

外国账户税务合规法案（FATCA）

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免责声明

1. 本文件仅为汇丰集团提供予客户而非任何其他人士之用。本文件内容为资料摘要，仅供参考之用，并非巨细无遗。客户不应视此为税务或法律意见。汇丰不保证文件内容的准确性和完整性，且概不对任何错误或因倚赖此等资料而导致的任何损失承担任何责任。此等资料乃根据FATCA编制并截至2014年8月22日；
2. 如要了解FATCA法案详情，阁下可参阅美国国家税务局网站（<http://www.irs.gov/>）信息；
3. 阁下全面负责确认阁下的FATCA身分及递交相关文件；
4. 汇丰不能就此提供任何税务及法律意见。如有相关疑问，请联系阁下的专业税务及法律顾问。

一·背景资料

金融监管组织、政府及银行正作出多项重要改变，以确保可长远保障金融体系及阁下利益。当中一项变动为美国政府所颁布并成为1986年美国税法一部分的《外国账户税务合规法案》（「FATCA」）。FATCA旨在向美国税务机关申报由美国人士所拥有的金融资产。

FATCA对汇丰及阁下有何影响？

银行及其他金融组织须每年申报美国人士直接或间接持有的金融账户资料。

汇丰致力在所有经营地点全面遵从FATCA法案。这意味著我们须向美国税务机关申报受影响客户的收入和利润详情。为此，我们需从阁下取得额外资料，以识别美国人士（USP）和外国金融组织（FFI）。就此而言，我们亦可能须识别其他客户。

如我们无法从阁下取得所需资料或文件，汇丰今后可能需从支付予阁下或贵账户的特定类别款项中预扣美国税项，这称为「须预提款项」。我们也可能需要终止与阁下的关系。

为识别阁下是否需按FATCA进行申报，我们需根据FATCA列明的类别对阁下进行分类。

根据FATCA，汇丰需就哪些人士进行申报？

我们须就特定美国人士持有的账户申报若干资料。这包括由美国公民和美国居民、若干在美国创立或组成的公司或合伙公司以及某些股东为美国公民或美国居民的被动实体（请参阅「被动收入」一节及「根据FATCA何谓被动实体？」一节）所持有的账户。我们亦需就未向我们提供文件以确认其在FATCA项下税务身分的客户或金融交易对手申报若干资料。

何谓须预提款项？

简单来说，须预提款项指：来源于美国的固定或可确定的年度或定期收入；或2016年后，出售或以其他方式处置（包括赎回）可产生美国来源利息或股息收入的资产所得款项总额。此定义或会变更，其范围在日后可能会扩大。此等款项的预提将于2017年1月1日前分阶段实行。

二·FATCA身分

这是否适用于阁下？

虽然大部分FATCA类别毋须申报，但部分类别可能适用于阁下。为确保阁下与FATCA类别相对应，我们将要求客户确认其在FATCA项下的身分、审阅适用条件并确认其符合条件。

A. 独资营商号

如果贵公司或公司持有人符合以下七个条件*中的任何一个，我们都可能需要向阁下了解及确定阁下是否FATCA所指的美国人士。

1. 为美国公民或美国居民
2. 出生地为美国
3. 拥有美国地址，包括美国邮政信箱
4. 拥有美国电话号码
5. 重复设立将款项支付至美国地址或美国账户的付款指示
6. 将有效授权书或代签权授予拥有美国地址的人士
7. 唯一地址是代收或代存邮件地址

*所有均适用于公司持有人，只有第3及第4项同时适用于贵公司及公司持有人。



所需相关文件

请向我们提供相关文件，以确定阁下的FATCA税务身分

假如閣下是...	請提供*
美國人士	W-9表格
非美國人士	W-8BEN表格及補充資料 (如適用)

* 请于美国国家税务局网站 (<http://www.irs.gov/>) 下载W-8BEN表格及W-9表格。

B. 所有其他实体

「美国人士」是指：

- 在美国境内或根据美国、任何州或哥伦比亚特区的法律设立或组建的公司或合伙
- 除外国遗产以外的任何遗产。外国遗产是指收入并非来源于美国、与在美国进行贸易或商业行为无实际联系及不包括在美国国税法A分目项下总收入内的遗产
- 任何符合下列情况的信托：(i)美国法院能够对信托的管理执行主要监督，及(ii)一名或多名美国人士有权控制信托的所有重大决定。

