

# 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

PUBLIC





# FATCA Declaration – Additional Signature Sheet

Signature

Full Name

Official Position

Date

Signature

Full Name

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Full Name

Official Position

Date

(Signed in accordance with the mandate)



## 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 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. HSBC Sri Lanka makes no guarantee of its accuracy and completeness and is not responsible for any errors, nor shall HSBC Sri Lanka be liable for any loss that results from reliance upon this information based on FATCA legislation as at 1<sup>st</sup> June 2014. Customers should seek professional legal and tax advice specific to their own situation.