

China Tax Alert

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FATCA: China reaches “agreement in substance”

- *China has reached an “agreement in substance” for a Model 1 IGA with the US, effective 26 June 2014*

The U.S. Department of the Treasury (“U.S. Treasury Department”) recently updated its Foreign Account Tax Compliance Act (FATCA) website to record the fact that China has reached an “agreement in substance” for a Model 1 Intergovernmental Agreement (IGA) with the US, and has agreed to this status effective from 26 June 2014.

In April 2014, the U.S. Treasury Department and Internal Revenue Service announced that foreign financial institutions (FFI) located in jurisdictions that have reached an “agreement in substance” with the US regarding the terms of an IGA under the FATCA regime, will be treated as having such an agreement in effect until the end of 2014.

The abovementioned treatment was available to jurisdictions that had:

- Reached such “agreements in substance” prior to 1 July 2014
- Consented to having the agreement status disclosed.

The ‘in effect’ status applies to FFIs resident in the IGA jurisdiction as well as to any branch located in such jurisdiction. It does not apply to branches located outside of the jurisdiction. If the jurisdiction fails to sign its IGA by 31 December 2014, the jurisdiction will be removed from the ‘in effect’ list.

Hong Kong reached an [“agreement in substance”](#) with the US in May this year in respect of a Model 2 IGA, having earlier concluded a [tax information exchange agreement](#) in March 2014.

China is one of the US’s largest trading partners and this is an important development in achieving overall tax compliance through information sharing agreements. In the past, Chinese officials expressed concern about the potential burdens of complying with FATCA, and the US has used IGAs to simplify compliance.

China will now be treated as having an agreement “in effect” for FATCA compliance purposes, which means Chinese financial institutions will now avoid the potential 30 percent withholding tax that could have been imposed under FATCA. In addition, the agreement will also enable Beijing to obtain information on mainland taxpayers in the US to help counter tax evasion.

China will have until the end of the year to finalise and sign the IGA in order to retain the Model 1 IGA status.

It is understood that Chinese financial institutions may now register at the FATCA Registration Portal as a “Registered Deemed-Compliant FFI” within a Model 1 IGA jurisdiction. Financial institutions are required to register with the US IRS and obtain a Global Intermediary Identification Number (GIIN) from the US IRS before 1 January 2015.

In order to ensure certainty and compliance, it is hoped that further guidance will be provided shortly by the PRC Government on how financial institutions can fully comply with their FATCA obligations and details of any local exemption.

The list of jurisdictions treated as having an IGA in effect, as well as the list of countries with signed IGAs, is available on the [U.S. Treasury Department](#) website.

Khoonming Ho

Partner in Charge, Tax
China and Hong Kong SAR
Tel. +86 (10) 8508 7082
khoonming.ho@kpmg.com

Beijing/Shenyang David Ling

Partner in Charge, Tax
Northern China
Tel. +86 (10) 8508 7083
david.ling@kpmg.com

Qingdao Vincent Pang

Tel. +86 (532) 8907 1728
vincent.pang@kpmg.com

Shanghai/Nanjing Lewis Lu

Partner in Charge, Tax
Central China
Tel. +86 (21) 2212 3421
lewis.lu@kpmg.com

Chengdu Anthony Chau

Tel. +86 (28) 8673 3916
anthony.chau@kpmg.com

Hangzhou John Wang

Tel. +86 (571) 2803 8088
john.wang@kpmg.com

Guangzhou Lilly Li

Tel. +86 (20) 3813 8999
lilly.li@kpmg.com

Fuzhou/Xiamen Maria Mei

Tel. +86 (592) 2150 807
maria.mei@kpmg.com

Shenzhen Eileen Sun

Partner in Charge, Tax
Southern China
Tel. +86 (755) 2547 1188
eileen.gh.sun@kpmg.com

Hong Kong Karmen Yeung

Tel. +852 2143 8753
karmen.yeung@kpmg.com

Northern China

David Ling

Partner in Charge, Tax
Northern China
Tel. +86 (10) 8508 7083
david.ling@kpmg.com

