

# FATCA Declaration for Active Non-Financial Foreign Entities

Bank use only

Customer Name

Customer Number

Customer Address

Customer Permanent Residence Address, if different from the above address

Your Permanent Residence Address is the address of where you are treated as resident for tax purposes, or, if not applicable, the address of your principal office

I/We *(delete as appropriate)* hereby certify that, for purposes of chapter 4, subtitle A (sections 1471 through 1474 of the United States Internal Revenue Code of 1986 (the provisions commonly referred to as the "Foreign Account Tax Compliance Act" or "FATCA" and regulations thereunder):

1. I am/We are not incorporated, created or organised in the United States of America or under the law of the United States of America or of any of the States of the United States of America, including the District of Columbia
2. I am/We are not a financial institution *(see notes)*
3. Less than half of my/our gross income for the last calendar year is passive income *(see notes)*
4. Less than half of my/our assets 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).
5. I am/We are acting on my/our own behalf and not as agent, intermediary or nominee of another person.
6. My/Our principal business activity is:

I/We certify that the information on this form is accurate. If at any time, a change in circumstances occurs that causes any of the certifications '1' to '6' above to become no longer true, I/we will inform HSBC within 30 days.

Signature

Full Name

Official Position

Date

Signature

Full Name

Official Position

Date

Signature

Full Name

Official Position

Date

Signature

Full Name

Official Position

Date

(Signed in accordance with the mandate)

Please use the Additional Signature Insert for more to sign in accordance with your mandate



# 主動的非金融外國實體FATCA聲明

銀行專用

客戶名稱

客戶編號

客戶地址

客戶永久住址,如非上述地址

閣下的永久住址是指閣下的稅務居住住址,或如不適用,閣下的主要辦事處地址

我/我們(刪去不適用)特此證明:就着1986年美國國內稅收法第四章, A分編1471至1474章節(一般稱為「外國賬戶稅務合規法案」或“FATCA”及依據該法案頒布的條例)之目的而言:

1. 我/我們並非在美國或根據美國法律或美國任何州(包括哥倫比亞特區)的法律註冊成立、設立或組成的。
2. 我/我們並非金融機構(請參看備註)
3. 我/我們在前一個日曆年的被動收入佔總收入少於50% (請參看備註)
4. 我/我們所持有的可帶來或持有以產生被動收入的資產佔資產少於50% (按季度以被動資產加權平均百分比計算)
5. 我/我們代表自身而不是作為代理、中介機構或另一位人士的代名人。
6. 我/我們主要的業務活動是:

我/我們證明:本表格上的資料全部準確。倘於任何時間因狀況變更以致任何以上第「1」項至第「6」項的證明事項變成不正確,我/我們將於30天內通知香港上海匯豐銀行。

簽名

全名

正式職銜

日期

簽名

全名

正式職銜

日期

(簽署需依照簽署安排)

如有需要請使用額外的簽署紙

## 免責聲明

中文譯本僅供參考,文義如與英文有歧義,概以英文本為準。





# FATCA Declaration – Additional Signature Sheet

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(Signed in accordance with the mandate)

## FATCA聲明 – 額外簽署紙

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日期	

(簽署需依照簽署安排)

如有需要請使用額外的簽署紙

### 免責聲明

中文譯本僅供參考，文義如與英文有歧義，概以英文本為準。



## Foreign Account Tax Compliance Act (FATCA)

### Notes for signing:

<Active Non Financial Foreign Entity Declaration>

<Non Profit Declaration>

**IMPORTANT** - This document must be read with the Disclaimer which forms part of it.

### 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 our customers' 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?

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 our customers to identify US Persons (USPs) and Foreign Financial Institutions (FFIs). There may also be other customers who we have to identify for this purpose.

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

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

In order to identify the customers where reporting under FATCA may apply, we need to match our customer base against certain categories set out in the FATCA legislation.


#### Does this apply to you?

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

HSBC is not able to provide tax advice in respect of this process or for FATCA classification purposes.

