

Hong Kong Retirement Schemes Association

Foreign Account Tax Compliance Act (FATCA)

26 March 2014

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Foreign Account Tax Compliance Act (“FATCA”)

- US tax law that was enacted in 2010
- Aimed at preventing US tax evasion by US persons
 - By providing the US tax authorities with an increased ability to detect US citizens and residents hiding assets through **foreign financial institutions (“FFI”)**
 - FFIs need to **comply with terms of an FFI agreement** with US government to **prevent a new 30% US withholding tax** on some payments received
- The first FATCA readiness date is 1 July 2014
- Hong Kong negotiating an **intergovernmental agreement on FATCA** with the US

Who can generally be an FFI?

ORSOs

Pooled ORSOs

APIFs

MPFs

*Asset
Custodians*

*Other Investment
Funds*

Trustees

*Banks,
Insurance
Companies*

*Fund
Managers*

Note: The above is very general in nature and cannot be relied on. Each entity should consider its own FATCA status, which depend son its particular facts and circumstances.

How does FFI comply with FATCA, if not exempt?

- FFI needs to **register with the US Government** and agree to comply with the terms of an **FFI Agreement** including:
 - Collect more information (e.g., self-certification or IRS Form W-8 and/or other additional information required) and undertake other **due diligence procedures** when **accepting new scheme members**
 - Meet enhanced **due diligence procedures** to identify **existing** US scheme members, as well as specified other categories of “financial account” holders
 - **Report to the IRS** the US scheme members and other specified financial account holders
 - **Withhold** 30% US tax on some payments made to FFIs that don’t comply with FATCA
 - **Responsible Officer** at the FFI has to personally **certify** to the US Government the FFI has complied with the terms of the FFI agreement

Thank you!

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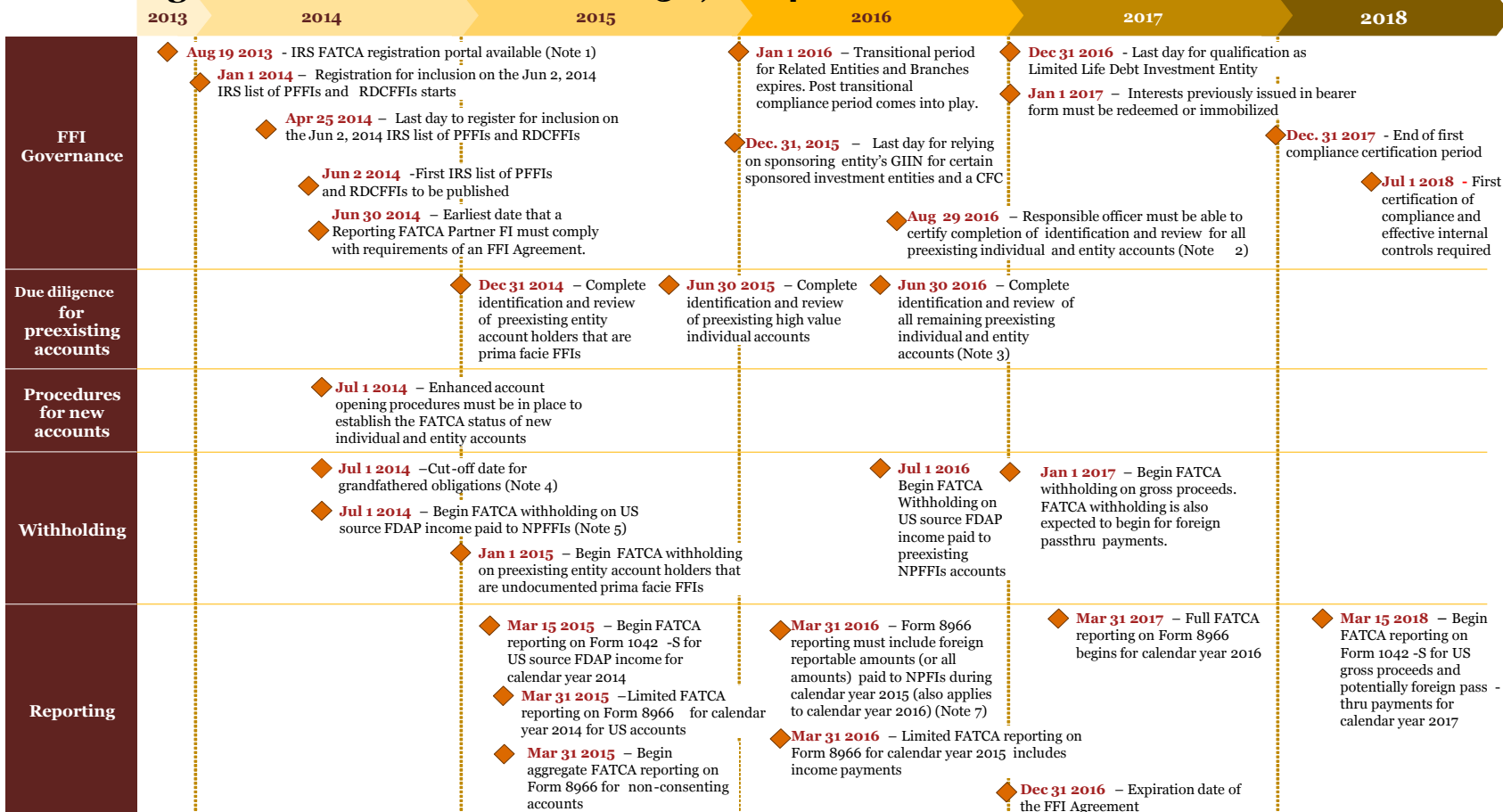
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FATCA timeline for FFIs under Model II IGAs

