

海外帳戶納稅法案(FATCA)相關定義注釋

Expressions used in U.S. Foreign Account Tax Compliance Act ("FATCA")

1. 特定美國實體 Specified U.S. Person

指不屬於下述任何一種的美國實體：The term 'specified US person' means any US person other than:

以下代號用於鑑別屬於 FATCA 申報豁免的美國客戶 (「非特定美國人士」) The following codes identify U.S. Persons that are exempt from reporting under FATCA ("Non-Specified U.S. Person")	
A	根據美國國稅法規第 501 (a) 條規定的被豁免之組織或根據美國國稅法規第 7701 (a) (37)所指之個人退休計劃 An organization exempt from U.S. tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37) of the U.S. Internal Revenue Code ("Tax Code")
B	美國聯邦政府及其下屬機構 The U.S. or any wholly owned agency or instrumentality thereof
C	美國州政府，哥倫比亞特區，美國領土，及其下屬機構或其全資擁有的機構或部門 Any state of the U.S., the District of Columbia, any U.S. territory, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing
D	根據美國財政部法規第 1.1472-1(c)(1)(i)條所指之上市公司 A corporation the stock of which is regularly traded on one or more established securities markets, as described in U.S. Treasury Regulations Section 1.1472-1(c)(1)(i)
E	根據美國財政部法規第 1.1472-1(c)(1)(i)條所指之公司的聯屬集團內的附屬公司 A corporation that is a member of the same expanded affiliated group as a corporation described in U.S. Treasury Regulations Section 1.1472-1(c)(1)(i)
F	美國國內註冊的股票、外匯或商品期貨零售商 A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the U.S. or any state within the U.S.
G	根據美國國稅法規第 856 條規定的不動產投資信託公司 Any real estate investment trust as defined in section 856 of the Tax Code
H	根據美國國稅法規第 851 條所指的監管投資公司，或根據美國證券交易委員會在 1940 年投資公司法 (15 U.S.C. 80a-64)成立之公司 Any regulated investment company as defined in section 851 of the Tax Code or any entity registered with the Securities Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-64)
I	根據美國國稅法規第 584(a)條所指之共同信託基金 A common trust fund as defined in section 584(a) of the Tax Code
J	根據美國國稅法規第 581 條所指之銀行 A bank as defined in section 581 of the Tax Code
K	經紀人 A broker
L	根據美國國稅法規第 664 條或第 4947(a)(1)條規定，可豁免稅務的信託 A trust exempt from tax under section 664 or described in section 4947(a)(1) of the Tax Code
M	根據美國國稅法規第 403(b)條或 457(g)條規定，可豁免稅務的信託 A tax exempt trust under a section 403(b) plan or section 457(g) plan of the Tax Code

2. 香港與美國於 2014 年 11 月 13 日正式簽署「跨政府協議版本二」，以便利香港的金融機構處理和遵從「外國帳戶稅務合規法案」的要求。「外國帳戶稅務合規法案」是美國制定的反逃稅機制，為識別美國納稅人在美國境外的金融機構設立帳戶以圖向美國國稅局隱瞞其收入及資產的情況。法案規定美國境外的金融機構須向美國國稅局披露美國納稅人的帳戶資料。

Hong Kong and the U.S. signed a Model 2 inter-governmental agreement (IGA) ("Model 2 IGA") on 13 November 2014 to facilitate compliance with the U.S. Foreign Account Tax Compliance Act (FATCA) by financial institutions in Hong Kong. FATCA is an anti-tax evasion regime enacted by the U.S. to detect U.S. taxpayers who use accounts with non-U.S. financial institutions to conceal income and assets from the IRS. It requires financial institutions outside the U.S. to report financial account information of U.S. taxpayers to the IRS.

3. 金融機構 Financial institution ("FI")

「金融機構」是指託管機構、存款機構、投資機構、或特定保險公司。

The term "Financial Institution" means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.

「託管機構」是指為其他人士持有金融資產，以之作為其業務的重大部份的任何機構。如於：(i)截至作出釐定的年度之前的 12 月 31 日 (或非曆年會計期間的最後一日) 止三個年度期間；或(ii)機構已存在的期間 (以較短期間者為準) 內，機構的總收入內持有金融資產及有關金融服務所佔的部份相等於或超過該機構的總收入的 20%，該機構即以為其他人士持有金融資產作為業務的重大部份。

The term “Custodial Institution” means any entity that holds, as a substantial portion of its business, financial assets for the account of others. An entity holds financial assets for the account of others as a substantial portion of its business if the entity’s gross income attributable to the holding of financial assets and related financial services equals or exceeds 20 percent of the entity’s gross income during the shorter of: (i) the three-year period that ends on December 31 (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the entity has been in existence.

