</sup> 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.</li> </ul>
3	Under what circumstances will customers be requested by their banks in Hong Kong to provide FATCA related	<ul style="list-style-type: none"> <li>• 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</li> </ul>

	<p>information or documents?</p>	<p>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 Forms<sup>3</sup>, and other supporting documentation as required (collectively, “FATCA documentation”). FATCA documentation is kept by the banks and not passed to the U.S. authorities.</p> <ul style="list-style-type: none"> <li>• Existing individual and entity customers may also be contacted for FATCA documentation. Common scenarios include: <ul style="list-style-type: none"> <li>(a) The bank identifies customer information on file that indicates a connection with the U.S. (e.g. a U.S. address);</li> <li>(b) <i>[Applicable to entity customers only]</i> 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 Persons<sup>4</sup>;</li> <li>(c) FATCA documentation previously provided by the customer has expired or is no longer reliable.</li> </ul> </li> </ul>
<p>4</p>	<p>What happens if a customer does <i>not</i> provide the required FATCA-related documents or information?</p>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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”).</li> <li>• For financial institution customers, they will be classified as Nonparticipating Foreign Financial Institutions (NPFFI) and may be subject to 30%</li> </ul>

		<p>penalty withholding by the banks on behalf of IRS. Further, their financial account information will be reported to the IRS.</p> <p>Please refer to Question 5 for information that will be reported by the banks.</p>
5	<p>Which customers and what information are banks required to report to the IRS?</p>	<p>Bank are required to report the financial accounts of the following customer groups to the IRS:</p> <ul style="list-style-type: none"> <li>(a) Individual and entity customers that are Specified US persons<sup>2</sup> – information to be reported includes certain account holder information and financial account information<sup>5</sup></li> <li>(b) Entity customers with US Controlling Persons<sup>4</sup> – reportable information includes certain account holder information, controlling person information, as well as financial account information<sup>6</sup></li> <li>(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.</li> <li>(d) NPFFIs – 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.</li> </ul> <p>For customers that are not in the abovementioned customer groups, the banks will not pass their information to the US authorities under FATCA.</p>

6	How and where can customers get additional assistance regarding FATCA?	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> </ul>
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.?	<ul style="list-style-type: none"> <li>• As stated in question 3, banks may need to obtain Forms W-8, W-9 or Self-Certification Form<sup>3</sup> from their customers in order to ascertain the customer's entity tax status (i.e. FATCA classification).</li> <li>• Customers can view or download the U.S. Forms W-8/W-9 from the URL below: <a href="https://apps.irs.gov/app/picklist/list/formsInstructions.html?value=w8&amp;criteria=formNumber&amp;submitSearch=Find">https://apps.irs.gov/app/picklist/list/formsInstructions.html?value=w8&amp;criteria=formNumber&amp;submitSearch=Find</a></li> </ul>
8	Why are banks asking me to fill in the FATCA forms even if I have no relationships with the U.S.?	<ul style="list-style-type: none"> <li>• As stated in question 3, banks may need to obtain Forms W-8, W-9 or Self-Certification Form<sup>3</sup> from their customers to ascertain the customer's non-U.S. or U.S. tax status.</li> <li>• Customers can view or download U.S. Forms W-8/W-9 from the URL below: <a href="https://apps.irs.gov/app/picklist/list/formsInstructions.html?value=w8&amp;criteria=formNumber&amp;submitSearch=Find">https://apps.irs.gov/app/picklist/list/formsInstructions.html?value=w8&amp;criteria=formNumber&amp;submitSearch=Find</a></li> </ul>
9	My bank 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"> <li>• 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</li> </ul>

out a Self-Certification Form<sup>3</sup> 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>

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<sup>1</sup> The information of this fact sheet is based on U.S. Treasury Regulations and the Hong Kong Inter-Governmental Agreement (“IGA”).

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> 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.

# Automatic Exchange of Financial Account Information ("AEOI") Fact Sheet

## **Important Notice**

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*Specific independent legal and/or tax advice about your treatment under the Inland Revenue Ordinance (Cap. 112) (including in respect of the Inland Revenue (Amendment) (No.3) Ordinance 2016, any further changes to the Inland Revenue Ordinance for the purposes of the AEOI and any associated regulations) and your obligation to make disclosures to your financial institution should be sought separately. You should ensure that you consider the latest legislative requirements and guidance.*

