

U.S. Foreign Account Tax Compliance Act (FATCA)

Notes for signing:

- < Active Non-Financial Foreign Entity Declaration >
- < Non Profit Organisation Declaration >

IMPORTANT - This document must be read with the Disclaimer which forms part of it.

BACKGROUND

There are a number of substantial changes being made by financial regulators, governments and banks to ensure the protection and long-term safety of both the financial system and our customers' interests. One of these changes is the U.S. Foreign Account Tax Compliance Act ("FATCA"), which has been introduced by the US government as part of the United States Internal Revenue Code of 1986 (together with regulations made under the Code). The purpose of FATCA is to report financial assets owned by United States persons to the United States tax authorities.

How does FATCA affect GF Securities (Hong Kong) Brokerage Limited and you?

GF Securities (Hong Kong) Brokerage Limited has made a commitment to being fully FATCA compliant in all countries where we operate. This means we have to report affected customers' income and profit details to the US tax authorities. In order to do so, we will need to obtain additional information from our customers to identify US Persons (USPs) and Foreign Financial Institutions (FFIs). There may also be other customers who we have to identify for this purpose. Every year insurance companies and other financial organisations will be required to report information on policies and financial accounts held directly or indirectly by US Persons.

Where we are not able to obtain the required information or documentation from our customers, we may be required to apply U.S. withholding taxes in respect of certain types of payments we make to our customers or our customers' policies and these are known as 'withholdable payments'. We may also be required to end customer relationships.

In order to identify the customers where reporting under FATCA may apply, we need to match our customer base against certain categories set out in the FATCA legislation.

Does this apply to you?

Whilst most FATCA categories set out in the legislation are not reportable, some may be applicable to our customers. In order to make sure that we are able to match our customers against the FATCA categories, we are asking our customers to provide confirmation of their FATCA status, review the conditions that apply, and confirm that they are satisfied. GF Securities (Hong Kong) Brokerage Limited is not able to provide tax advice in respect of this process or for FATCA classification purposes.

Who do we need to report under FATCA?

We are required to report certain information on policies held by Specified US Persons. This includes policies held by U.S. citizens and U.S. residents, certain corporations or partnerships created or organised in the United States, as well as policies held by certain passive Non-Financial Foreign Entities (please see the section on Passive Income and the section What is meant by a Passive Non-Financial Foreign Entity (Passive NFFE) under FATCA?) with shareholders who are U.S. citizens or U.S. resident persons. We will also be required to report certain information on customers or financial counterparties who do not provide us with documentation to establish a tax status under FATCA.

What is a withholdable payment?

In the simplest of terms, a withholdable payment is a payment of either: US source income that is fixed or determinable, annual or periodical (FDAP) income; or, after 31 December 2016, gross proceeds from the sale or other disposition (including redemption) of property that can produce US source interest or dividend income. This definition is subject to change and may be widened in the future. Withholding on these different types of payment is phased in over a period to 1 January 2017.

What is an Active Non-Financial Foreign Entity (Active NFFE) under FATCA?

The term 'Active NFFE' generally refers to an entity that operates an active trade or business other than that of a financial business.

We are not required to report information on Active NFFEs or their shareholders under FATCA as long as the following criteria are met:

- The entity is not a United States person (refer definition of United States person below).
- The entity is not a financial institution. Please refer to the section 'What is meant by a Financial Institution under FATCA' for further information.
- Less than 50 percent of the entity's gross income for the preceding calendar year is passive income. Please refer to the section 'What is meant by Passive Income' for further information.
- Less than 50 percent of the assets held by the entity are assets that produce or are held for the production of passive income (calculated as a weighted average of the percentage of passive assets measured quarterly). The value of the entity's assets is determined based on the fair market value or book value of the assets that is reflected on the entity's balance sheet (as determined under either a U.S. or an international financial accounting standard).

GF Securities (Hong Kong) Brokerage Limited is not able to provide tax advice in respect of this process.

United States person

The term 'United States person' includes:

- A citizen or resident of the United States
- A corporation or partnership created or organized in the United States of America or under the law of the United States or of any State of the United States of America

- Any estate other than non-United States estate (non-United States estate means an estate the income of which, from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States, is not includible in gross income under subtitle A of the United States Internal Revenue Code)
- Any trust if – (i) a court within the United States is able to exercise primary supervision over the administration of the trust, and (ii) one or more United States persons have the authority to control all substantial decisions of the trust.

What is meant by Passive Income?

Passive income generally includes:

- Dividends including income equivalent to dividends (also known as substitute dividends)
- Interest including income equivalent to interest and certain returns from investments in insurance contracts
- Certain rents and royalties other than those derived from an active trade or business
- Annuities
- Net gains from transactions, including forwards and similar transactions relating to certain types of transactions in commodities
- Certain foreign currency exchange gains
- Net income from notional principal contracts
- Amounts received under cash value insurance contracts or amounts earned by an insurance company in connection with its reserves for insurance and annuity contracts
- Net gains from the sale of assets that give rise to certain of the above types of income.