For FFI agreements effective on June 30, 2014



- (1) The FATCA registration website is accessible to financial institutions as of August 19, 2013.
- (2) As part of the certification, FFI must also certify that it did not have any procedures in place from August 6, 2011 that would assist account holders in the avoidance of FATCA.
- (3) Certain de minimis thresholds and retesting rules may apply.
- (4) Generally applies to obligations that can produce a withholdable payment. Grandfathered obligations also include: (1) any obligation that gives rise to a withholdable payment solely because the obligation is treated as giving rise to a dividend equivalent pursuant to section 871(m) and the regulations thereunder, provided that the obligation is executed on or before the date that is six months after the date on which obligations of its type are first treated as giving rise to dividend equivalents; (2) with respect to foreign passthru payments, any obligation that is executed on or before the date that is six months after the date on which final regulations defining the term foreign passthru payment are filed with the federal register; and (3) any agreement requiring a secured party to make a payment with respect to, or to repay, collateral posted to secure a grandfathered obligation.
- (5) Withholding on US source FDAP income for non-consenting accounts starts on Jul, 1, 2014. However, being qualified as a non-consenting account under Model 2 IGA requires that a previous group request filed by the IRS was not successful.
- (6) Limited reporting includes name, address, TIN, account number, and account balance of each specified US person who is an account holder. For account holders that are treated as a US owned foreign entity or an owner-documented FFI, report the name, address and TIN of each substantial US owner of a US owned foreign entity, or each direct or indirect owner of an owner documented FFI that is a specified US person.
- (7) The Treasury and IRS intends to modify the reporting requirements for foreign reportable amounts under which the reporting would be required only for the foreign reportable amounts paid with respect to financial accounts.