何谓「主动非金融外国实体」？

主动非金融外国实体一般是指属于主动经营式但非从事金融业务的实体。根据FATCA，只要符合以下条件，毋须就主动非金融外国实体或其股东申报资料：

- 该实体并非美国人士（请参阅以下美国人士的定义）。
- 该实体并非金融组织。详情请参阅「根据FATCA何谓金融组织」一节。
- 该实体在前一个日历年的被动收入占总收入少于50%。详情请参阅「何谓被动收入」一节。
- 可产生或持作产生被动收入的资产占该实体所持有资产少于50%（按季度以被动资产加权平均百分比计算）。该实体的资产价值按公允市值或其资产负债表所反映的资产账面值（按美国或国际会计准则计算）厘定。

何谓被动收入？

被动收入一般包括：

- 股息，包括等同股息的收入（又称替代股息）
- 利息，包括等同利息收入和若干保险合同投资回报
- 并非产生自主主动经营式业务的特定租金和特许权使用费
- 年金
- 来自交易的净收益，包括与特定类型商品交易有关的远期及类似交易
- 特定汇兑收益
- 来自名义本金合约的净收益
- 根据具有现金价值的保险合同收取的款项，或保险公司就其保险储备和年金合约所赚取的款项
- 出售可产生上述特定类别收入的资产的净收益

被动收入不包括：

- 来自关连人士的已收或应计利息、股息、租金或特许权使用费收入，而该等款项可适当地分配到该关连人士的非被动收入。
- 特定商品交易商及证券交易商在日常业务过程中产生的收入。

有关被动收入的详细定义，请参阅美国国税法及FATCA第1.1472-1(c)(1)(iv)(A)-(B)条。

根据FATCA何谓「被动实体」（被动非金融外国实体）？

FATCA所界定的被动实体定义相当广泛，包括收取被动收入或持有被动资产而不属于任何其他FATCA类别的实体、组织或公司。这些实体并非从事金融组织业务。

汇丰需了解此等实体的拥有权，以确定FATCA申报规定是否适用于被动非金融外国实体的实际美国拥有人。

有关被动实体的详细定义，请参阅美国国税法及FATCA第1.1472-1(c)(1)(iv)(A)-(B)条。

根据FATCA何谓非营利组织？

「非营利组织」一般指专门从事宗教、慈善、科学、艺术、文化或教育事务的非营利性实体或组织。根据FATCA，汇丰毋须就非营利组织申报资料。

FATCA设定若干条件，实体或组织必须满足此等条件方合资格成为FATCA界定的非营利组织。此等条件旨在确保在美国境外成立的实体或组织是真实本著慈善目的，而非用于方便逃避美国税项的工具。

有关非营利组织的详细定义，请参阅美国国税法及FATCA第1.1471-5(e)(5)(vi)条。

根据FATCA何谓金融组织？

FATCA所界定的「金融组织」定义较为广泛，一般涵盖所有银行、建屋贷款社、托管金融资产的实体、若干类型的保险公司、资产管理公司及若干投资基金或投资公司。委任受托人公司的实体、第三方资产管理公司、从事金融业务的公司集团的控股公司以及若干类型的财资公司及集团融资公司，亦可能符合金融组织的定义。

有关金融组织的详细定义，请参阅美国国税法及FATCA第1.1471-5(e)(1)至(6)条。

所需相关文件

请向我们提供相关文件，以确定阁下的FATCA税务身分

假如閣下是...	請提供*...
美國人士	W-9表格
主動非金融外國實體	主動非金融外國實體的FATCA聲明或W-8表格
非營利組織	非營利組織的FATCA聲明或W-8表格
其他實體	W-8表格

* 请于美国国家税务局网站(<http://www.irs.gov/>) 下载W-8表格及W-9表格。阁下可向我们索取《主动非金融外国实体的FATCA声明》，以及《非营利组织的FATCA声明》标准表格。

Foreign Account Tax Compliance Act (FATCA)

Important: This document must be read with the Disclaimer which forms part of it.