Passive income excludes:

- Any income from interest, dividends, rents or royalties that is received or accrued from a related person to the extent such amount is properly allocable to income of such related person that is not passive income.
- Income generated by certain commodities dealers and securities dealers in the ordinary course of business.

For a detailed definition of passive income, please refer to the United States Internal Revenue Code and regulations thereunder, §1.1472-1(c)(1)(iv)(A)-(B).

What is meant by a Financial Institution under FATCA?

The term ‘financial institution’ is broadly defined under FATCA and generally includes all banks, entities with custody of financial assets, certain types of insurance companies, asset management companies and certain investment funds or investment vehicles. An entity which appoints a trustee company or an entity that is a third party asset manager or acts as the holding company to a group of companies carrying on a financial business may also fall within the definition of financial institution, as well as certain types of treasury and group financing companies.

For a detailed definition of financial institution, please refer to United States Internal Revenue Code and regulations thereunder, §1.1471-5(e)(1) to (6).

What is a Non-Profit Organisation under FATCA?

The term ‘Non-Profit Organisation’ refers generally to an entity or organisation of a non-profit nature that exclusively engages in religious, charitable, scientific, artistic, cultural or educational activities. We are not required to report information on Non-Profit Organisations under FATCA. The FATCA legislation imposes certain conditions which need to be satisfied in order for an entity or organisation to qualify as a ‘Non-Profit Organisation’ under FATCA. The conditions are aimed at ensuring that the entity or organisation is established outside of the United States of America, that it has a genuine charitable motive, and that it is not a vehicle to facilitate US tax avoidance.

What is meant by a Passive Non-Financial Foreign Entity (Passive NFFE) under FATCA?

Very broadly, Passive NFFEs are defined under FATCA as entities, organizations, or companies that are in receipt of passive income or hold passive assets and do not fall under any of the other FATCA classifications. These entities do not carry on a business of a financial institution.

GF Securities (Hong Kong) Brokerage Limited needs to understand the ownership of such entities to determine whether reporting under FATCA applies in respect of substantial U.S. owners of a Passive NFFE.

DISCLAIMER

This document is intended solely for the customers of GF Securities (Hong Kong) Brokerage Limited to whom it is provided and not for any other person. It is a summary for information purposes only and general in nature. It should not be considered as tax or legal advice. GF Securities (Hong Kong) Brokerage Limited makes no guarantee of its accuracy and completeness and is not responsible for any errors, nor shall GF Securities (Hong Kong) Brokerage Limited be liable for any loss that results from reliance upon this information. Customers should seek professional legal and tax advice specific to their own situation.

The Chinese translation is for reference only. In case of any discrepancy between the English version and the Chinese version, the English version shall prevail.

美國《海外帳戶稅收合規法案》(U.S. FATCA)

此為簽署以下聲明之備註:

活躍非金融外國實體聲明

非營利組織聲明

重要: 本文件必須與作為其組成部分的免責聲明一併閱讀。

背景

金融監管機構、政府及銀行正作出多項重要改變，以確保能長遠保障金融系統及客戶利益。其中一項變動為美國政府所頒佈成為 1986 年美國國內稅收法一部份的美國《海外帳戶稅收合規法案》(“FATCA”)。FATCA 旨在向美國稅務機關申報由美國人士所擁有的金融資產。

FATCA 對廣發證券(香港)經紀有限公司及閣下的影響?

廣發證券(香港)經紀有限公司致力在所有經營地全面遵從 FATCA 法案。這代表我們需要向美國稅務機關申報受影響的客戶的收入和利潤。為此，我們需要從客戶取得更多資料，以識別美國人士(USPs)和外國金融機構(FFIs)或其他客戶。保險公司及其他金融組織需每年申報美國人士直接或間接持有的保單及金融帳戶的資料。如我們無法從客戶取得所需的資料或文件，我們可能需要從向客戶或客戶保單支付的若干款項中扣起美國稅項，稱為「可扣繳款項」。我們也可能需要終止與客戶的關係。

為了識別可能需按 FATCA 進行申報的客戶，我們將根據 FATCA 法案列明的類別對客戶進行分類。

這是否適用於閣下?

雖然大部份 FATCA 類別並不需被申報，部份類別亦可能適用於我們的客戶。為了確保我們能按 FATCA 類別給客戶做出配對，現要求客戶確認其於 FATCA 下的身份、審閱適用條件並確認其符合條件。

廣發證券(香港)經紀有限公司不能夠就這一 FATCA 分類過程提供任何稅務意見。

根據 FATCA 我們需要就誰進行申報?

我們須就由特定美國人士 (Specified US Persons) 持有的保單申報若干資料。這包括由美國公民和美國居民、若干在美國設立或組成的企業或合夥公司、以及某些股東為美國公民或美國居民的被動實體所持有的保單(詳情請參閱有關被動收入的章節及「根據 FATCA 何謂被動的非金融外國實體?」章節)。我們也需要就沒有向我們提供文件以確認其於 FATCA 下的稅務身份的客戶或財務對手作出若干資料申報。

何謂可扣繳款項?

