

Foreign Account Tax Compliance Act (FATCA)

Guidance for Parochial Church Councils on completing self-certification forms currently being issue by banks, building societies and other institutions.

The following guidance can generally be used by PCCs when they are requested by their banks (or other institutions) to complete FATCA forms relating to accounts that institution holds for the PCC into which the PCC have deposited or invested their **own** funds/assets. It should not be relied upon for any other situations.

This guidance is divided into the following parts:

1. Background to FATCA;
2. The problems facing PCCs in completing the forms;
3. How to complete the forms:
 - Example completed forms; and
 - Pro-forma covering letter.
4. Annex One: Pro Forma Covering Letter (also available as a Word Doc)

1. Background to FATCA.

The issue: Over recent months a growing number of PCCs have been receiving requests, mainly from their banks, to complete a set of forms which can loosely be described as relating to FATCA.

FATCA (the 'Foreign Account Tax Compliance Act') is in fact the name for a piece of US legislation under which the US Government is targeting tax evasion by US citizens and residents who use off-shore accounts (i.e. bank accounts, investment funds etc). The concept under US tax law is that all US citizens are liable to be taxed by the US Government on their worldwide income and gains regardless of whether that person is resident in the US or any other country. For the FATCA legislation to work the Internal Revenue Service ('IRS') in the US has to have the ability to identify any US person who holds accounts outside the US. It has attempted to achieve this by:

1. Requiring all Foreign Financial Institutions ('FFI') e.g. banks, building societies, investment funds etc, to identify and report all account holders with US connections. Compliance by non-US firms is encouraged by the possible imposition of a 30% tax on monies which they handle that may pass through the US. Given the global nature of banking and the financial services industry such a tax can easily capture firms regardless of whether or not they have US clients. This means UK based FFIs including banks are seriously incentivised to comply with what is essentially US domestic legislation. UK FFIs have in turn incentivise

- their customers to complete the forms by suggesting that non-compliance will result in closure of accounts or some other punitive sanction; and
2. Entering into agreements with other governments (Inter-Governmental Agreements or IGAs) across the globe to share tax related information. Such an IGA exists between the UK and US. These Inter-Governmental Agreements (“IGA”) have laid out rules under which the FFIs have to operate in order to comply with the US FATCA legislation.

In addition to the US FATCA legislation, the UK government has enacted an equivalent regime and has as a result entered into its own IGAs with certain British Crown Dependencies (CDs) and British Overseas Territories (OTs) again with the purpose of exchanging tax related information to combat tax evasion etc. These agreements are collectively known as ‘UK FATCA’ (or sometimes known as ‘UK CDOT’). The forms the PCCs are receiving are only concerned with the US FATCA and UK FATCA reporting requirements and therefore this note is only concerned with providing guidance to enable PCCs to correctly inform the banks and any other FFIs with whom they deal, of their correct status/classification under those IGAs.

2. The problems facing PCCs in completing the forms.

To comply with the requirements under both US FATCA and UK FATCA, FFIs have to classify their clients/customers under those two sets of rules and determine whether they need to report information about those clients/customers to either the IRS or HMRC. To identify those clients who it is intended the rules catch, the FFIs have in effect to determine the identity of everyone who has an account with them - a massive task. The rules are extremely complex as demonstrated by the fact that the guidance notes produced by HMRC on the UK/US IGA are themselves over 180 pages long. In an attempt to simplify and standardise the collection from their clients/customers of the information necessary to determine their correct classifications, the FFIs have produced questionnaires. The problems with these questionnaires is two-fold.

Firstly they are aimed at a very wide range of customers of different types and consequently a scattergun approach results in a large number of questions some of which have little or nothing to do with the person/entity for whom the form is being completed. This is confusing to the person attempting to complete the form. Secondly, there are very few standard or pro-forma forms in use. Each bank with whom you have an account with might send you what look like very different forms which although in practice are asking for the same information, they do so in slightly different ways to each other, but different enough that to successfully complete one set of forms from one bank may make it no easier to complete the next set from a different bank. This difference in the layout of the forms makes it difficult to give definitive and clear guidance on how to complete any form that a PCC may receive.

As of the date of this note the author has only seen forms from two banks. In both cases the banks sent one particular form bearing a title similar to:

- **‘Tax Status Declaration – Entity’** (see Example Form 3); or
- **‘Inter-Governmental Agreement Declaration to confirm tax status under FATCA’** (see Example Form 2).

Both make specific reference to US FATCA and are not concerned with the customer's status under UK FATCA. I shall refer to these as the 'US FATCA Forms'

In addition one of the banks sent another form entitled:

- **'Tax Compliance: International Exchange of Information Agreements Self Certification Form'** (see Example Form 1).

This form is not specifically aimed at determining the customer's status under US FATCA but rather that under UK FATCA. I shall refer to these as the 'UK FATCA Forms'

And then there are what can be described as 'hybrid' forms which attempt to determine that status for both US and UK FATCA in one form (see Example Form 4)

This seems to show a lack of consistency by FFIs, with some seemingly only asking about US FATCA status while others are asking about both US and UK FATCA.

