

# FATCA – Frequently Asked Questions



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## FATCA overview

### 1. What is FATCA?

FATCA stands for the Foreign Account Tax Compliance Act. It is a new piece of legislation to help counter tax evasion in the US.

Introduced by the United States Department of Treasury (Treasury) and the US Internal Revenue Service (IRS), the purpose of FATCA is to encourage better tax compliance by preventing US Persons (see glossary) from using Banks and other Financial Organisations to avoid US taxation on their income and assets.

A significant number of countries worldwide are expected to sign Inter-governmental Agreements (IGAs) relating to FATCA compliance with the United States government. These IGAs will result in the FATCA legislation becoming part of these countries' local laws. (Please refer to glossary for IGA definition)

### 2. What is the impact of FATCA?

On an annual basis, 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. We will therefore be reviewing our existing customer base to confirm the FATCA statuses of our customers and where necessary we may have to contact our customers for further information and documentation.

### 3. How do I know if I am affected?

FATCA legislation will affect both personal and business customers who are treated as a 'US Person' for US tax purposes. The FATCA legislation will also affect certain types of businesses with US owners.

The term US person includes the following (but is not limited to):

- A citizen of the US, including an individual born in the US but resident in another country (who has not given up their US citizenship)
- A person residing in the US, including US green card holders
- Certain persons who spend a significant number of days in the US each year
- US Corporations, US Partnerships, US estates and US trusts

Over the next few months we will be reviewing the impact of the legislation for our customers, and will provide further information to affected customers in due course.

For more information regarding FATCA, please visit the IRS website or contact your tax professional.

### 4. When will the FATCA legislation become effective?

The FACTA legislation is currently due to become effective from 30 June 2014.

HSBC is committed to becoming fully FATCA compliant in all countries where we operate in accordance with the legislative timeline.

### 5. Is HSBC the only bank to be affected by FATCA?

No. All Banks and other Financial Organisations will be affected by FATCA, however their approach to adopting FATCA may differ. HSBC is committed to becoming fully FATCA compliant in all countries where we operate.

### 6. What does HSBC have to do to comply with FATCA?

To comply with FATCA, HSBC will:

- Conduct a review of new and existing customers to identify those that are reportable under FATCA. business customers will be classified according to the FATCA legislation. (For example, as US Persons, Foreign Financial Institutions or Non-Financial Foreign Entities).
- Report information to the IRS or local tax authority on all accounts held directly or indirectly by US Persons. In addition, HSBC may also need to report information about customers who do not provide the required documentation to us.

In certain circumstances and where customers fail to provide the appropriate documentation or when doing business with non-compliant entities, HSBC may be required to apply 30% US withholding tax on certain types of US income paid to such customers.

(Please refer to the glossary for the definitions of US Persons, Foreign Financial Institutions, Non-Financial Foreign Entities and Withholding tax).

## Am I affected?

### 7. Is FATCA applicable to personal or business customers?

FATCA legislation will impact both personal and business customers who hold an account, policy or agreement with HSBC.

- If you are a personal customer, please refer to Q8
- If you are a business customer, please refer to Q15

## Personal Customers

### 8. Am I only affected if I am a citizen of the US?

No. If an individual's account holds any of the following seven criteria, HSBC may request further information/documentation to determine if you are a US Person under FATCA.

- US citizenship or US residence
- US place of birth
- US address including US PO boxes
- US telephone number
- Repeating payment instructions to pay amounts to a US address or an account maintained in the US
- Current Power of Attorney or signatory authority granted to a person with a US address
- In Care of or Hold mail address which is the sole address for the account holder

### 9. What does FATCA mean for me if I am a US Person?

If you are considered a US Person (see glossary), you may be asked to supply HSBC with additional information/documentation. You may also wish to visit the IRS website to determine if you need to complete and submit any additional IRS forms.

If you are a specified US Person (see Glossary), HSBC will be required to report information about you and your account to the local tax authority or the IRS on an annual basis.

Whilst we will correspond with affected customers in due course, HSBC cannot offer any advice relating to FATCA and we recommend you contact a professional tax advisor to discuss your personal tax situation.

**10. What does FATCA mean for me if I am not a US Person?**

For most customers, FATCA will have minimal impact, and there will be no action required.

However, HSBC may still contact you to confirm your status as a non-US person if we have reason to believe you are potentially a US person for FATCA purposes.

**11. Does FATCA replace existing US tax rules that I already follow?**

FATCA does not replace the existing US tax regimes, it may however add additional requirements and complexity to the existing tax rules you may already follow. We recommend you contact a professional tax advisor to discuss your personal tax situation.

