

HOW ANZ COMPLIES WITH CRS AND FATCA FOR ANZ TMS SOLICITOR'S TRUST ACCOUNTS

Questions and Answers for New Zealand Law Firms
17 August 2017 v 0.2

Q. Is it OK to only hold an electronic version of my trust client's self-certification form?

A. Yes, an electronic version can be held (instead of the original copy) provided that it is readily accessible and capable of being retrieved, as either a printed hard copy or an electronic form in the future. Please note that the same record retention requirements (i.e. 7 years) apply to electronic copies.

Q. Can we use a digital signature on the form?

A. Yes, we can accept digital signatures.

Please make sure the electronic signature meets the rules in the [Electronic Transactions Act](#). Here are some of the key points:

- The electronic signature must adequately identify the signatory and his or her approval of the information in the document.
- The means of creating that electronic signature must be linked to that signatory.
- Any alteration made to that information after the time of electronic signing must be detectable.

Q. Who can sign ANZ's Exemption form?

A. The trust manager must sign this form - not the trust client.

Anyone who is normally able to sign on behalf of the law firm can sign this.

If the person signing is not on ANZ's authorised signatory/mandate list for the law firm, we will need evidence of the person's authority to sign, e.g. board resolution.

Q. Do I need to send the Exemption form to ANZ when opening a new trust client account?

A. No, we no longer require you to send the ANZ Exemption form to us. The trust manager must hold the exemption form now instead of sending it to ANZ. The form must be held securely, for a minimum of 7 years, and must be made available to ANZ upon request.

Q. The ANZ Exemption form asks for my account number? How do I know what this is when I'm requesting the account?

A. *If ADO is used to access the Trust Management Service:*

Once you've submitted your ADO request for a **new call account** (only), you can go into the Trust Management Client Database, click on the customer's name, and the account number will be displayed.

If ADO is not used to access the Trust Management Service, and for all Term Deposits:

We won't issue an account number until the account is opened. You don't need to include the account number on the exemption form if that's the case.

Q. What trust client accounts are exempt?

A. We must collect and may report tax residency information for solicitors' trust client accounts under CRS and FATCA, unless those accounts meet exempt account criteria.

A law firm must assess whether an account will meet exemption requirements and prescribed criteria.

The most likely exemptions for solicitors' trust client accounts include escrow and deceased estate accounts.

Other types of exempt accounts may include:

- Retirement and pension accounts
- Non-retirement tax-favoured accounts
- Term life insurance contracts
- Dormant accounts (See 'Determination CRS 2017/003' found here:

<http://www.ird.govt.nz/technical-tax/determinations/crs/determinations-crs-2017003.html>

- Monies held on behalf of a donee organisation as defined in the Income Tax Act 2007 (FATCA/US persons only)
- Monies held for a charitable trust registered under the Charities Act 2005 (FATCA/US persons only)

For more detailed CRS definitions refer to CRS section VIII (C)(17)(a) to (f) and for FATCA refer to Annex II (V) (A) to (G). Found here: www.ird.govt.nz/international/exchange

Q. What is an escrow account?

A. Below is the definition of escrow accounts.

Escrow Accounts

An account maintained in New Zealand established in connection with any of the following:

- 1. Legislation, a court order or judgment.*
- 2. A sale, exchange, or lease of real or personal property, provided that the account satisfies the following requirements:*
 - a) The account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a financial asset that is deposited in the account in connection with the sale, exchange, or lease of the property;*
 - b) The account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;*
 - c) The assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee (including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates;*
 - d) The account is not a margin or similar account established in connection with a sale or exchange of a financial asset; and*
 - e) The account is not associated with a credit card account.*

3. *An obligation of a Financial Institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time.*

4. *An obligation of a Financial Institution solely to facilitate the payment of taxes at a later time.*

(Taken from CRS Section VIII C17 e and FATCA refer to Annex II (V) (E) of the IGA. Found here: [www.ird.govt.nz/international/exchange/.](http://www.ird.govt.nz/international/exchange/))

Q. Who has to sign the entity form? Do all controlling persons need to sign the form?

A. The person giving the self-certification, or someone who has authority on their behalf, needs to sign the form.

We're happy to allow one single authorised person to collect all necessary tax residency information, and sign the self-certification forms on behalf of all of the controlling persons. That person must have the authority to give the tax residency information and affirmation for all of the people named in the form, and must also confirm that the information is true and complete. The trust manager should check the authority of the person giving the self-certification.

For example, a self-certification form needs to be signed by a partnership, which has two partners John and Mary. The partnership's lawyer, Bob, collects the tax residency information needed to complete the form and gets authority from John and Mary to complete the form. Bob then gives affirmation by signing the form.

Q. Why does ANZ collect a trust's beneficiary information at account opening?

A. We've chosen to collect a trust's beneficiary details up front, to minimise ongoing customer inconvenience once the account is open.

If we didn't collect beneficiary details up front, to comply with CRS we'd need to contact all trusts annually to see if the trust had made a distribution to any beneficiary in that year. We'd then have to collect self-certifications from those beneficiaries. We think this may be inconvenient for our customers.

Under our Trust Management Service terms and conditions, we've also agreed we won't contact trust clients directly — meaning we'd need to contact trust managers instead to ask whether their client had made a distribution to any beneficiaries. Again, we think this may be inconvenient for trust managers, particularly if they aren't involved in the day to day operation of those trusts.

Collecting beneficiary information up front avoids ongoing contact from us and avoids trust managers needing to contact those clients.

Remember, we only need details for beneficiaries that are named under the trust deed. We don't need details for any beneficiaries that are identified as a class only. However, you should let the trust know they should contact us if they do make a distribution to any beneficiary that was identified as a class.