「存款機構」是指從事一般銀行或相類以活動的過程中接收存款的機構。

The term “Depository Institution” means any entity that accepts deposits in the ordinary course of a banking or similar business.

「投資機構」是指藉著為或代客戶進行以下一項或多項活動或營運作為業務經營（或由某個藉著進行以下一項或多項活動或營運作為業務經營的機構管理）的任何機構：

The term “Investment Entity” means any entity that conducts as a business (or is managed by an entity that conducts as a business) one or more of the following activities or operations for or on behalf of a customer:

- 1) 買賣貨幣市場工具（包括支票、匯票、存款證、衍生工具等）；外匯；兌換、利率及指數工具；可轉換證券；或商品期貨交易；Trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
- 2) 個人及集體投資組合管理；或
Individual and collective portfolio management; or
- 3) 以其他方式代其他人士投資、管理或處理基金或貨幣。Otherwise investing, administering, or managing funds or money on behalf of other persons.

「特定保險公司」是指作為發出現金保險合約或年金合約，或有責任就現金保險合約或年金合約付款的保險公司（或保險公司的控股公司）的任何機構。

The term “Specified Insurance Company” means any entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.

4. 香港金融機構 Hong Kong Financial Institution

「香港金融機構」指在香港設立的金融機構，但不包括該其海外分行。香港金融機構亦包括外國金融機構的香港分行。

The term “Hong Kong Financial Institution” means any financial institution established in Hong Kong, but excluding any branches of such financial institution located outside of Hong Kong. The term Hong Kong Financial Institution also includes a Hong Kong branch of an FFI formed outside of Hong Kong.

5. 申報模式 1 外國金融機構 Reporting Financial Institution in a Model 1 IGA Jurisdiction (Reporting Model 1 FFI)

「申報模式 1 外國金融機構」是指已與美國簽訂跨政府協議「版本一」的國家之金融機構。

The term “Reporting Financial Institution in a Model 1 IGA Jurisdiction” means an FFI that is formed in a country that has signed a Model 1 Intergovernmental Agreement with the U.S.

6. 申報模式 2 外國金融機構 Reporting Financial Institution in a Model 2 IGA Jurisdiction (Reporting Model 2 FFI)

「申報模式 2 外國金融機構」是指已與美國簽訂跨政府協議「版本二」的國家之金融機構。這些外國金融機構需要和美國政府簽訂外國金融機構協議以成為合規參與的外國金融機構。

The term “Reporting Financial Institution in a Model 2 IGA Jurisdiction” means an FFI that is formed in a country that has signed a Model 2 IGA with the U.S. Such FFI would also be required to be subject to the FFI agreement with the U.S. government and become a Participating FFI.

7. 外國金融機構參與者 Participating FFI in a Non-IGA Jurisdiction (Participating FFI)

「外國金融機構參與者」是指在沒有跨政府協議下，已和美國政府簽訂外國金融機構協議之合規參與的外國金融機構。

The term “Participating FFI in a Non-IGA Jurisdiction” means an FFI that is formed in a country that has not signed any IGA with the U.S. and that has signed an FFI agreement with the U.S. government to become a Participating FFI.

8. 受保薦的外國金融機構 Sponsored FFI

「受保薦的外國金融機構」是指符合跨政府協議「版本二」附錄 II 中特定要求的機構。這些機構包括受保薦的投資機構及受控的外國企業。

The term “Sponsored FFI” means an entity that meets certain FATCA requirements as described in Annex II of the Model 2 IGA. It includes sponsored investment entities and sponsored controlled foreign corporations.

受保薦的金融機構是屬於「註冊視同合規的外國金融機構」的其中一類別。

This is a type of “Registered Deemed Compliant FFI”.

9. 註冊視同合規的外國金融機構 Registered Deemed Compliant FFI

「註冊視同合規的外國金融機構」是指已在美國國稅局註冊，且符合跨政府協議「版本二」附錄 II 中特定要求的機構，總體上包含以下類別

The term “Registered Deemed Compliant FFI” means an FFI that has registered with the IRS and meets certain FATCA requirements as described in Annex II of the Model 2 IGA. In general, it includes the following categories:

- 1) 擁有當地客戶群的註冊金融機構；
Registered financial institutions with a local client base;
- 2) 集體投資工具；以及
Collective investment vehicles; and

- 3) 已註冊及合資格的信用卡發行者。
Registered qualified credit card issuers.

