**Form B**

**Self-certification and consent to release of**

**client information** **of Company clients**

**(For use when the law firm is a non-financial foreign entity)**

The Foreign Account Tax Compliance Act (‘**FATCA**’) is US law which has effect in New Zealand under the Double Tax Agreements (United States of America – FATCA) Order 2014 (‘**FATCA Order**’). Our bank is required by law to obtain client information fromus where funds are held on interest bearing deposit through our trust account. The FATCA information required by the bank from us relates to the FATCA status of the Company. If any Company is a corporation organised in the United States or under the laws of the United States or is a passive NFFE (non-financial foreign entity) with any controlling person who is a US citizen or US tax resident, the bank must advise the IRD, which will pass relevant information to the US Internal Revenue Service.

In addition to FATCA, New Zealand has endorsed the OECD’s Standard for Automatic Exchange of Financial Account Information in Tax Matters (‘**AEOI**’) which incorporates the Common Reporting Standard (‘**CRS**’). From 1 July 2017, CRS will facilitate the annual cross border automatic exchange of information on ‘financial accounts’ between the Competent Authority of each country with which New Zealand enters into a bi-lateral agreement to implement CRS. There are substantial similarities between the FATCA and CRS regimes. This form also applies to CRS information.

Questions 1-2 relate to both FATCA and CRS. Questions 3-6 relate to FATCA. Questions 7-9 relate to CRS.

**Further information and definitions can be obtained regarding FATCA at** [www.ird.govt.nz/international/nzwithos/fatca/documents/](http://www.ird.govt.nz/international/nzwithos/fatca/documents/), **and regarding CRS at** <http://taxpolicy.ird.govt.nz/publications/2016-other-aeoi-guidance-draft/overview>**.**

1. **Company details**

Full name of Company: (‘**Company**’)

1. **Country of incorporation/establishment**

Country where incorporated or established:

Company’s Tax Identifying Number (or functional equivalent):

1. **Financial Institution**

|  |  |  |  |
| --- | --- | --- | --- |
| Is the Company a Financial Institution (a custodial institution, a depository institution, an investment entity or a specified insurance company), as defined in the FATCA Order, for FATCA purposes? (Circle correct answer) | | Yes | No |
|  |  |
| If the answer is yes, please provide the Company’s Global Intermediary Identification Number (GIIN) then proceed to question 7 |  | | |
|  | | |

1. **United States company**

|  |  |  |  |
| --- | --- | --- | --- |
| Is the Company organised in the United States or under the laws of the United States? (Circle correct answer) | | Yes | No |
|  |  |
| If the answer is yes, please provide the Company’s US federal taxpayer identifying number (US TIN) and proceed to question 7 |  | | |
|  | | |

1. **Source of gross income**

|  |  |  |
| --- | --- | --- |
| If the answer to the previous question is no, does 50% or more of the Company’s gross income for the preceding calendar year or other appropriate reporting period come from passive income? (See note 2 for definition of ‘passive income’). (Circle correct answer) | Yes | No |
|  |  |
| Is 50% or more of the Company’s assets held during the preceding calendar year or other appropriate reporting period producing, or held to produce, passive income? (Circle correct answer) | Yes | No |
|  |  |

If either answer is yes (and the Company is not a company whose stock is regularly traded on an established securities market, or a related company of such a company or does not otherwise qualify as an active NFFE (non-financial foreign entity) – refer note 4) the Company is a passive NFFE. Proceed to question 6.

If both answers are no, the Company is an active NFFE. Proceed to question 7.

1. **Controlling persons of passive NFFE Company**

|  |  |  |
| --- | --- | --- |
| Is any shareholder of the Company who is a ‘controlling person’ (refer note 3) a US citizen or US tax resident? (See note 1 for definition of US citizen and US tax resident). (Circle correct answer) | Yes | No |
|  |  |
|  |  |
| If the answer is yes, please provide details of the person(s) below: |  |  |
|  |  |

Full name

Residential address

Date of birth (day/month/year)

Place of birth

US federal taxpayer identifying

number (US TIN) (if applicable)

1. **CRS information**

|  |  |  |
| --- | --- | --- |
| Is the Company a Financial Institution (a custodial institution, a depository institution, an investment entity or a specified insurance company). If the answer is no, the company is an NFE (non-financial entity).  If the Company is a Financial Institution for FATCA purposes (refer question 3) it is likely but not certain that the Company will be a Financial Institution for CRS purposes. Refer to the link to the IRD’s Draft Guidance on the Automatic Exchange of Information on page 1. | Yes | No |
|  |  |

1. **Source of gross income (for CRS purposes)**

|  |  |  |
| --- | --- | --- |
| If the answer to the previous question is no, does 50% or more of the Company’s gross income for the preceding calendar year or other appropriate reporting period come from passive income? (See note 5) (Circle correct answer) | Yes | No |
|  |  |
| Is 50% or more of the Company’s assets held by the Company during the preceding calendar year or other appropriate reporting period producing, or held for the production of, passive income? (Circle correct answer). | Yes | No |
|  |  |
| If either answer is yes (and the Company is not a company whose stock is regularly traded on an established securities market, or a related company of such a company or does not otherwise qualify as an active NFE, the Company is a passive NFE. Proceed to question 9. |  |  |
| If both answers are no, the company is an active NFE.  Proceed to sign this form. |  |  |