FATCA timeline for PFFIs in non-IGA countries

For FFI agreements effective on June 30, 2014

	2013	2014	2015	2016	2017	2018	
FFI Governance	<ul style="list-style-type: none"> Aug 19 2013 - IRS FATCA registration portal available (Note 1) 	<ul style="list-style-type: none"> Jan 1 2014 - Registration for inclusion on the Jun 2, 2014 IRS list of PFFIs and RDCFFIs starts Apr 25 2014 - Last day to register for inclusion on the Jun 2, 2014 IRS list of PFFIs and RDCFFIs Jun 2 2014 - First IRS list of PFFIs and RDCFFIs to be published Jun 30 2014 - Earliest effective date of an FFI Agreement 		<ul style="list-style-type: none"> Jan 1 2016 - Expanded affiliated group transition period ends for Limited FFIs and Limited Branches Dec 31, 2015 - Last day for relying on sponsoring entity's GIIN for certain sponsored investment entities and a CFC. 	<ul style="list-style-type: none"> Dec 31 2016 - Last day for qualification as Limited Life Debt Investment Entity Jan 1 2017 - Interests previously issued in bearer form must be redeemed or immobilized 		<ul style="list-style-type: none"> Dec. 31, 2017 - End of first compliance certification period July 1, 2018 - First certification of compliance and effective internal controls required
Due diligence for preexisting accounts			<ul style="list-style-type: none"> Dec 31 2014 - Complete identification and review of preexisting entity account holders that are prima facie FFIs 	<ul style="list-style-type: none"> Jun 30 2015 - Complete identification and review of preexisting high value individual accounts 	<ul style="list-style-type: none"> Jun 30 2016 - Complete identification and review of all remaining preexisting individual and entity accounts (Note 3) 		
Procedures for new accounts		<ul style="list-style-type: none"> Jul 1 2014 - Enhanced account opening procedures must be in place to establish the FATCA status of new individual and entity accounts 					
Withholding		<ul style="list-style-type: none"> Jul 1 2014 - Cut-off date for grandfathered obligations (Note 4) Jul 1 2014 - Begin FATCA withholding on US source FDAP income for insufficiently documented new entity accounts and NPFFIs 	<ul style="list-style-type: none"> Jan 1 2015 - Begin FATCA withholding on preexisting entity account holders that are undocumented prima facie FFIs 	<ul style="list-style-type: none"> Jul 1 2015 - Begin FATCA withholding on any undocumented individual preexisting high value account 	<ul style="list-style-type: none"> Jul 1 2016 - Begin FATCA withholding on remaining undocumented preexisting accounts 	<ul style="list-style-type: none"> Jan 1 2017 - Begin FATCA withholding on gross proceeds. FATCA withholding is also expected to begin for foreign pass-thru payments. 	
Reporting			<ul style="list-style-type: none"> Mar 15 2015 - Begin FATCA reporting on Form 1042 -S for US source FDAP income for calendar year 2014 Mar 31 2015 - Limited FATCA reporting on Form 8966 for calendar year 2014 for US accounts (Note 5) Mar 31 2015 - Begin aggregate FATCA reporting on Form 8966 for recalcitrant accounts 	<ul style="list-style-type: none"> Mar 31 2016 - Form 8966 reporting must include foreign reportable amounts (or all amounts) paid to NPFFIs during calendar year 2015 (also applies to calendar year 2016) (Note 6) Mar 31 2016 - Limited FATCA reporting on Form 8966 for calendar year 2015 includes income payments 	<ul style="list-style-type: none"> Mar 31 2017 - Full FATCA reporting on Form 8966 begins for calendar year 2016 	<ul style="list-style-type: none"> Mar 15 2018 - Begin FATCA reporting on Form 1042 -S for US gross proceeds and potentially foreign pass-thru payments for calendar year 2017 	

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(5) Limited reporting includes name, address, TIN, account number, and account balance of each specified US person who is an account holder. For account holders that are treated as a US owned foreign entity or an owner-documented FFI, report the name, address and TIN of each substantial US owner of a US owned foreign entity, or each direct or indirect owner of an owner-documented FFI that is a specified US person.

(6) The Treasury and IRS intends to modify the reporting requirements for foreign reportable amounts under which the reporting would be required only for the foreign reportable amounts paid with respect to financial accounts. A PFFI may elect to report all amounts.