10. 認證視同合規的外國金融機構 Certified Deemed Compliant FFI

「認證視同合規的外國金融機構」是指符合跨政府協議「版本二」附錄 II 中特定要求的機構。該類外國金融機構需要聲明自身為「認證和被視作合規的金融機構」。這些機構並不需要向美國國稅局註冊。一般而言，這些機構包括以下類別：

The term “Certified Deemed Compliant FFI” means an FFI that meets certain FATCA requirements as described in Annex II of the Model 2 IGA. Such FFI would certify its status as a “Certified deemed-compliant FFI” without registering with the IRS. In general, it includes the following categories:

- 1) 符合法案規定的本地銀行；
Local banks meeting detailed requirements;
- 2) 只有低價值帳戶的外國金融機構；
FFIs with only low-value accounts;
- 3) 受保薦的投資工具；
Sponsored, closely held investment vehicles;
- 4) 由受託人記載的信託；以及
Trustee-documented trust; and
- 5) 符合規定的投資諮詢公司及投資管理人。
Certain investment advisors and investment managers meeting detailed requirements.

11. 豁免實益擁有人 Exempt Beneficial Owner (EBOs)

豁免實益擁有人一般包括符合美國財政部法規 § 1.1471-6 (如：非美國的中央銀行、非美國政府機構) 或相關跨政府協議中定義的類別。An EBO is an entity which meets the requirements described in Treasury Regulations § 1.1471-6 (e.g. as a foreign central bank of issue, foreign government) or applicable IGA.

根據香港特別行政區政府與美國政府簽訂的跨政府協議的附錄 II，豁免實益擁有人一般包括以下類別：

The following entities are generally treated as EBOs as described in Annex II of the IGA signed between the Government of Hong Kong SAR and the U.S. Government:

- 1) 香港特別行政區政府機構 (包括香港特別行政區政府及其全資擁有的機構)；
Hong Kong SAR governmental entity (including the Government of the Hong Kong SAR and certain entities wholly owned by the Government of the Hong Kong SAR);
- 2) 香港金融管理局；
Hong Kong Monetary Authority;
- 3) 符合香港特別行政區政府與美國政府簽訂的跨政府協議附錄 II 中「豁免實益擁有人」條件的基金；以及
Funds that qualify as EBO in Annex II of the IGA signed between the Government of the Hong Kong SAR and the U.S. Government; and
- 4) 符合香港特別行政區政府與美國政府簽訂的跨政府協議附錄 II 中的國際組織。
International organizations as defined in Annex II of the IGA signed between the Government of the Hong Kong SAR and the U.S. Government.

12. 不參與合規的金融機構 Non-Participating FFI (NPFFI)

「不參與合規的金融機構」指除了外國賬戶稅務合規法案最終規例下的(i)合規參與的外國金融機構、(ii) 視作合規的外國金融機構或 (iii) 豁免實益擁有人以外外的外國金融機構。

The term “Non-participating FFI” refers to FFI other than (i) a participating FFI, (ii) a deemed-compliant FFI, or (iii) an exempt beneficial owner under FATCA final regulations.

不參與合規的外國金融機構並不包括香港金融機構或其他協議國的金融機構 (除在跨政府協議(「版本一」或「版本二」)或其他與美國協議下被視作不合規的金融機構)。

It does not include a Hong Kong Financial Institution or other Partner Jurisdiction Financial Institution other than a Financial Institution treated as a Non-participating Financial Institution pursuant to the relevant Model 1 or Model 2 IGA or the corresponding provision in an agreement between the U.S. and a Partner Jurisdiction.

13. 活躍非金融海外實體 Active NFFE

「非金融海外實體」是指任何非美國機構及非外國金融機構，同時符合跨政府協議「版本二」附錄 I 第 VI 節 B 段的機構。舉例，如果客戶是一間製造業公司，它很有可能是一個持有實業的非外國金融機構。一般而言，它包括以下類別：

An Non-Financial Foreign Entity (“NFFE”) means any non-U.S. entity that is not a FFI, which meets certain requirements set out in Annex I (paragraph B of Section VI) in a Model 2 IGA. For example, if a customer is itself a manufacturing company, it is likely to be an Active NFFE. In general, it includes the following categories:

- 1) 此機構於上一年度的被動收入少於其總收益的 50%及於上一年度所持有用作賺取被動收入的資產少於其總資產的 50%；
The NFFE has less than 50% of its gross income for the last calendar year be passive income and less than 50% of its assets for the last calendar year be assets that produce passive income;
- 2) 此機構或其聯屬公司是符合特定要求的上市公司；
The NFFE or its affiliate is a regularly publicly traded entity meeting certain requirements;