Disclaimer

1. This document is intended solely for the customers of HSBC to whom it is provided and not for any other person. It is a summary for information purposes only and general in nature. It should not be considered as tax or legal advice. HSBC makes no guarantee of its accuracy and completeness and is not responsible for any errors, nor shall HSBC be liable for any loss that results from reliance upon this information based on FATCA legislation as at 22 August 2014.
2. You are advised to refer to the US IRS website (<http://www.irs.gov/>) for details in respect of FATCA.
3. You are fully responsible for confirmation of your FATCA status and submission of relevant documentation.
4. HSBC is unable to offer any tax and legal advice. For related questions, please contact your professional tax and legal advisors.

I. Background

There are a number of substantial changes being made by financial regulators, governments and banks to ensure the protection and long-term safety of both the financial system and your interests. One of these changes is the Foreign Account Tax Compliance Act (FATCA), which has been introduced by the US government as part of the United States Internal Revenue Code of 1986 (together with regulations made under the Code). The purpose of FATCA is to report financial assets owned by United States persons to the United States tax authorities.

How does FATCA affect HSBC and you?

Every year banks and other financial organisations will be required to report information on financial accounts held directly or indirectly by US Persons.

HSBC has made a commitment to being fully FATCA compliant in all countries where we operate. This means we have to report affected customers' income and profit details to the US tax authorities. In order to do so, we will need to obtain additional information from you to identify US Persons (USPs) and Foreign Financial Institutions (FFIs). There may also be other customers who we have to identify for this purpose.

Where we are not able to obtain the required information or documentation from you, we may be required to apply U.S. withholding taxes in respect of certain types of payments we make to you or your accounts in the future and these are known as 'withholdable payments'. We may also be required to end relationships with you.

In order to identify whether reporting under FATCA applies to you, we need to match you against certain categories set out in the FATCA legislation.

Who does HSBC need to report under FATCA?

We are required to report certain information on accounts held by *Specified US Persons*. This includes accounts held by U.S. citizens and U.S. residents, certain corporations or partnerships created or organised in the United States, as well as accounts held by certain passive entities (*please see the section on Passive Income and the section What is meant by a passive entity (Passive NFFE) under FATCA?*) with shareholders who are U.S. citizens or U.S. resident persons. We will also be required to report certain information on customers or financial counterparties who do not provide us with documentation to establish a tax status under FATCA.

What is a withholdable payment?

In the simplest of terms, a withholdable payment is a payment of either: US source income that is fixed or determinable, annual or periodical (FDAP) income; or, after 2016, gross proceeds from the sale or other disposition (including redemption) of property that can produce US source interest or dividend income. This definition is subject to change and may be widened in the future. Withholding on these different types of payment is phased in over a period to 1 January 2017.

II. FATCA Status

Does this apply to you?

Whilst most FATCA categories set out in the legislation are not reportable, some may be applicable to you. In order to make sure that we are able to match you against the FATCA categories, we are asking you to provide confirmation of your FATCA status, review the conditions that apply, and confirm that they are satisfied.



A. Sole Proprietorship

If the owner/company holds any of the following seven criteria*, we may engage you to establish whether you are United States Person in accordance with FATCA.

1. US citizenship or US residence
2. US place of birth
3. US address including US PO boxes
4. US telephone number
5. Repeating payment instructions to pay amounts to a US address or an account maintained in the US
6. Current Power of Attorney or signatory authority granted to a person with a US address
7. In care of or hold mail address which is the sole address for the account holder

*All applicable to the owner, item 3 & 4 apply to both the owner and the company.

Documentation Required

Please provide us with relevant documentation to establish your tax status under FATCA.

If you are...	Please provide* ...
United States Person	Form W-9
Non-United States Person	Form W-8BEN and supplementary information (if applicable)

* Please download Form W-8BEN and Form W-9 from the US IRS website (<http://www.irs.gov/>).

B. All Other Entities

The term 'United States Person' generally refers to:

- A corporation or partnership created or organized in the United States or under the law of the United States or of any state, or the District of Columbia
- Any estate (other than foreign estate, i.e. an estate the income of which, from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States, is not includible in gross income under subtitle A of the United States Internal Revenue Code)
- Any trust if – (i) a court within the United States is able to exercise primary supervision over the administration of the trust, and (ii) one or more United States persons have the authority to control all substantial decisions of the trust.

What is an Active Non-Financial Foreign Entity (Active NFFE)?