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## AEOI Fact Sheet

1	What is AEOI/CRS?	<ul style="list-style-type: none"> <li>• AEOI stands for automatic exchange of financial account information.</li> <li>• CRS stands for Common Reporting Standard. It establishes the standard by which different countries/jurisdictions can perform AEOI.</li> <li>• AEOI/CRS is an international standard established by the Organisation for Economic Cooperation and Development (“OECD”) in July 2014 to enhance tax transparency and combat cross-border tax evasion.</li> </ul>
2	Why is AEOI relevant to Hong Kong?	<ul style="list-style-type: none"> <li>• Around 100 jurisdictions have committed to implementing AEOI. As a responsible international citizen and a leading financial centre, Hong Kong has committed to implement AEOI (<a href="http://www.fstb.gov.hk/tb/en/docs/pr_20151012_e.pdf">http://www.fstb.gov.hk/tb/en/docs/pr_20151012_e.pdf</a>).</li> <li>• The Inland Revenue (Amendment) (No. 3) Ordinance 2016 (the “Amendment Ordinance”) sets out the legislative framework for Hong Kong to implement AEOI under a phased timeline with due diligence procedures commencing from 1 January 2017. To deliver its commitment, Hong Kong will commence the first information exchanges by the end of 2018.</li> <li>• The Amendment Ordinance essentially requires financial institutions in Hong Kong, including banks, to identify and report information relating to financial accounts held by customers that are tax residents of reportable jurisdictions to the Hong Kong Inland Revenue Department (“IRD”). There are a total of 75 reportable jurisdictions according to the Inland Revenue (Amendment) (No.2) Ordinance 2017 as of 1 July 2017.</li> <li>• If the relevant reportable jurisdiction has concluded an AEOI agreement with Hong Kong, the IRD will perform information exchanges with that jurisdiction. Hong Kong has signed AEOI agreements with 14 jurisdictions as of 14 July 2017, and more such agreements are expected in the future.</li> <li>• Customers may refer to the IRD website for the list of reportable jurisdictions and the current list of jurisdictions that have signed AEOI agreements with Hong Kong. The website is <a href="http://www.ird.gov.hk/eng/tax/aeoi/rpt_jur.htm">http://www.ird.gov.hk/eng/tax/aeoi/rpt_jur.htm</a>.</li> <li>• In order to determine whether reporting is required and to provide accurate information to the IRD for information exchanges, banks are required to ascertain the tax residency of their customers and may need to obtain additional information or documentation from them.</li> </ul>

3	Under what circumstances will customers be requested by their banks in Hong Kong to provide AEOI-related information or documents?	<ul style="list-style-type: none"> <li>• During new account opening, banks are required to ascertain the tax residency of individuals (including sole proprietors) and entities (e.g. limited companies, trusts, etc.). Banks may obtain this information by asking customers to complete self-certification forms and provide other supporting documentation where necessary (collectively “AEOI documentation”).</li> <li>• Pre-existing individual and entity customers (i.e. customers whose accounts were opened before 1 January 2017) may also be contacted for AEOI documentation. Common scenarios where a bank may require further information from pre-existing customers include: <ul style="list-style-type: none"> <li>(a) The bank identifies customer information on file that indicates a connection with a reportable jurisdiction (e.g. identification of the account holder as a tax resident of a reportable jurisdiction, an address in a reportable jurisdiction, one or more telephone numbers in a reportable jurisdiction with no telephone number in Hong Kong, standing instructions to transfer funds to an account maintained in a reportable jurisdiction, a power of attorney or authorized signatory whose address is in a reportable jurisdiction, a hold mail or in-care-of address in a reportable jurisdiction with no other address on file for the customer.);</li> <li>(b) The bank identifies customer information on file that indicates a connection with a foreign residence (e.g. identification of the account holder as a non-Hong Kong tax resident, a non-Hong Kong address, one or more non-Hong Kong telephone numbers with no telephone number in Hong Kong, standing instructions to transfer funds to an account maintained outside Hong Kong, a power of attorney or authorized signatory whose address is not in Hong Kong, a non-Hong Kong hold mail or in-care-of address with no other address on file for the customer.);<sup>i</sup></li> <li>(c) [Applicable to entity customers only] The bank does not have sufficient customer information on hand to internally determine the customer’s entity classification under AEOI and/or that of the customer’s controlling persons<sup>ii</sup>,</li> <li>(d) AEOI documentation previously provided by the customer is no longer reliable.</li> </ul> </li> </ul>
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4	<p>Why are banks asking me / my company to fill in a self-certification form? What is this form about?</p>	<ul style="list-style-type: none"> <li>• Banks will need to have sufficient information about the individual or entity customer to identify the tax residency of the customer.</li> <li>• The self-certification form is an important document that enables banks to collect relevant information from their customers. It is a formal declaration that customers make in connection with their tax residency(ies) and (in relation to an entity customer) the entity classification for AEOI purposes. Under the Amendment Ordinance, an account holder who knowingly or recklessly provides a statement that is misleading, false or incorrect in a material particular in making a self-certification is liable on conviction to a fine at level 3 (\$10,000).</li> <li>• According to the due diligence procedures set out in the Amendment Ordinance, self-certifications are required from customers for all new accounts (i.e. accounts opened on or after 1 January 2017). For pre-existing accounts (i.e. accounts opened before 1 January 2017), depending on the customer information on record (e.g. address), banks can seek self-certifications from the customers to determine their tax residency as part of their due diligence procedures.</li> </ul>
5	<p>What happens if a customer does not provide the required AEOI-related information or documents?</p>	<ul style="list-style-type: none"> <li>• The Amendment Ordinance imposes a legal obligation on financial institutions to obtain a self-certification from new customers. If a new customer does not provide the self-certification as required, the account application will likely not be accepted.</li> <li>• For a pre-existing customer that does not provide self-certification and/or other supporting documents when requested, as prescribed by the Amendment Ordinance, the bank will need to determine the customer’s tax residency based on the information currently on record, and if this is in a reportable jurisdiction, the bank will need to report the relevant account information to the IRD. The IRD will, in due course, perform information exchange with jurisdictions that have signed AEOI agreements with Hong Kong.</li> <li>• Please refer to Question 7 for information that will be reported by the banks.</li> </ul>
6	<p>Why are banks asking me additional questions even after I provided a self-certification form?</p>	<ul style="list-style-type: none"> <li>• In accordance with the Amendment Ordinance, banks must confirm the reasonableness of the self-certification received based on the information obtained in connection with the opening of the account, including any documentation collected pursuant to AML/KYC procedures (i.e. the “reasonableness” test).</li> <li>• If any part of the self-certification is found to be incorrect, incomplete, or apparently in conflict with the information held by the banks, they must obtain a new self-certification form or</li> </ul>