1. **Controlling persons of a passive NFE company**

|  |  |  |
| --- | --- | --- |
| (See note 3 for definition of ‘controlling persons’).  Is any shareholder who is a ‘controlling person’ a tax resident of any country (other than New Zealand or the US)? | Yes | No |
|  |  |
| If the answer is yes, please provide details of the person(s) below: |  |  |
|  |  |

Full name

Residential address

Date of birth (day/month/year)

Place of birth

Country of tax residency

Tax Identifying Number (or  
functional equivalent) in such country

|  |  |  |
| --- | --- | --- |
| Is any shareholder of the Company who is a ‘controlling person’ tax resident in any country (other than New Zealand or the US)? (Circle correct answer) | Yes | No |
|  |  |
| If the answer is yes, please provide details of the person(s) below: |  |  |

Full name

Residential address

Date of birth (day month year)

Place of birth

Country of tax residency  
(other than New Zealand or   
the US)

Tax Identifying Number (or  
functional equivalent) in such country

**To: [law firm]**

**I/We certify that the information given above is correct and I/we irrevocably consent to you providing any information held by you relating to the Company’s FATCA or CRS status or FATCA or CRS matters to the IRD and/or any bank maintaining a trust account for you.**

**I/We agree to notify you in writing immediately if there is any change I/we become aware of which would render any answer above to be incorrect, and to re-submit this form to you upon your request.**

**Dated:**

**Signed:**

**Notes:**

1. A US citizen includes persons born in the US, having a US citizen parent or persons who are US-naturalised, a former alien who has been naturalised as a US citizen, and an individual born in Puerto Rico, Guam or the US Virgin Islands. A US tax resident includes a green card holder and someone who satisfies the substantial presence test. The substantial presence test is satisfied when a person is present in the US for 31 days in the current year (calendar year), and for at least 183 days in the period of the current year and the two years prior to the current year. When assessing the 183 days, this includes all days present in the US in the current year, 1/3 of the days present in the US in the year prior to the current year, and 1/6 of the days present in the US in the year two years prior to the current year.
2. For FATCA purposes, ‘passive income’ is determined in accordance with New Zealand tax law. It includes dividends, interest, rents and royalties (other than rents and royalties derived in the active conduct of a trade or business), annuities, and amounts received under cash insurance contracts.
3. The term ‘controlling persons’ is defined for FATCA and CRS purposes to mean, in the case of a company, the natural persons who exercise ultimate effective control over the company. While no threshold is given, it may be thought that control of 25% or more of voting shares would constitute control.
4. Active NFFEs for FATCA purposes also include certain types of holding companies, start-ups, hedging financing centres and tax exempt charitable entities – refer to the definition of ‘Active NFFE’ in VI B4 of Annex 1 of the FATCA Order. If an NFFE is not an active NFFE, it is a passive NFFE.
5. ‘Passive income’ for CRS purposes is defined in s3(1) of the Tax Administration Act 1994 as follows:

**passive income,** in the application of the CRS applied standard to a person or entity for a period, means an amount that is not income from a transaction entered into in the ordinary course of the business of a dealer in financial assets and that is—

1. a dividend:
2. interest:
3. income equivalent to interest:
4. rent or a royalty, other than rent or a royalty derived in the active conduct of a business conducted, partly or wholly, by employees of the person or entity:
5. an annuity:
6. for financial assets that give rise to amounts included under paragraphs (a) to (e), the amount by which gains from the sales or exchanges of the financial assets in the period exceed losses from the sales or exchanges:
7. the amount by which gains from the transactions in financial assets in the period exceed losses from the transactions:
8. the amount by which gains from the foreign currency transactions in the period exceed losses from the transactions:
9. the amount by which gains from the swaps in the period exceed losses from the swaps:
10. an amount received under a cash value insurance contract
11. For CRS purposes, a ‘financial asset’ generally covers all assets (including, for example, shares, bonds, and money) other than physical commodities or direct interests in real property.
12. ‘Active NFE’ is defined in Section VIII(D)(8) of the CRS. Refer to the CRS link on page 1. If an NFE is not an active NFE, it is a passive NFE.
13. Where moneys held by a law firm on interest-bearing deposit are:
    * 1. escrow money, or
      2. held for a deceased estate where the law firm holds a copy of the deceased’s will or death certificate (and can provide that documentation to the bank if required) (this exemption does not apply to testamentary trust continuing on following the distribution of an estate)

the account is exempted from being a financial account and cannot be reported on by the bank. Other accounts are exempted (for example, for FATCA purposes, accounts held by charitable organisations registered under the Charities Act 2005 or Charitable Trusts Act 1957 and donee organisations are excluded from being financial accounts).