As you can see from the examples, there are significant differences between these forms and a general lack of clarity in the instructions from the FFIs combine in making it difficult for a person inexperienced in their completion to decide which parts of which forms need completing.

3. How to complete the forms

To assist you in completing the FATCA forms you might receive we have attached examples of 4 real life forms each of which has been completed specifically for PCCs within the Church of England. Hopefully even if you do not receive exactly the same forms yourself, these example will give you a practical idea of how to complete other. However a number of PCCs have already received the two forms from HSBC that we have used as examples 1 and 2.

US FATCA Forms:

Please refer to Example Form 2 and 3 and also Example Form 4 (section C).

The US FATCA Forms should be relatively easy to complete and with confidence that it accurately states the correct nature of the PCC under the US FATCA rules. This is because under US/UK, **'Registered Charities'**¹ in the UK have a special status and are exempted under the rules. To give force to this exemption the US has determined that UK Registered Charities are treated as **'Certified Deemed Compliance Foreign Financial Institutions'**² (see USA/UK IGA, Annex II, section II, A – Non-profit organisations) and as you can see from the Examples there is usually a box on the form using that wording which you should be able to put a tick against. Even more simply the form may just ask you if you are **registered charity** and again if it does you can simply tick that box.

If in these **US** FATCA forms you see reference to 'Active NFFE', such as you can see at the top of the third page of Example Form 3, **you should ignore it** as it not relevant to a PCCs status under USA FATCA, instead complete the form in the way described in the paragraph above. Do not get confused with the way you need to complete the Hybrid Forms (see below) where you will need to indicate the PCC has both Registered Charity/Certified Deemed Compliant Foreign Financial Institutions status for US FATCA and also Active NFFE status for UK FATCA.

UK FATCA Forms:

Please refer to Example Form 1 and Example Form 4 (section D).

The UK FATCA Forms can be more tricky, in that there is not the same clear cut exemption for UK charities as with its US counterpart. Without a good working knowledge of both the US and UK FATCA rules, it may sometimes be difficult to determine if you should be answering a particular question or leaving it blank. There is however an accepted shortcut which although not in the strictest sense always absolutely accurate for all UK charities is an acceptable simplification in stating your status under UK FATCA. Under most of the IGAs between the UK and the CDs and OTs, Registered Charities are deemed to be Active Non-Financial Foreign Entities ('Active NFFE') for the purpose of those agreements. You should feel confident to tick that box should you see it.

Covering Letter:

Despite your best efforts to complete these forms with all the information necessary for the FI to arrive at the correct FATCA classification for your PCC, it is more than possible that the structure of some of the forms you may come across will not allow this.

Therefore in order to make sure that the FI has all pertinent information we strongly recommend that you return any FATCA form with a covering letter, the pro-forma of which is attached as Appendix 1. This letter should be read through from beginning to end first, then go back and delete those paragraphs not applicable to your PCC and add in any missing information such as tax numbers. Remember to delete all the instructions at the top and bottom before sending out.

Notes:

1. For the purposes of both the US and UK FATCA rules a 'Registered Charity' is any entity which is either (i) registered as a charity with the Charity Commission of England and Wales; (ii) registered with HMRC for charitable tax purposes; or (iii) registered as a charity with the Office of the Scottish Charity Regulator.
2. This is despite the fact that UK charities would otherwise not meet the definition of Foreign Financial Institutions under the US FATCA legislation which is confusing if you see a question asking if you are a FI but there is no supplemental question asking you to clarify what type of FI you are. You will see in that the FI question in Example form 4, at Part 4, section A does ask that supplementary question.

This guidance is based on our understanding of the relevant law and the guidance as issued by HMRC.

Tax Team, National Church Institutions
20th November 2015

Disclaimer: This guidance is not intended to constitute formal advice from the National Church Institutions ('NCIs') to any PCC and as such cannot be treated as such. It simply represents our understanding of the law and regulations as they apply to PCCs. It is held out simply as general guidance to assist with the completion of various FATCA related forms that PCC are currently receiving. The NCIs have no duty of care as a result of providing this guidance and PCCs who feel it necessary would need to take their own formal advice from their accountants or other professional advisers.

Annex 1: Pro-Forma Covering Letter for PCCs returning FATCA forms to banks etc

Text in red or highlighted in yellow are instructions on how to complete this letter and should be removed before the final letter is sent to the bank. This is also available as a separate Word document.

Dear Sir Madam,

PCC of **St, XXXXXXXX** Bank Account No: **XXXXXXX** Sort Code **XX-XX-XX**
Forms for Self-Certification under FATCA

We have completed the various FATCA forms you sent us to the best of our knowledge and understanding of the relevant regulations under both the US/UK Inter-Governmental Agreement (IGA) and the IGAs that exist between the UK and its Crown Dependencies and Overseas Territories but for clarity I have detailed below the relevant information relating to the PCC to ensure that you can satisfy yourself of the correct reporting status for both the US/UK and UK/CDOT FACTA IGAs.