Q. If a customer is only a New Zealand tax resident, do they need to complete a Self-Certification?

A. Yes, we need the customer to positively affirm their tax residency status.

Q. [How can an ADO user see if their trust client has provided a self-certification already?](#)

A. The law firm will need to keep their own records, but we will display foreign tax details in the ADO database.

If a client hasn't provided a self-certification, then the foreign tax fields in ADO will be blank.

If a client has provided a self-certification, then the foreign tax information will be displayed in ADO. That information includes:

- Tax residency – Domestic only or Foreign
- Fiscally transparent – Yes or No
- CRS entity type - Exempt, Financial Institution, Managed Investment Entity, Active NFE, Passive NFE

Or, if the client has provided the self-certification that day the tax fields will display 'submitted'.

Q. [What changes were made in ADO for CRS?](#)

A. Please see the ADO Release Notes. You can find these on the 'What's New' page, accessed from the 'Help' menu.

Q. [What do I do if a 'controlling person' is an entity?](#)

A. If a controlling person is an entity, like a solicitor's nominee company, we will need a self-certification from all of the controlling persons of that entity who are natural persons. For example, directors will need to provide a self-certification form as a controlling person of a company.

An authorised person can complete the self-certification for the controlling persons.

The nominee company itself is not required to complete a separate entity self-certification.

Q. [Can solicitor's nominee companies, that may be a controlling person on a number of trusts, provide information about the company and the controlling persons of that company once, rather than each time an account is opened for a trust?](#)

A. We are looking at how we can make this easier in the future. We're looking to create a form for solicitor's nominee companies to use for all trusts that they will be trustees for.

For now, we suggest the natural controlling persons of the solicitor's nominee company use the additional controlling persons form to capture their controlling persons and then re-use this form, where appropriate, for all funds on IBD where the trustee company is a trustee.

Q. [For pre-existing customers: What if the law firm's customer cannot be contacted? What are the requirements if the customer does not respond?](#)

A. We must comply with FATCA and CRS due diligence and reporting requirements. Solicitors must attempt to contact clients to obtain a valid self-certification and information about their tax residency status.

If the customer cannot be contacted or refuses to respond, then the solicitor must advise us. We must still report information about that customer to Inland Revenue. Inland Revenue states in their CRS guidance that they will not exchange undocumented account information, however may use this information for review and audit activity.

See page 13 of the Inland Revenue final guidance that can be found at:
<http://www.ird.govt.nz/international/exchange/crs/important-aeoi-crs-documents>

Q. Do the self-certification forms or the W forms have an expiry date?

A. ANZ's self-certification forms do not have an expiry date. However, if the law firm becomes aware that the details given by a trust account client or controlling person in a self-certification has changed or has become incorrect, then we will need a new self-certification completed.

W-8 forms: Unless a change in circumstances makes any information on the form incorrect, generally a form will be valid for a period starting on the date the form is signed and ending on the last day of the third calendar year. The IRS guidance also states that any replacement form should be provided within 30 days if a change in circumstance occurs that makes the form incorrect.

Q. What is the start date for documenting existing trust client accounts?

A. You must provide self-certifications, or an exemption form, for all trust client accounts that had interest bearing deposits with ANZ at any time from the date you provided your FATCA/CRS status declaration to ANZ, or from 31 March 2017, whichever is the earliest.

Q. Do I need to provide FATCA and CRS information for an account that has closed or will be closed in the next 6 months (i.e. before 31 December 2017)?

A. Yes, you must still provide FATCA and CRS information, even if the account has closed or will be closed soon.

Under both CRS and FATCA, we must still report all accounts that were closed during a reporting period.

See clause 6.2 of the IRD CRS guidance found here:
<http://www.ird.govt.nz/international/exchange/crs/aeoi-crs/>

And Article 2(2)(a)(4) of the US NZ IGA found here:
<http://www.ird.govt.nz/international/nzwithos/fatca/documents/important-fatca-documents.htm>.

Q. Is there a minimum monetary level before we need to get the self-certifications, for example \$1,000.00?

A. We do not apply a minimum monetary level before getting a self-certification form from a trust account client.

The customer may also hold other accounts with ANZ. If this is the case we will need to aggregate the balances for reporting purposes and our systems will automatically check for this.

Balances can also change during a reporting period.

To keep the process simple, solicitors must obtain self-certification forms for all IBD accounts, irrespective of balance.

Q. Will ANZ accept the New Zealand Law Society (NZLS) self-certification forms?

A. Unfortunately, ANZ isn't able to accept the NZLS self-certification forms. We've carefully reviewed the NZLS forms, and we're concerned they may not allow ANZ to meet all of our obligations under FATCA and CRS.

For example, some of the NZLS forms don't appear to include a positive declaration or affirmation of the trust client's tax residency status. And some key information, like an entity's incorporation details and tax status, is missing.

We hope to discuss this with the NZLS in more detail soon, and we'll let our customers know if things change.

Q. Can we use other forms we've created, or another bank's forms?

A. ANZ must ensure it meets its obligations under FATCA and CRS. The self-certification forms we've developed have been carefully prepared to do that.

Unfortunately, other forms may not capture all of the information we need for FATCA or CRS, or may take a different approach to ANZ. ANZ is unable to accept other self-certification forms, including other bank forms.

Procedurally, it would also be very difficult for ANZ to manage many different forms across the large number of customers we bank. We would need to review each form individually to see if it meets our obligations under FATCA and CRS, and it would also considerably complicate how we record and report information under the new rules.

We are working with the New Zealand Bankers' Association on the development of industry standard self-certification forms for CRS and FATCA, and we'll let you know when these will be available.