The term 'Active NFFE' generally refers to an entity that operates an active trade or business other than that of a financial business.

We are not required to report information on Active NFFEs or their shareholders under FATCA as long as the following criteria are met:

- The entity is not a United States Person (refer definition of United States Person below).
- The entity is not a financial institution. Please refer to the section 'What is meant by a Financial Institution under FATCA' for further information.
- Less than 50 percent of the entity's gross income for the preceding calendar year is passive income. Please refer to the section 'What is meant by Passive Income' for further information.
- Less than 50 percent of the assets held by the entity are assets that produce or are held for the production of passive income (calculated as a weighted average of the percentage of passive assets measured quarterly). The value of the entity's assets is determined based on the fair market value or book value of the assets that is reflected on the entity's balance sheet (as determined under either a U.S. or an international financial accounting standard).

What is meant by Passive income?

Passive income generally includes:

- Dividends including income equivalent to dividends (also known as substitute dividends)
- Interest including income equivalent to interest and certain returns from investments in insurance contracts
- Certain rents and royalties other than those derived from an active trade or business
- Annuities
- Net gains from transactions, including forwards and similar transactions relating to certain types of transactions in commodities

- Certain foreign currency exchange gains
- Net income from notional principal contracts
- Amounts received under cash value insurance contracts or amounts earned by an insurance company in connection with its reserves for insurance and annuity contracts
- Net gains from the sale of assets that give rise to certain of the above types of income

Passive income excludes:

- Any income from interest, dividends, rents or royalties that is received or accrued from a related person to the extent such amount is properly allocable to income of such related person that is not passive income.
- Income generated by certain commodities dealers and securities dealers in the ordinary course of business.

For a detailed definition of passive income, please refer to the United States Internal Revenue Code and FATCA regulations thereunder, §1.1472-1(c)(1)(iv)(A)-(B).

What is meant by a passive entity (Passive NFFE) under FATCA?

Very broadly, Passive Entities are defined under FATCA as entities, organizations, or companies that are in receipt of passive income or hold passive assets and do not fall under any of the other FATCA classifications. These entities do not carry on a business of a financial institution.

HSBC needs to understand the ownership of such entities to determine whether reporting under FATCA applies in respect of substantial US owners of a Passive NFFE.

For a detailed definition of Passive Entities, please refer to United States Internal Revenue Code and FATCA regulations thereunder, §1.1472-1(c)(1)(iv)(A)-(B).

What is a Non-Profit Organisation under FATCA?

The term 'Non-Profit Organisation' refers generally to an entity or organisation of a non-profit nature that exclusively engages in religious, charitable, scientific, artistic, cultural or educational activities. We are not required to report information on Non-Profit Organisations under FATCA.

The FATCA legislation imposes certain conditions which need to be satisfied in order for an entity or organisation to qualify as a 'Non-Profit Organisation' under FATCA. The conditions are aimed at ensuring that the entity or organisation is established outside of the United States of America, that it has a genuine charitable motive, and that it is not a vehicle to facilitate US tax avoidance.

For a detailed definition of Non-Profit Organisation, please refer to United States Internal Revenue Code and FATCA regulations thereunder, §1.1471-5(e)(5)(vi).

What is meant by a Financial Institution under FATCA?

The term 'financial institution' is broadly defined under FATCA and generally includes all banks, building societies, entities with custody of financial assets, certain types of insurance companies, asset management companies and certain investment funds or investment vehicles. An entity which appoints a trustee company or an entity that is a third party asset manager or acts as the holding company to a group of companies carrying on a financial business may also fall within the definition of financial institution, as well as certain types of treasury and group financing companies.

For a detailed definition of financial institution, please refer to United States Internal Revenue Code and FATCA regulations thereunder, §1.1471-5(e)(1) to (6).

Documentation Required

Please provide us with relevant documentation to establish your tax status under FATCA.

If you are...	Please provide* ...
United States Person	Form W-9
Active NFFE	FATCA Declaration for Active NFFE or Form W-8
Non-Profit Organisation	FATCA Declaration for Non Profit Organisations or Form W-8
Other entities	Form W-8

* Please download Form W-8 and Form W-9 from the US IRS website (<http://www.irs.gov/>). Standard forms "FATCA Declaration for Active NFFE" and "FATCA Declaration for Non Profit Organisations" can be obtained from us.