Vaughn Barber

Tel. +86 (10) 8508 7071
vaughn.barber@kpmg.com

Roger Di

Tel. +86 (10) 8508 7512
roger.di@kpmg.com

John Gu

Tel. +86 (10) 8508 7095
john.gu@kpmg.com

Kevin Lee

Tel. +86 (10) 8508 7536
kevin.lee@kpmg.com

Paul Ma

Tel. +86 (10) 8508 7076
paul.ma@kpmg.com

Vincent Pang

Tel. +86 (10) 8508 7516
+86 (532) 8907 1728
vincent.pang@kpmg.com

Michael Wong

Tel. +86 (10) 8508 7085
michael.wong@kpmg.com

Jessica Xie

Tel. +86 (10) 8508 7540
jessica.xie@kpmg.com

Irene Yan

Tel. +86 (10) 8508 7508
irene.yan@kpmg.com

Tracy Zhang

Tel. +86 (10) 8508 7509
tracy.h.zhang@kpmg.com

Abe Zhao

Tel. +86 (10) 8508 7096
abe.zhao@kpmg.com

Eric Zhou

Tel. +86 (10) 8508 7610
ec.zhou@kpmg.com

David Chamberlain

Tel. +86 (10) 8508 7056
david.chamberlain@kpmg.com

Tony Feng

Tel. +86 (10) 8508 7531
tony.feng@kpmg.com

Li Li

Tel. +86 (10) 8508 7537
li.li@kpmg.com

Alan O'Connor

Tel. +86 (10) 8508 7521
alan.oconnor@kpmg.com

Joseph Tam

Tel. +86 (10) 8508 7605
laiyi.tam@kpmg.com

Anni Wang

Tel. +86 (10) 8508 7518
anni.wang@kpmg.com

Sheila Zhang

Tel. +86 (10) 8508 7507
sheila.zhang@kpmg.com

Tiansheng Zhang

Tel. +86 (10) 8508 7526
tiansheng.zhang@kpmg.com

Central China Lewis Lu

Partner in Charge, Tax
Central China
Tel. +86 (21) 2212 3421
lewis.lu@kpmg.com

Anthony Chau

Tel. +86 (21) 2212 3206
+86 (28) 8673 3916
anthony.chau@kpmg.com

Cheng Chi

Tel. +86 (21) 2212 3433
cheng.chi@kpmg.com

Chris Ho

Tel. +86 (21) 2212 3406
chris.ho@kpmg.com

Ho Yin Leung

Tel. +86 (21) 2212 3358
hoyin.leung@kpmg.com

Sunny Leung

Tel. +86 (21) 2212 3488
sunny.leung@kpmg.com

Christopher Mak

Tel. +86 (21) 2212 3409
christopher.mak@kpmg.com

Henry Ngai

Tel. +86 (21) 2212 3411
henry.ngai@kpmg.com

Brett Norwood

Tel. +86 (21) 2212 3505
brett.norwood@kpmg.com

Yasuhiko Otani

Tel. +86 (21) 2212 3360
yasuhiko.otani@kpmg.com

John Wang

Tel. +86 (21) 2212 3438
john.wang@kpmg.com

Jennifer Weng

Tel. +86 (21) 2212 3431
jennifer.weng@kpmg.com

Grace Xie

Tel. +86 (21) 2212 3422
grace.xie@kpmg.com

Bruce Xu

Tel. +86 (21) 2212 3396
bruce.xu@kpmg.com

William Zhang

Tel. +86 (21) 2212 3415
william.zhang@kpmg.com

Michelle Zhou

Tel. +86 (21) 2212 3458
michelle.b.zhou@kpmg.com

Cheng Dong

Tel. +86 (21) 2212 3410
cheng.dong@kpmg.com

David Huang

Tel. +86 (21) 2212 3605
david.huang@kpmg.com

Dylan Jeng

Tel. +86 (21) 2212 3080
dylan.jeng@kpmg.com

Amy Rao

Tel. +86 (21) 2212 3208
amy.rao@kpmg.com

Henry Wong

Tel. +86 (21) 2212 3380
henry.wong@kpmg.com

Southern China Eileen Sun

Partner in Charge, Tax
Southern China
Tel. +86 (755) 2547 1188
eileen.gh.sun@kpmg.com

Vivian Chen

Tel. +86 (755) 2547 1198
vivian.w.chen@kpmg.com

Sam Fan

Tel. +86 (755) 2547 1071
sam.kh.fan@kpmg.com

Angie Ho

Tel. +86 (755) 2547 1276
angie.ho@kpmg.com

Jean Jin Li

Tel. +86 (755) 2547 1128
Tel. +86 (592) 2150 888
jean.j.li@kpmg.com

Lilly Li

Tel. +86 (20) 3813 8999
lilly.li@kpmg.com

Kelly Liao

Tel. +86 (20) 3813 8668
kelly.liao@kpmg.com

Bin Yang

Tel. +86 (20) 3813 8605
bin.yang@kpmg.com

Penny Chen

Tel. +86 (755) 2547 1072
penny.chen@kpmg.com

Grace Luo

Tel. +86 (20) 3813 8609
grace.luo@kpmg.com

Maria Mei

Tel. +86 (592) 2150 807
maria.mei@kpmg.com

Michelle Sun

Tel. +86 (20) 3813 8615
michelle.sun@kpmg.com

Lixin Zeng

Tel. +86 (20) 3813 8812
lixin.zeng@kpmg.com

Hong Kong

Ayesha M. Lau

Partner in Charge, Tax
Hong Kong SAR
Tel. +852 2826 7165
ayasha.lau@kpmg.com

Chris Abbiss

Tel. +852 2826 7226
chris.abbiss@kpmg.com

Darren Bowdern

Tel. +852 2826 7166
darren.bowdern@kpmg.com

Barbara Forrest

Tel. +852 2978 8941
barbara.forrest@kpmg.com

Daniel Hui

Tel. +852 2685 7815
daniel.hui@kpmg.com

Charles Kinsley

Tel. +852 2826 8070
charles.kinsley@kpmg.com

John Kondos

Tel. +852 2685 7457
john.kondos@kpmg.com

Alice Leung

Tel. +852 2143 8711
alice.leung@kpmg.com

Curtis Ng

Tel. +852 2143 8709
curtis.ng@kpmg.com

Kari Pahlman

Tel. +852 2143 8777
kari.pahlman@kpmg.com

John Timpany

Tel. +852 2143 8790
john.timpany@kpmg.com

Wade Wagatsuma

Tel. +852 2685 7806
wade.wagatsuma@kpmg.com

Lachlan Wolfers

Tel. +852 2685 7791
lachlan.wolfers@kpmg.com

Christopher Xing

Tel. +852 2978 8965
christopher.xing@kpmg.com

Karmen Yeung

Tel. +852 2143 8753
karmen.yeung@kpmg.com