#### Who do we 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.

### **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).
- HSBC is not able to provide tax advice in respect of this process.

### **United States person**

The term 'United States person' includes:

- A citizen or resident of the United States
- A corporation or partnership created or organized in the United States of America or under the law of the United States or of any State of the United States of America
- 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 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 regulations thereunder, §1.1472-1(c)(1)(iv)(A)-(B).


## **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 regulations thereunder, §1.1471-5(e)(1) to (6).

## **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 FACTA.

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.

### **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.

### **DISCLAIMER**

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. The Hongkong and Shanghai Banking Corporation Limited, Macau makes no guarantee of its accuracy and completeness and is not responsible for any errors, nor shall the Hongkong and Shanghai Banking Corporation Limited, Macau be liable for any loss that results from reliance upon this information based on FATCA legislation as at 29-May-2014. Customers should seek professional legal and tax advice specific to their own situation.



## 外國賬戶稅務合規法案（FATCA）

此為簽署以下聲明之備註：  
**主動的非金融外國實體FATCA聲明**  
**非營利組織FATCA聲明**

**重要：**本文件必須與作為其組成部分的免責聲明一併閱讀。

### 背景

金融監管機構、政府及銀行正作出多項重要改變，以確保能長遠保障金融系統及客戶利益。其中一項變動為美國政府所頒佈成為1986年美國國內稅收法一部份的《外國賬戶稅務合規法案》（“FATCA”）。FATCA旨在向美國稅務機關申報由美國人士所擁有的金融資產。

### FATCA對香港上海滙豐銀行及閣下的影響？

香港上海滙豐銀行致力在所有經營地全面遵從FATCA法案。這代表我們需要向美國稅務機關申報受影響的客戶的收入和利潤。為此，我們需要從客戶取得更多資料，以識別美國人士(USPs)和外國金融機構(FFIs)或其他客戶。

銀行及其他金融組織需每年申報美國人士直接或間接持有的金融帳戶的資料。

如我們無法從客戶取得所需的資料或文件，銀行可能需要從向客戶或客戶帳戶支付的若干款項中扣起美國稅項，稱為「可扣繳款項」。我們也可能需要終止與客戶的關係。

為了識別可能需按FATCA進行申報的客戶，我們將根據FATCA法案列明的類別對客戶進行分類。

### 這是否適用於閣下？

雖然大部份FATCA類別並不需被申報，部份類別亦可能適用於我們的客戶。為了確保銀行能按FATCA類別給客戶做出配對，現要求客戶確認其FATCA下的身份、審閱適用條件並確認其符合條件。

香港上海滙豐銀行不能夠就這一FATCA分類過程提供任何稅務意見。

### 根據FATCA銀行需要就誰進行申報？

我們須就由特定美國人士（Specified US Persons）持有的帳戶申報若干資料。這包括由美國公民和美國居民、若干在美國設立或組成的企業或合夥公司、以及某些股東為美國公民或美國居民的被動實體所持有的帳戶（詳情請參閱有關被動收入的章節及「根據FATCA何謂被動的非金融外國實體？」章節）。我們也需要就沒有向我們提供文件以確認其FATCA下的稅務身份的客戶或財務對手作出若干資料申報。

### 何謂可扣繳款項？

簡單來說，可扣繳款項乃：固定或可確定的每年或定期（FDAP）的美國來源收入；或2016年12月31日後，來自出售或以其他方式處置（包括贖回）可產生美國來源利息或股息收入的資產所得的總資金收入。其定義在未來也許會變更及範圍也許會擴大。這些款項的扣繳會在2017年1月1日前分階段引進。

## 根據FATCA何謂「主動的非金融外國實體」？

主動的非金融外國實體 (Active Non-Financial Foreign Entity)

