

HONG KONG TAX ALERT

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Hong Kong Edges Closer to FATCA

Hong Kong and the United States have substantially concluded discussions on an IGA facilitating compliance by financial institutions in Hong Kong with FATCA.

FATCA requires financial institutions outside the US to report financial account information of US taxpayers to the United States revenue authorities (IRS).

Intergovernmental Agreements (IGA) seek to address country-specific legal barriers such as data privacy regulations that put financial institutions at risk when they try to comply with FATCA.

Penalties for non-compliance of foreign financial institutions is a 30% withholding tax applied to all payments to the institutions by US based or foreign FATCA-compliant entities

Following the completion of substantive discussions, Hong Kong and the US are expected to sign a Model 2 IGA later this year. There are two models of IGAs:

- A Model 1 IGA requires financial institutions outside the US to report account information of US taxpayers to their own government, which will commit to exchanging such information on an automatic basis at a governmental level with the IRS.
- A Model 2 IGA requires financial institutions to report the relevant account information of US taxpayers directly to the IRS. This is supplemented by group requests made by the IRS for exchange of information on relevant US taxpayers at a government level.

The Model 2 IGA, which is Hong Kong's preferred option, will require Hong Kong based financial institutions to report the relevant account information of US taxpayers directly to the IRS. Financial institutions in Hong Kong will need to register and conclude separate individual agreements with the IRS. Under these agreements, the institutions will seek consent of their account holders who are US taxpayers for reporting their account information to the IRS on an annual basis. The operation of the Model 2 IGA will be supplemented by exchange of information provide for in the Tax Information Exchange Agreement signed between Hong Kong and the United States in March 2014.

It is anticipated that the conclusion of the Model 2 IGA will result in a reduction of the reporting burden and facilitate compliance with FATCA by financial institutions in Hong Kong. The IGA will cover exemptions for financial institutions or products which present low risks for tax evasion by US taxpayers.

This announcement is a positive development as it provides Hong Kong financial institutions impacted by the FATCA regulations with welcome relief from certain provisions of the FATCA regulations and will enable them ensure compliance with greater efficiency and certainty.

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