- 3) 此機構在美國領土成立，且所有收款人的擁有者都是該美國領土的真正居民；
The NFFE is organized in a U.S. Territory and all of the owners of the payee are bona fide residents of that U.S. Territory;
- 4) 此機構是一個非美國政府、該政府的行政區（包括州、省、縣或直轄市）、執行某些政府或其行政區的職能的公共機構、美國領土的政府、國際組織、非美國的中央銀行、或由一個或多個前述實體全資擁有的實體；
The NFFE is a government (other than the U.S. government), a political subdivision of such government (which, for the avoidance of doubt, includes a state, province, county, or municipality), or a public body performing a function of such government or a political subdivision thereof, a government of a U.S. Territory, an international organization, a non-U.S. central bank of issue, or an entity wholly owned by one or more of the foregoing;
- 5) 此機構主要 (i) 持有（全部或部分）從事貿易或非金融業務的一間或多間子公司或者 (ii) 提供融資和服務給一間或多間子公司。若此機構的性質被視為投資基金，則不屬於此類別；
Substantially all of the activities of the NFFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an NFFE shall not qualify for this status if the NFFE functions (or holds itself out) as an investment fund;
- 6) 此機構為初創公司，或正在清盤中的公司，或為財資公司；
The NFFE is a start-up, liquidating or treasury company;
- 7) 此機構在過去的五年中並不是金融機構，並正進行清盤及重組，意圖繼續或展開非金融相關的業務；
The NFFE was not a FI in the past five years, and is in the process of liquidating its assets or is reorganizing with the intent to continue or recommence operations in a business other than that of a FI;
- 8) 此機構主要為非金融機構的關聯公司進行融資及對沖交易，且不為任何非關聯公司提供融資或對沖服務；或
The NFFE primarily engages in financing and hedging transactions with, or for, related entities that are not FI, and does not provide financing or hedging services to any entity that is not a related entity, provided that the group of any such related entities is primarily engaged in a business other than that of a FI; or
- 9) 此機構符合非牟利組織的特定要求。
The NFFE meets detailed requirements applicable to certain not-for-profit organizations.

14. 被動非金融海外實體 Passive NFFE

在跨政府協議「版本二」中，「被動非金融海外實體」是指除了持有實業的非金融外國機構以外的非金融外國機構。
Under Model 2 IGA, the term “Passive NFFE” means an NFFE other than an Active NFFE.

15. 控權人 Controlling Persons

「控權人」在跨政府協議「版本二」下泛指能操控一個機構的自然人。對信託而言，控權人包括最終的財產授予人、受託人、保護人（如有）、受益人，或對其信託能予以操控的自然人。在信託以外的法律安排上，控制人有著相同或類近的意思。「控權人」的演繹方法應與國際組織【金融行動特別工作組】的建議一致。

The term “Controlling Persons” under a Model 2 IGA means the natural persons who exercise control over an entity. In the case of a trust, such term means the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term “Controlling Persons” shall be interpreted in a manner consistent with the Financial Action Task Force Recommendations.

16. 直接申報的非金融外國機構，或受保薦的直接申報的非金融外國機構 Direct Reporting NFFEs or Sponsored Direct Reporting NFFEs

外國賬戶稅務合規法案最終規例規定「直接申報的非金融外國機構」及「受保薦的直接申報的非金融外國機構」都是屬於可豁免的非金融外國機構的類別。直接申報的非金融外國機構是指選擇直接向美國國稅局申報其美國控制人的資料的被動非金融外國機構。直接申報的非金融外國機構不需與美國簽署外國金融機構協議。此外，美國國稅局及美國財政部計劃容許特定機構替直接申報的非金融外國機構匯報相關的資料（這些機構為「受保薦的直接申報的非金融外國機構」）。

FATCA final regulations provide that “Direct Reporting NFFEs” and “Sponsored Direct Reporting NFFEs” qualify as excepted NFFEs. A Direct Reporting NFFE is a Passive NFFE that elects to provide the information of its U.S. Controlling Persons directly to the IRS. A Direct Reporting NFFE will not be required to sign an FFI Agreement. Further, the IRS and the U.S. Department of the Treasury intend to allow an entity to sponsor Direct Reporting NFFEs (such an NFFE, a “Sponsored Direct Reporting NFFE”).

免責聲明：本附錄提供的資料及解釋僅供參考。本附錄並不旨在就外國賬戶稅務合規法案提供詳盡無遺的指引。如閣下須要取得有關法律條文的確切陳述，閣下應直接參考外國賬戶稅務合規法案。東莞銀行股份有限公司香港分行並無就本附錄所載的為特定目的或用途列出的資料及解釋的準確性或質素作出明示或默示的保證。如有必要，閣下應尋求法律意見。

Disclaimer: The information and interpretations provided in this Appendix is for general reference only. It does not provide an exhaustive guide to the application of FATCA. For a complete and definitive statement of law, direct reference should be made to the FATCA itself. Bank of Dongguan Co., Ltd. Hong Kong Branch makes no express or implied warranties of accuracy or fitness for a particular purpose of use with respect to the information and interpretations set out in this Appendix. You are advised to seek legal advice if necessary.