PCCs (Parochial Church Councils) are statutory charitable corporations which are governed under two pieces of Church of England legislation, called Measures (these Measure have the same status as UK Acts of Parliament). These are:

- The Parochial Church Councils Measure (Powers) Measure 1956 (as amended); and
- The Church Representation Rules (contained in Schedule 3 to the Synodical Government Measure 1969 (as amended)).

There are no persons whether individual, corporate or otherwise that have any beneficial ownership in them. All the assets administered by them are held as corporate property and not on behalf of third parties. PCCs are not deposit taking institutions nor custodial institutions. They invest their own funds but do not invest funds on behalf of third parties.

*[This paragraph should be used by PCCs **NOT** registered with the Charity Commission]*

PCCs are charities but are 'excepted' from charity registration with the Charity Commission of England and Wales if their income is £100,000 p.a. or less, but they are still subject to that bodies' regulation (see the Charity Commission's guidance titled 'Excepted Charities'). As a consequence many PCCs are not registered with the Charity Commission and therefore do not have a charity registration number.

[This paragraph should be used by PCCs registered with the Charity Commission]

PCCs are charities and we are registered with the Charity Commission for England and Wales and our registration number is given below.

[This paragraph should be used by all PCCs that are registered with HMRC and have an HMRC Charity Registration Number]

The PCC of St. XXXXXXXX is also separately registered with HMRC for charitable tax purposes and our HMRC Charity Reference Number is also detailed below.

[This paragraph should be used by PCCs that are not directly registered with HMRC and instead make use of a Diocesan Gift Aid scheme whereby the diocese makes Gift Aid claims on its behalf]

The PCC, which is within the diocese of **[enter name of diocese]**, is recognised by HMRC for charitable tax purposes but does not have a separate HMRC Charity Reference Number. This is because it make use of use of arrangements in place between the diocese and HMRC under which it registered as a charity for tax purposes under the umbrella of a global HMRC Charity Reference Number issued to the diocese. *[if you know that number you should quote it below at point 1.a.iv or alternatively you can contact the Diocesan Gift Aid Administrator to ask them for it.]*

US and UK FATCA Self Certification.

US FATCA details

a. Tax Residency

- i. Organisations name: PCC of **St XXXXXXXX, Anytown.**
- ii. Address: **1 Church Lane, Anytown, AB12 3CD** United Kingdom
- iii. Country of residency for tax purposes: United Kingdom
- iv. Country or incorporation: United Kingdom
- v. United Kingdom Tax Identification Number: **922/12345/67890**
HMRC Charity Reference number: **XR12345**; and/or
Charity Commission Registered Charity Number: **1234567** [see Note]

b. Classification of Entity for FACTA

The PCC is a Registered Charity in the United Kingdom (as defined in the US/UK IGA under Annex II.I.A - Non-Profit Organisations) and is therefore treated as a Deemed Compliant Foreign Financial Institution.

UK/CDOT IGAs

The PCC is classified as an Active NFFE under the IGAs between the UK all the British Crown Dependencies and British Overseas Territories (see Annex II.I.E and Annex III.I.H).

Yours faithfully,

PCC Treasurer,
For and on behalf of **St XXXX, PCC, Anytown.**

[Note (this is to aid in filling in the above letter and should be deleted from the letter before it is sent to the bank etc):

It is expected that you will have some type of unique 'Tax Identification Number' ('TIN') and they will want you to quote it.

- Any PCC who itself makes Gift Aid repayment claims to directly to HMRC will be registered with HMRC and will have been given a number (the 'HMRC Charity Reference number') in the format of 'up to five numbers and starting with one or two letters' (e.g. XR12345), which it quotes on each reclaim. In some dioceses a PCCs can ask the diocese to handle Gift Aid reclaims on its behalf (under arrangements agreed with HMRC). In these circumstances should quote the HMRC Charity Reference Number that the dioceses use (please ask you Diocesan Gift Aid Administrator if you do not know what it is).*
- For UK corporate entities such as PCCs this would normally be the Unique Tax Reference number ('UTR') that would be found on any notice you may have received from HMRC telling you that you have to complete a Corporation Tax Return. As shown above the format of such a number is XXX/XXXXX/XXXXX where the three lead numbers are the identifier for the tax office who deals with you. In the case of Charities this will be 992, the Charities Section in Bootle, Merseyside. The remaining XXXXX/XXXXX is the number unique to the individual taxpayer.*
- If you have registered with the Charity Commission you will have been given a registration number.*

If you are not registered with the Charity Commission and your annual income is over £100,000 you should review the situation and take action to register – guidance is available on the Parish Resources website.

When completing this pro-forma letter you should quote all the numbers you do possess.]