一般是指屬於主動經營式但非從事金融業務的實體。根據FATCA，**如符合以下條件，銀行無須就主動的非金融外國實體或其股東申報資料。**

- 該實體並非美國人士(請參閱以下美國人士的定義)。
- 該實體並非金融機構。詳情請參閱「根據FATCA何謂金融機構」章節。
- 該實體在前一個日曆年的被動收入占總收入少於50%。詳情請參閱「何謂被動收入」章節。
- 該實體所持有的可帶來或持有以產生被動收入的資產佔資產少於50% (按季度以被動資產加權平均百分比計算)。該實體的資產價值是按公平市價或該實體的資產負債表上所反映的資產帳面價值(按美國或國際會計準則計算)而定。

香港上海滙豐銀行不能夠就這過程提供任何稅務意見。

## 美國人士

「美國人士」包括:

- 美國居民或公民
- 在美國或根據美國法律或美國任何州的法律註冊設立或組成的公司或合夥公司
- 任何非美國遺產(非美國遺產是指一遺產而其收入並非來源於美國、與在美國進行的貿易或商業行為無實際聯繫及並不涵蓋於美國國內稅收法A分編的總收入項下)
- 任何信託符合– (i) 美國法院能夠對信託行政執行主要監督，及(ii)一個或以上的美國人士擁有能控制信託所有重大決定的權力

## 何謂被動收入 (Passive Income) ？

被動收入一般包括：

- 股息，包括等同股息的收入(又稱替代股息)
- 利息，包括等同利息收入和若干來自保險合同投資的回報
- 若干非衍生自主動經營式業務的租金和特許權使用費
- 年金
- 來自交易的淨收益，包括與若干商品交易類型有關的遠期及類似交易
- 若干外匯兌換收益
- 來自名義本金合同的淨收益
- 來自具有現金價值之保險合同的款項或保險公司就其保險儲備和年金合同所賺取的款項
- 來自出售可帶來部份上述收入類的資產的淨收益

被動收入不包括：

- 已收取或應計入的來自相關人士的利息、股息、租金或特許權使用費收入，而該等款項是可適當地分配到該相關人士的非被動收入。
- 商品交易商及證券交易商在日常業務過程中產生的收入。

有關被動收入的詳細定義，請參閱美國國內稅收法第§1.1472-1(c)(1)(iv)(A)-(B)條，

### 根據FATCA何謂金融機構？

根據FATCA，「金融機構」的定義頗廣泛，一般而言包括所有的銀行、保管金融資產的實體、若干類型的保險公司、資產管理公司及若干投資基金或投資實體。委任受託人公司或第三方資產管理人、或一間或一組主要從事非金融貿易或業務之公司的控股公司、以及若干類型的財資公司，也可能符合金融機構的定義。

有關金融機構的詳細定義，請參閱美國國內稅收法第§1.1471-5(e)(1)至(6)條。

### 根據FATCA何謂非營利組織？

「非營利組織」(Non-Profit Organisation)一般是指專門從事於宗教、慈善、科學、藝術、文化或教育活動的非營利性質實體或組織。根據FATCA，銀行無須就非營利組織申報資料。

FATCA法規設定若干條件，實體或組織必須滿足這些條件才有資格成為FATCA承認的非營利組織。這些條件旨在確保在美國以外成立的實體或組織是真正本著慈善動機，而非作為方便逃避美國稅項的工具。

### 根據FATCA何謂「被動的非金融外國實體」？

根據FATCA，廣泛而言，被動的非金融外國實體包括收取被動收入或持有被動資產而並沒有歸入其他FATCA類別的實體、組織或公司。這些實體並非從事金融機構業務。

香港上海滙豐銀行需了解這些實體的擁有權以決定是否需要就被動的非金融外國實體的實質美國持有人按FATCA進行申報。

### 免責聲明

此文件僅提供予香港上海滙豐銀行向其發送之客戶而非任何其他人士。內容為一般性質及只作信息摘要之用。客戶不應視此為稅務或法律意見。香港上海滙豐銀行不保證文件內容的準確性和完整性，對任何錯誤或由於依賴此等截至2014年5月29日的有關FATCA信息而導致的任何損失概不承擔任何責任。客戶應向專業顧問就其本身情況尋求專業的法律及稅務意見。

中文譯本僅供參考，文義如與英文有歧義，概以英文本為準。