簡單來說，可扣繳款項乃：固定或可確定的每年或定期 (FDAP) 的美國來源收入；或 2016 年 12 月 31 日後，來自出售或以其他方式處置 (包括贖回) 可產生美國來源利息或股息收入的資產所得的總資金收入。其定義在未來也許會變更及範圍也許會擴大。這些款項的扣繳會在 2017 年 1 月 1 日前分階段引進。

根據 FATCA 何謂「活躍非金融外國實體」?

活躍非金融外國實體 (Active Non-Financial Foreign Entity) 一般是指屬於活躍經營但非從事金融業務的實體。根據 FATCA，如符合以下條件，我們無須就活躍非金融外國實體或其股東申報資料。

- 該實體並非美國人士(請參閱以下美國人士的定義)。
- 該實體並非金融機構。詳情請參閱「根據 FATCA 何謂金融機構」章節。
- 該實體在前一個日曆年的被動收入佔總收入少於 50%。詳情請參閱「何謂被動收入」章節。
- 該實體所持有的可帶來或持有以產生被動收入的資產佔資產少於 50% (按季度以被動資產加權平均百分比計算)。該實體的資產價值是按公平市價或該實體的資產負債表上所反映的資產賬面價值(按美國或國際會計準則計算)而定。

廣發證券(香港)經紀有限公司不能夠就這過程提供任何稅務意見。

美國人士

「美國人士」包括:

- 美國居民或公民
- 在美國或根據美國法律或美國任何州的法律註冊設立或組成的公司或合夥公司
- 任何非美國遺產(非美國遺產是指一遺產而其收入並非來源於美國、與在美國進行的貿易或商業行為無實際聯繫及並不涵蓋於美國國內稅收法 A 分編的總收入項下)
- 任何信託符合 - (i) 美國法院能夠對信託行政執行主要監督，及(ii)一個或以上的美國人士擁有能控制信託所有重大決定的權力

何謂被動收入 (Passive Income)?

被動收入一般包括:

- 股息，包括等同股息的收入(又稱替代股息)
- 利息，包括等同利息收入和若干來自保險合同投資的回報
- 若干非衍生自主動經營式業務的租金和特許權使用費

- 年金
- 來自交易的淨收益，包括與若干商品交易類型有關的遠期及類似交易
- 若干外匯兌換收益
- 來自名義本金合同的淨收益
- 來自具有現金價值之保險合同的款項或保險公司就其保險儲備和年金合同所賺取的款項
- 來自出售可帶來部份上述收入類的資產的淨收益

被動收入不包括：

- 已收取或應計入的來自相關人士的利息、股息、租金或特許權使用費收入，而該等款項是可適當地分配到該相關人士的非被動收入。
- 商品交易商及證券交易商在日常業務過程中產生的收入。
- 有關被動收入的詳細定義，請參閱美國國內稅收法第§1.1472-1(c)(1)(iv)(A)-(B)條。

根據 FATCA 何謂金融機構？

根據 FATCA，「金融機構」的定義頗廣泛，一般而言包括所有的銀行、保管金融資產的實體、若干類型的保險公司、資產管理公司及若干投資基金或投資實體。委任受託人公司或第三方資產管理人、或一間或一組主要從事非金融貿易或業務之公司的控股公司、以及若干類型的財資公司，也可能符合金融機構的定義。

有關金融機構的詳細定義，請參閱美國國內稅收法第§1.1471-5(e)(1)至(6)條。

根據 FATCA 何謂非營利組織？

「非營利組織」(Non-Profit Organisation) 一般是指專門從事於宗教、慈善、科學、藝術、文化或教育活動的非營利性質實體或組織。根據 FATCA，我們無須就非營利組織申報資料。

FATCA 法規設定若干條件，實體或組織必須滿足這些條件才有資格成為 FATCA 承認的非營利組織。這些條件旨在確保在美國以外成立的實體或組織是真正本著慈善動機，而非作為方便逃避美國稅項的工具。

根據 FATCA 何謂「被動的非金融外國實體」？

根據 FATCA，廣泛而言，被動的非金融外國實體包括收取被動收入或持有被動資產而並沒有歸入其他 FATCA 類別的實體、組織或公司。這些實體並非從事金融機構業務。

廣發證券(香港)經紀有限公司需了解這些實體的擁有權以決定是否需要就被動的非金融外國實體的實質美國持有人按 FATCA 進行申報。

免責聲明

此文件僅提供予廣發證券(香港)經紀有限公司向其發送之客戶而非任何其他人士。內容為一般性質及只作信息摘要之用。客戶不應視此為稅務或法律意見。廣發證券(香港)經紀有限公司不保證文件內容的準確性和完整性，對任何錯誤或由於依賴此等 FATCA 信息而導致的任何損失概不承擔任何責任。客戶應向專業顧問就其本身情況尋求專業的法律及稅務意見。

中文譯本僅供參考，文義如與英文有歧義，概以英文本為準。