

The SFC's recent inquiry into FATCA Certifications: Implications for Hong Kong financial institutions

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The SFC's recent activities

Recently, the SFC has made inquiries of Hong Kong Financial Institutions regarding their compliance with FATCA Responsible Officer (RO) certifications. The SFC has reached out to Financial Institutions on overdue certifications and questioned the reasons for non-compliance, remediation actions and timeline to complete. Non-compliance with FATCA requirements can potentially carry a penalty of 30% withholding tax on US sourced income imposed by the US Internal Revenue Service (IRS).



RO Certifications

The designated Responsible Officers of Participating Foreign Financial Institution (FFI) or Reporting Model 2 FFI in Hong Kong should certify their financial institutions' compliance with FATCA by submitting certifications to the IRS. The following illustrates the requirements for the submission of both one-time and periodic certifications:

1	One-Time Certification	2	Periodic Certification
	<ul style="list-style-type: none">• Completion of the required due diligence identification procedures for pre-existing accounts; and• After conducting a reasonable inquiry, the FFI did not have any practices or procedures in place to assist account holders to avoid FATCA.		<ul style="list-style-type: none">• Establish a Compliance Programme that is in effect as of the date of the certification and that has been subjected to regular review• No material failures for the certification period, or if there are any material failures, appropriate actions were taken to remediate material failures and to prevent future occurrences, and;• With respect to any failure to withhold, deposit, or report to the extent required by the FFI agreement, FFI has corrected such failure by paying any taxes due and filing the appropriate return (or amended return)



RO's Role and Responsibilities

The RO is the person authorised under applicable laws and regulations to act on behalf of the FFI to represent the FATCA status of the FFI. The RO is charged with overseeing the FATCA framework and certifying compliance with FATCA on behalf of their institutions. The RO's main duties include:

- Certifying compliance of the FFI with FATCA to the IRS
- Establishing a FATCA compliance program
- Notifying the IRS of material failures or non-compliance with FATCA requirements

Duties of the RO:

- Are you fully aware of the role, responsibilities and obligations of a RO?
- Are you comfortable that the current FATCA framework of your financial institution is in line with the prevailing requirements and that there are no material failures for the period under review?
- Are you aware of the recent regulatory updates to FATCA, and have the updates been incorporated into the framework?
- Have you conducted periodic reviews on your financial institution’s compliance program?
- Have you conducted a reasonable internal inquiry necessary for FATCA certifications?
- Do you know the key steps required for certification in the relevant period?



Impact on Financial Institutions and ROs

Any breach of FFI requirements, if unattended, may taint the compliance status of your financial institution, potentially prompting counterparties to withhold payments to your financial institution or suspend business relationships.

ROs, who are designated by financial institutions to oversee the FATCA framework and certify compliance with FATCA, may struggle to assess the compliance status of their financial institutions, and determine and collect sufficient supporting evidence to help them substantiate their certifications.

How KPMG can help

Our range of advisory services provides varying levels of support for your FATCA framework and can be tailored to the specific circumstances of your financial institutions.

Below is an overview of our services relating to RO Certification:

01 FATCA Health-Check

- Structured review against the prevailing FATCA requirements
- Defined approach with process walk-through and sample testing
- Pragmatic recommendations
- Optional inclusion of remediation support and post-implementation review

Key Benefits



- Suitable for FFI looking for a full range of support for RO certification from an external consultant
- Independent assessment of FATCA compliance as the basis for RO certification
- Pragmatic recommendations on alignment of policies, procedures and controls with the prevailing FATCA requirements
- Access to industry best practices and subject matter experts with past experience with IRS
- Advisory on remediation to support ground-level execution and drive best practices within the financial institution
- Support for handling of non-compliant events or material failures (if any)

02 Compliance Program

- Tailored compliance monitoring program with suggested controls and testing steps for ongoing compliance assessment

Key Benefits



- Suitable for FFIs looking for an external consultant to help strengthen the FATCA framework
- Proprietary program with end-to-end mapping of all prevailing FATCA regulations, control objectives, controls and suggested test steps, enabling relevant business units to independently assess control effectiveness and compliance with FATCA on an ongoing basis
- Sustainable solution enabling FFI to be self-reliant and perform ongoing testing procedures satisfying future FATCA certifications
- Specific guidance on how procedures can be enhanced with consideration of suggested controls in the program

How KPMG can help (Cont’d)

03 RO Refresher Training

- Training on prevailing FATCA requirements, regulatory updates and points to note for FATCA certification

Key Benefits



- Suitable for FFIs looking for regulatory insights into the prevailing requirements
- Access to the latest updates on FATCA and market practices
- Updated understanding of the roles and responsibility of ROs and key steps for the certification process

FATCA Framework

Our range of services provides coverage of the elements of the FATCA framework, which are necessary for the RO certification process:

Entity and Product Management

- Entity and product classification
- Entity registration matters
- Product approval and maintenance

Customer Due Diligence

- Customer onboarding and remediation
- Handling of change in circumstances
- IRS Form W-8 and customer consent

Reporting

- Accuracy, completeness and timeliness of reporting to IRS

Withholding

- Identification of non-participating FFIs and withholdable payments
- Remittance and refunds

Compliance

- Retention of documents and audit trails
- Internal certification and inquiry
- Compliance monitoring program
- RO certification requirements
- Roles and responsibilities of three lines of defence

Contact us

If you would like to further discuss the potential implications of RO certifications for your business, please contact us:



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