

# US based Business partner

HCL SW Tax Guidance-North America

# Resale certificate requirements

A Reseller Certificate is an standard exemption certificate applicable in US which allows a business to buy goods/services without paying sales taxes to their vendor if they intend to resell. Hence HCL’s Business Partners can issue a reseller *certificate* for procuring the taxable goods/services from HCL without tax if they will not be the end consumer and rather intent to resell further to end consumers. Once the reseller certificate is provided, HCL can accept it on good faith and is relieved of its primary responsibility for charging sales tax on its invoice the partner. If later on it is found that tax was applicable, the burden of paying taxes on the product shifts to the partner. When the goods/services are sold by the Business partner to the end consumer, the Business partner must collect the sales tax. If the Business partner doesn’t resell the goods/ services and consume/use the product in their own business, Business partners would be required to pay sales/ use tax on such products/ services. Since both HCL America Inc. and HCLT India are registered in almost all the Tax jurisdiction in US, HCL is primarily responsible to charge the respective state’s sales tax to the customer unless buyer Provides any one of the following:

- A) Resale Certificates; stating that goods/services are for resale or,
- B) Direct Pay Permit as certified by respective State Authority (Taxpayer self-assesses and remits use tax directly to the State.)

Below Table gives a brief view of the State wise taxability of these part codes in US per current tax laws.

Product	AL	AR	AZ	CA	CO	CT	DC	FL	GA	GU	HI	IA	ID	IL	IN	KS	KY	LA	MA	MD	ME	MI	MN	MO	MS	NC	ND	NE	NJ	NM	NV	NY	OH	OK	PA	PR	RI	SC	SD	TN	TX	UT	VA	VI	VT	WA	WI	WV	WY
Part D	T	E	T	E	E	T	T	E	E	T	T	T	E	T	T	T	T	T	T	E	T	T	T	E	T	T	T	T	T	T	E	T	T	E	T	T	T	E	T	T	T	T	E	E	T	T	T	T	
Part E	T	E	T	E	E	T	T	E	E	E	T	T	E	T	T	T	T	T	T	E	T	T	T	E	T	T	T	T	T	T	E	T	T	E	T	T	T	T	E	T	T	T	E	E	T	T	T	T	E

Legend: E = Exempt, T = Taxable

# Resale Certificate- Key points

- A resale certificate enables Business Partners to purchase goods/services wholesale without paying sales tax to HCL.
- For exemption of US sales tax a Business Partner needs to issue a reseller certificate or license of the consumption/beneficiary state in favor of HCL.
- While sharing the Resale certificate a reseller must ensure the following points:
  - It should be issued to either "HCL Technologies Ltd" OR "HCL America Inc" depending upon HCL billing entity.
  - Business Partners can issue either Multi Jurisdictional Resale Certificate OR State specific certificate depending on the respective State's guidance in this regard.
  - Tax registration numbers for all States for which exemption is claimed.
- Having a Reseller certificate on record is beneficial to both HCL and Partners to substantiate their tax stand during Tax Audits
- There is no paper requirement as such, a scan or electronic copy of Reseller certificate will suffice for record purposes.
- Resale certificate needs to be kept on record by HCL for substantiating their exempted sales during State Tax audits.
- A Reseller Certificate should contain description of Purchaser's Business and Description of taxable goods/services to be purchased
- Certificate should be signed and dated

## Direct Pay Permit

- A business Partner can also share a direct pay permit certificate for tax exemption.
- A direct pay permit is issued by a jurisdiction and allows the holder of the permit to accrue and pay state and local taxes directly to the jurisdiction.
- Business Partners can issue either Multi Jurisdictional Certificate OR separate state authority wise Certificate wherein goods/services to be delivered.

## A Business Partner in US should not deduct any withholding tax while making payment to HCL

HCL will issue the following forms to Business Partner as a support for non deduction of withholding tax by business partner

- W9 Form –For billing form HCL America
- W8BEN and ECI Form- for billing from HCLT India.

Under US tax laws, the software product license (including license for updates) for the internal use of a customer is treated as sale of a tangible personal property (e.g., copyrighted articles). Such proceeds should not be treated as royalties subject to withholding tax under U.S. tax law, because the “license fees” here are not consideration for the use of, or the right to use, the copyright rights embedded in the software products. Under the “Computer Programs Regulations,” the transfer of software Product to the customers does not involve any transfer of copyright rights because the particular copy of the software Product is “a particular tangible manifestation or embodiment of intellectual property [without transferring] any rights to the underlying intellectual property.”

The support services provided in relation to the software products give rise to service income. Since such services are not performed in the United States, they will not give rise to U.S.-sourced income.

As such, the software product payments should not be subjected to any withholding tax in the US.

HCL Technologies Limited will give a valid W8BEN E. The W-8BEN-E is used to confirm that a vendor is a foreign entity and is a resident of a foreign country with which the United States has an income tax treaty and who is eligible for treaty benefits. Generally, a Form W-8BEN-E is valid for a three calendar-year period from the date of issue.

**Q1: Can Reseller use their resale certificate from State A to buy something for resale in State B?**

**A1:** No, A reseller has to issue the resale certificate specific to the state in which he is reselling the product. For example, If a Reseller is buying the product for sale in the state of Texas then he has to issue a Reseller certificate in favour of HCL issued by Texas State jurisdiction.

**Q2: Is the HCL entity name mandatory on the Resale certificate ?**

**A2:** Yes, HCL Entity name ( from which invoice is getting generated ) is mandatory on the Resale certificate, without the name resale certificate will be treated as invalid.

**Q3: When should a reseller send the reseller certificate / Direct pay permit to HCL .**

**A3:** A reseller should send the Reseller Certificate/ Direct pay permit at the time of signing the MRA itself. These reseller Certificate / Direct pay permit should be sent to [O2Chelpdesk@hcl.com](mailto:O2Chelpdesk@hcl.com) After checking the certificate HCL AR team will send a mail to the business partner either confirming acceptance of the reseller certificate / Direct pay permit for tax exemption or will send Queries related to the certificate to the Reseller.

**Q4: Whom should the Reseller contact for any Tax related issues on the invoice**

**A4:** The Reseller should send a mail to [O2Chelpdesk@hcl.com](mailto:O2Chelpdesk@hcl.com) for any Tax related issues on the invoices

**Q5: Is there any validity period for the resale certificate? If there is no written on the resale certificate what is the valid term?**

**A5:** Generally Vendor can accept the Resale certificate in good faith unless explicitly revoked by Buyer. However it is recommended to recheck the applicability of the same from Buyer in every 2-3 years.

**HCL**

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