

1 February 2022

Banking (FATCA and CRS)

This note will assist councils in completing certain forms for their bank

Banks may ask councils to complete a form to comply with FATCA (The US Foreign Account Tax Compliance Act, which seeks to ensure US citizens do not avoid tax by using foreign accounts) or to meet the requirements of the Common Reporting Standard (CRS), which is being rolled out globally by tax authorities.

FATCA

The form that should be used for FATCA is Form W-8BenE, which is for entities:

[Form W-8BEN-E \(Rev. October 2021\) \(irs.gov\)](#)

[Instructions for Form W-8BEN-E \(10/2021\) | Internal Revenue Service \(irs.gov\)](#)

- × Form W-8Ben is only for individuals
- × Form W-8Exp is only for claiming exemption from US tax on dividends and interest
- × Form W-8ECI is only for income from business activities in the USA

The council should just provide one form, as a corporate body. It is a lengthy form, but most parts of it can be ignored. Our view is:

Box 1 should name the council

Box 2 should say UK

Box 4 tick Foreign Government – Integral Part (see below)

Box 5 tick Foreign Government

Box 6 should be the council's published correspondence address (not a PO box)

Box 27 (part XIII) tick this box

Sign and date Part XXX and tick the box

(The Regulations allow electronic signature if the bank accepts it)

This guidance is based on the definitions within the US legislation (FATCA):

An “integral part” of a foreign sovereign is any ... body, however designated, that constitutes a governing authority of a foreign country

The rules ... apply to political subdivisions of a foreign country ...

Section 1.103-1(b) of the US Internal Revenue Code provides that the term “political subdivision” denotes any division of any state or local governmental unit that is a municipal corporation

The US Internal Revenue Service website contains examples of where clarification has been sought about “political subdivision” and it appears to include incorporated towns, where they exercise tax raising powers, so it should apply to local government in the UK.

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The only alternative approach would be to declare the council as a corporation in box 4, an active NFFE in box 5 and tick box 39 instead of 27, which achieves the same effect and doesn't appear to be a misdeclaration.

CRS

There is also a Common Reporting Standard (for sharing data between tax authorities) being rolled out globally. Account holders may be asked to complete the bank's own form to self-certify their tax status.

For CRS purposes a council is likely to be an Active Non-Financial Entity (it doesn't exist to hold other people's deposits, to make investments or to sell insurance) and will also be a Governmental Entity (as opposed to being a "Foreign Government" for FATCA).

The CRS defines the term "Governmental Entity" as the government of a jurisdiction, any political subdivision of a jurisdiction (which, for the avoidance of doubt, includes a state, province, county, municipality, or local authority).

<https://www.oecd.org/tax/exchange-of-tax-information/standard-for-automatic-exchange-of-financial-account-information-in-tax-matters-second-edition-9789264267992-en.htm>

Disclaimer

This guidance is issued to assist in completing the relevant forms in accordance with the legislation and guidance. It is not a statement of law, nor does it account for individual circumstances. Councils should seek professional advice if they are uncertain. The Parkinson Partnership LLP accepts no liability for any loss arising from situations where councils have not followed the relevant law and guidance.