		an explanation and/or supporting documents from the customer.
7	What customers and what information are banks required to report to the IRD?	<ul style="list-style-type: none"> <li>• Banks are required to report financial accounts held by individuals and entities (including controlling persons of certain types of entities) that are tax residents of reportable jurisdictions.</li> <li>• Information to be reported include the following: <ul style="list-style-type: none"> <li>(1) account data (such as name, address, date of birth (for individuals), jurisdiction of residence and taxpayer identification number (“TIN”) of the account holder); and</li> <li>(2) financial data (such as account number, interest, dividends, account balance or value, income from certain insurance products, sales proceeds from financial assets and other income generated with respect to assets held in the account or payments made with respect to the account).</li> </ul> </li> <li>• Financial account information of customers whose sole tax residency is Hong Kong will not be reported to the IRD under the AEOI regime.</li> </ul>
8	Can I check my tax residency status held with my bank(s), and how?	<ul style="list-style-type: none"> <li>• In accordance with the Personal Data (Privacy) Ordinance (“PDPO”), customers have the right to request access to their personal data.</li> <li>• Customers can make use of account servicing channels of banks to check and/or update their tax residency status as needed.</li> </ul>
9	Why is it important to update my bank(s) of any change in circumstances which affects my tax residency status (e.g. cease to be / newly become a tax resident of a non-Hong Kong jurisdiction (including reportable and non-reportable jurisdiction)?	<ul style="list-style-type: none"> <li>• Banks are required to report the financial accounts of customers that are tax residents of reportable jurisdictions to the IRD on an annual basis.</li> <li>• The Amendment Ordinance allows a financial institution to collect information from a customer that indicates a connection with a foreign residence (even though this overseas jurisdiction may not be a reportable jurisdiction yet). This is because more jurisdictions may be added to the list of reportable jurisdictions. It is therefore important that customers advise banks of any change in (including cessation of) their tax residency status to ensure accurate and up-to-date information is being reported as required.</li> <li>• Generally, a customer should provide the bank with a suitably updated self-certification form within 30 days of such change in circumstances.</li> </ul>
10	How and where can customers get additional assistance regarding AEOI?	<ul style="list-style-type: none"> <li>• The IRD has issued guidance and reference materials such as pamphlets and frequently asked questions (“FAQs”). Customers should refer to the IRD website for more details: <a href="http://www.ird.gov.hk/eng/tax/dta_aeoi.htm">http://www.ird.gov.hk/eng/tax/dta_aeoi.htm</a>.</li> </ul>

		<ul style="list-style-type: none"> <li>• In addition, customers may refer to the OECD’s AEOI portal for information regarding the definition of tax residency and TINs in different jurisdictions. The website is <a href="http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/">http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/</a>.</li> <li>• Please note that banks are not to offer any tax advice, notably the determination of tax residency or entity classification, to their customers. As such, for any tax related questions that cannot be resolved, customers should seek advice according to their own circumstances from professional legal and/or tax advisors.</li> </ul>
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<sup>i</sup> The Amendment Ordinance allows a financial institution to collect information from an account holder that indicates a connection with a foreign residence (even though this overseas jurisdiction may not be a reportable jurisdiction yet). This is because more jurisdictions may be added to the list of reportable jurisdictions.

<sup>ii</sup> “Controlling Persons” are the natural person(s) who exercise control over an Entity. In the case of a trust, the Controlling Person(s) are the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, or any other natural person(s) exercising ultimate effective control over the trust (including through a chain of control or ownership). The settlor(s), the trustee(s), the protector(s) (if any), and the beneficiary(ies) or class(es) of beneficiaries, must always be treated as Controlling Persons of a trust, regardless of whether or not any of them exercises control over the activities of the trust. Where the settlor, trustee, protector or beneficiary of a trust are themselves Entities then the Controlling Persons of the settlor, trustee, protector or beneficiary must be treated as Controlling Persons of the trust. In the case of a legal arrangement other than a trust, Controlling Person(s) means persons in equivalent or similar positions to those of a trust. (Source: <http://www.ird.gov.hk/eng/pdf/2016/terms.pdf>)