**12. What happens if a joint account is held by a US person and a non US person?**

A joint account which has one US owner is treated as a US account and therefore the entire account is subject to the FATCA legislation.

**13. How frequently will I have to provide information for FATCA purposes?**

FATCA is an ongoing process. If your account information changes, we may be required to contact you to obtain additional information so that we are able to update your account classification under FATCA.

**14. What information will HSBC report to my local tax authority or the IRS?**

The information reported to the IRS or to customer's local tax authority will depend on the FATCA classification of the customer. This information will typically be of a personal nature (for example, Name, Address, US Taxpayer Identification Number), and of a financial nature (e.g. Account number, Account balance/Value). We will be communicating with the affected customers in detail on these requirements.

## **Business Customers**

**15. Am I only affected if I am a US Company?**

No. The impacts of FATCA are wider than just US companies. HSBC will be reaching out to many business customers globally to determine their status under FATCA. The aim of this exercise is to identify customers which are reportable under FATCA. We will be communicating with customers who need to take further action.

**16. What do I need to do as a business customer?**

In order to establish your tax status under FATCA, we may need you to provide additional information/documentation. This documentation could be an HSBC declaration or a US tax form from the IRS. We will be communicating with affected customers that need to complete these forms, detailing when they will need to be completed by.

**17. Does FATCA replace existing tax rules I already follow?**

FATCA does not replace the existing US tax regimes, it may however add additional requirements and complexity to the existing tax rules you may already follow. Should you need further advice on your tax status or FATCA classification, you should contact a professional tax advisor.

**18. Why has my other Bank asked for different documentation than HSBC?**

The way in which Banks and Financial Organisations collect information from their customers in order to confirm their tax status under FATCA may vary. This may mean that in some instances you are asked for different documentation from HSBC than another Bank.

HSBC cannot offer advice on your FATCA tax status or classification. If you need further support you should visit the IRS website or contact a professional tax advisor.

**19. How frequently will I have to provide information for FATCA purposes?**

FATCA is an ongoing process. If your account information changes, we may be required to contact you to obtain additional information/documentation so that we are able to update your account classification under FATCA.

**20. Under what circumstances would HSBC need to report information about my account to my local tax authority or to the IRS?**

The purpose of FATCA is to prevent US Persons (see glossary) from using Banks and other Financial Organisations to avoid US taxation on their global income and assets. HSBC will therefore report information to the IRS or local tax authority on all accounts held directly or indirectly by US Persons. In addition, HSBC may also need to report information about customers who do not provide the required documentation to us.

**21. What information will HSBC report to the local tax authority or the IRS?**

The information reported to the IRS or the local tax authority will depend on the FATCA classification of the customer. This information will typically be of a personal nature in relation to the substantial US owners of a business (for example, Name, Address, US Taxpayer Identification Number), and of a financial nature (e.g. Account number, Account balance/Value). We will be communicating with the affected customers in detail on these requirements.

## **What do I need to do?**

**22. What types of information and/or documents can I expect to supply to HSBC?**

We will be communicating with the affected customers and provide full details of the information/documentation HSBC needs for FATCA purposes. Documents may include US tax forms (also referred to as withholding certificates or W forms) or self-declarations of FATCA status.

### 23. Will HSBC supply me with all the forms I need to complete?

Yes. If HSBC requires further information from you we will either send you the relevant forms or direct you to a website where you can download them.

### 24. When do I have to provide the requested information and/or documentation for FATCA?

In general, customers should supply the requested documentation and information by the date contained within the communication.

### 25. What will HSBC do if I do not provide the information required under FATCA?

HSBC is committed to being fully FATCA compliant in all countries where we operate.

The HSBC Group may not open new accounts or offer additional products and services to customers who choose not to comply with HSBC's requests for documentation to establish a customer's status under FATCA.

HSBC may exit the relationship with customers who decide not to provide the necessary information and documentation.

HSBC may also need to report information about customers who do not provide the required documentation to us.

In addition, we may also be required to withhold tax on certain US-source payments coming into your account. (Please refer to the glossary for further information on Withholding tax).

### 26. What do I need to do if I am affected by FATCA?

Over the next few months we will continue to review the impact of the legislation for our customers and will correspond with affected customers in due course. For more information regarding FATCA, please visit the IRS website (see useful links), or contact your professional tax advisor for advice.

