



強制性公積金計劃管理局
MANDATORY PROVIDENT FUND
SCHEMES AUTHORITY

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16 May 2014

Circular Letter: SU/COT/2014/003

To: All representative/ relevant employers of ORSO schemes

Dear Sir/Madam,

Implementation of the US Foreign Account Tax Compliance Act (FATCA)

I refer to the Authority's letter dated 17 December 2013 about the implications of FATCA for ORSO schemes. The HKSAR Government and the United States Government have substantially concluded discussions on an inter-governmental agreement (IGA) that will facilitate compliance with the US Foreign Account Tax Compliance Act (FATCA) by financial institutions in Hong Kong. According to the press release by the HKSAR Government (Encl. 1) on 9 May 2014, the FATCA IGA will cover exemptions for financial institutions or products which present low risks for tax evasion by US taxpayers. A copy of the latest text of Annex II ("Annex II" – final text may differ from this version) to Model 2 IGA which covers the scope of exemptions that the HKSAR and the United States are currently working on is attached for reference, in strict confidence (Encl. 2). Please refer to the Frequently Asked Questions on the website of the Financial Services and Treasury Bureau¹ and the latest version of the Model 2 Agreement on the website of the US Department of Treasury² for details of the IGA.

¹ http://www.fstb.gov.hk/fsb/info/doc/fatca-faq_e.pdf

² <http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx>

In light of the availability of the IGA, you should consider whether your ORSO scheme may/ may not be able to take advantage of the exemptions from FATCA requirements that apply to retirement schemes under the FATCA IGA. You should make necessary preparations for compliance accordingly, and ensure ORSO members are fully informed of the implications as the FATCA regime will commence on 1 July 2014.

The FATCA IGA and implications on ORSO schemes

As the employers sponsoring the ORSO schemes, please ensure that you get familiarized with the detailed terms of the FATCA IGA including the annexes and make all necessary arrangements to ensure your ORSO scheme will be in compliance with the relevant FATCA requirements and/ or whether exemptions may apply under the FATCA IGA.

According to the framework contemplated in the said version of Annex II to the IGA, retirement funds that qualify as exempt beneficial owners are excluded from the definition of Financial Accounts under the FATCA, and are exempt from requirements with the FATCA.

For a retirement fund to qualify as exempt beneficial owners, the fund must meet the requirements stipulated in the IGA and Annexes. Given there are different types of ORSO schemes in Hong Kong, namely ORSO schemes which are registered with the MPFA as ORSO registered schemes and ORSO schemes that are exempted from registration under the ORSO legislation, please consider carefully how your ORSO scheme may benefit from relevant exemptions as mentioned above, or would otherwise be required to be FATCA compliant.

In the case that an ORSO scheme is not qualified to be exempted from FATCA requirements, the scheme will need to observe a number of registration, due diligence, reporting and withholding requirements under FATCA. Special attention should be paid to the registration deadlines in June and July 2014 set by US IRS, which is fast approaching.

Communication to ORSO scheme members

It is important to ensure ORSO scheme members are fully informed of whether and how FATCA might affect their interests as members of the ORSO schemes. Your company should communicate clearly to the scheme members on

how their schemes are to achieve FATCA compliance and related implications and where you consider it necessary, enhanced disclosure/ communication may have to be made by way of member notices, FAQ posted on websites, seminars etc.

As the application of FATCA regime and the IGA between the HKSAR Government and the US Government involve complex US tax regulation, you are strongly recommended to seek professional advice on how to prepare your ORSO schemes for compliance with the relevant requirements in a timely manner.

If you have any questions in relation to the matters mentioned in this letter, please do not hesitate to contact your case officer of ORSO schemes department or our MPFA hotline at 2918 0102.

Yours sincerely,



(Henrietta Ma)
Manager
ORSO Schemes Department
Supervision Division

Encl.

1. Government Press Release on FATCA dated 9 May 2014
2. Latest text of Annex II to the IGA

c.c. Administrators of ORSO registered schemes

The Hong Kong Trustees' Association Limited (without enclosure)