Please note that you may receive more than one request for documentation if you have multiple relationships with different members of the HSBC Group. It is important that you respond to all requests, even if you believe you have already supplied the requested information.

Please note that HSBC is unable to offer tax advice. For tax related questions please contact your professional tax advisor or refer to the IRS website.

## GLOSSARY

Summary of terms included:

- Foreign Financial Institution (FFI)
- IRS Forms
- Inter-governmental agreement (IGA)
- Internal Revenue Service (IRS)
- Non-Financial Foreign Entity (NFFE)
- Specified United States Person
- Tax Identification Number (TIN)
- US Person (USP)
- US citizen
- Withholding tax

## Foreign Financial Institution (FFI)

FFI is the abbreviation for Foreign Financial Institution. It refers to a non-US Financial Institution. The FATCA legislation contains an extensive definition of FFI and includes entities such as banks, custodian institutions, investment funds and certain types of insurance companies.

## IRS Forms

Withholding certificates, also referred to as W-forms, are US IRS tax forms.

Form W-9 is a Request for Taxpayer Identification Number and Certification. This US Tax Form is provided by an account holder to confirm and certify their US status. The W-8 series forms are currently used by foreign persons (including corporations) to certify their non-U.S. status. The form establishes that one is a non-resident alien or foreign corporation, to avoid or reduce tax withholding from U.S. source income. These forms will permit a non-US customer to self-certify their status under FATCA.

## Inter-governmental agreement (IGA)

An IGA is an agreement between the US and specific countries to build FATCA compliance into the country's legal framework so that the country can implement FATCA. An IGA will require financial institutions to provide the information on US accounts which they hold either:

- directly to the IRS
- to the local tax authority of the resident country

## Internal Revenue Service (IRS)

The IRS is the United States government agency responsible for tax collection and tax law enforcement.

## Non-Financial Foreign Entity (NFFE)

A NFFE (Non-Financial Foreign Entity) is a non-US incorporated/established entity that does not meet the definition of an FFI and includes:

- Listed or privately held operating or trading businesses
- Professional service firms
- Certain entities with a passive (i.e. not an operating/trading business)
- Charitable organisations

## Tax Identification Number (TIN)

A US IRS specific term: Tax Identification Number.

For an individual this would be their US social security number, for an entity their employer identification number.

## Specified United States (US) Person

The term specified United States person means any United States person other than:

- A. a corporation the stock of which is regularly traded on one or more established securities markets for a calendar year;
- B. any corporation which is a member of the same expanded affiliated group as a corporation the stock of which is regularly traded on one or more established securities markets for the calendar year;

- C. any organisation exempt from taxation under U.S. federal tax law or an individual retirement plan;
- D. the United States or any wholly owned agency or instrumentality thereof;
- E. any State, 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;
- F. any bank incorporated and doing business under the laws of the United States (including laws relating to the District of Columbia) or of any state thereof;
- G. any real estate investment trust;
- H. any regulated investment company, or any entity registered with the Securities Exchange Commission under the Investment Company Act of 1940,
- I. any common trust fund;
- J. any trust that is exempt from tax or is deemed a charitable trust;
- K. a dealer in securities, commodities, or derivative financial instruments that is registered as such under the laws of the United States or any State;
- L. a broker, and
- M. any tax exempt trust under a tax exempt or public school annuity plan or governmental plan.

## US Person (USP)

The term “United States person” means:

- A citizen or resident of the United States,
- A 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,
- A corporation 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 or trust other than a foreign estate or foreign trust. (See Internal Revenue Code section 7701(a)(31) for the definition of a foreign estate and a foreign trust.),
- A person that meets the substantial presence test, or
- Any other person that is not a foreign person.

## US Citizen

The term “United States Citizen” means:

- An individual born in the United States,
- An individual whose parent is a U.S. citizen,
- A former alien who has been naturalized as a U.S. citizen,
- An individual born in Puerto Rico,
- An individual born in Guam, or
- An individual born in the U.S. Virgin Islands.

## Withholding tax

A 30% withholding tax applies under FATCA on ‘withholdable payments’ in respect of financial institutions that do not comply with the FATCA requirements and/or customers who do not provide the requisite FATCA documentation.

The term withholdable payment means:

- Fixed or determinable, annual or periodical (FDAP) income, if such payment is from sources within the US – this will include any payment of interest and dividends. This will apply from 1 July 2014.
- Any gross proceeds from the sale or other disposition of any property of a type which can produce interest or dividends from sources within the US. This will apply from 1 January 2017.

Various exceptions apply, including for income connected with a US business.