

Nigel Higgins,  
HM Revenue & Customs,  
CTIAA FPST,  
Room 3C/06,  
100 Parliament Street  
London SW1A 2BQ

Dear Nigel

**Implementing the UK-US FATCA Agreement – Response from the Association of British Credit Unions Limited (ABCUL)**

We appreciate the opportunity to respond to this consultation. The Association of British Credit Unions Limited (ABCUL) is the main trade association for credit unions in England, Scotland and Wales representing around 65% of British credit unions who in turn serve around 80% of credit union members.

Credit unions are not-for-profit, financial co-operatives owned and controlled by their members providing safe savings and affordable loan facilities. Increasingly credit unions offer more sophisticated products such as current accounts, ISAs and mortgages.

At 30 June 2012, credit unions in Great Britain were providing financial services to 901,720 adult members and held more than £776 million in deposits with more than £602 million out on loan to members. An additional 123,718 young people were saving with credit unions taking the total people using credit unions above one million.<sup>1</sup>

**Summary of ABCUL's comments**

- ABCUL supports the inclusion of credit unions within the definition Financial Institutions with a Local Client Base and that, as such, our membership will in large part be “deemed compliant” and will not have to report under FATCA.
- We are concerned, however, that requirements arising from the UK-US FATCA Agreement will impose a potentially costly burden upon our member credit unions and therefore urge HM Revenue & Customs to retain the category of “non-registering local bank” in its FATCA rule book—as is proposed in the US Internal Revenue Service (IRS) proposed FATCA rule – and also include credit unions within the definition of “non-registering local bank”.

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<sup>1</sup> Figures from unaudited quarterly returns provided to the Financial Services Authority

- Credit unions have common bond limitations which generally prohibit individuals who are not residents of Great Britain from becoming credit union members but a very small number of British credit union members may also be considered “non-resident aliens” of the United States. We suggest therefore that HM Revenue and Customs’ FATCA rules not apply to: (1) citizens of the UK (including British Overseas Territories) or another EU Member State or a Crown Dependency; (2) individuals holding a visa allowing residency in the UK or another EU member state or a Crown Dependency; or (3) to individuals who meet the UK tax residency test.
- We believe that the proposed FATCA US\$50,000 reporting threshold for customer accounts should be increased to £85,000 per customer to align it with the FSCS protection limit. Alternatively, we believe that the US\$50,000 threshold should be denominated in pounds sterling and indexed periodically by HMRC if HM Revenue and Customs does not increase the threshold to £85,000.

Credit unions in Britain are small, co-operative financial institutions which provide inclusive financial services in the communities and workplaces they serve. They are owned and controlled by a restricted membership and are operated for the sole benefit of this membership. The Credit Union Act 1979 sets down these operating principles in law.

In the past decade, British credit unions have trebled their membership and assets have expanded four-fold. As this growth has taken place, the role that credit unions can play – both in providing equitable financial services to the whole of their communities and providing diversity in the financial services sector – has been increasingly recognised by government and policy-makers.

Credit unions have been central to UK Government efforts to promote financial inclusion taking a pivotal role, for example, in delivering the Department for Work & Pensions Financial Inclusion Growth Fund which provided capital for on-lending to those without access to a source of affordable credit.

Ending in March 2011, the loans provided under the Growth Fund totalled 405,000 with a value of £175 million<sup>2</sup> and an independent evaluation of the scheme found that it saved loan recipients between £119 million and £135 million in interest payments compared with high cost alternatives.<sup>3</sup> The great success of this scheme has been central to the Coalition Government’s decision to extend £38 million investment through the DWP’s Credit Union Expansion Project to help credit unions towards self-sustainability in a 5-7 year period, adding a million new members, in order to provide a viable alternative financial service, particularly to those on a lower income.<sup>4</sup>

Other measures taken by the Coalition Government in support of credit union expansion include the passage into law of the Legislative Reform (Industrial & Provident Societies and Credit Unions) Order which came into effect in 2012 and allows credit unions to expand into new markets and provide new products and services to their members. These measures form a package of support aimed at realising the ambition set out in the Coalition’s Programme for Government which made a commitment to “*foster diversity in financial services, promote mutuals and create a more competitive banking industry*”.

In light of the Government’s general commitment to the development of the credit union sector, we are concerned that some of the requirements arising from the UK-US FATCA Agreement will impose a potentially costly burden upon our members in spite of the fact that there will be very little gained given their profile and the various restrictions that pertain to credit union membership.

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<sup>2</sup> See DWP Growth Fund statistics here: <http://www.dwp.gov.uk/other-specialists/the-growth-fund/statistics/>

<sup>3</sup> See DWP Growth Fund evaluation: [http://www.hm-treasury.gov.uk/d/evaluation\\_growth\\_fund\\_report.pdf](http://www.hm-treasury.gov.uk/d/evaluation_growth_fund_report.pdf)

<sup>4</sup> See DWP Credit Union Expansion: <http://www.dwp.gov.uk/other-specialists/credit-union-expansion/>

## **ABCUL's detailed comments on the intergovernmental agreement and its impact on credit unions**

- We support the inclusion of credit unions in the category of Financial Institutions with a Local Client Base and that, as such, our membership will in large part be “deemed compliant” and will not have to report under FATCA.<sup>5</sup> This is appropriate on grounds of proportionality given the profile of our credit unions, that is, being generally small financial institutions with a limited ability to cope with extra compliance burdens, reliant upon volunteer labour and working in an ethical, not-for-profit capacity to extend financial services to those that might otherwise be unfairly excluded from fair, secure and affordable financial products. It is also reasonable given the membership profile of credit unions.
- All of our members are subject to a common bond requirement via legislation which restricts membership of a credit union to a pre-defined group of people and this cannot include geographical regions outside of Great Britain. Therefore, none of our members actively solicit the business of residents outside of the country. This same provision makes it unlikely that credit unions will have US residents in their customer base since one is required to meet the common bond requirement and, therefore, live or work in an area of Great Britain or be employed in Great Britain to join a credit union.
- There are, however, some limited circumstances whereby a credit union member may be resident of both GB and US and therefore may be caught by FATCA or may leave the country for the US while retaining their credit union membership – as is permitted under Non-Qualifying Member provisions – after joining the credit union.
- Given, therefore, that there are some circumstances in which a credit union may find itself in the service of a US resident we do have some concerns about the composition of the provision for Financial Institutions with a Local Client Base and, thereby, “deemed compliant”. Since the Intergovernmental Agreement would require even “deemed compliant” firms to report on US resident accounts where they arise, that provision has little material effect upon the experience of our membership since where they have a US resident member they will be required to report in the same manner as any other institution. There is, of course, also the option to close the account but this would appear to be of a dubious legal basis if purely based upon the members’ residency and the credit union’s desire to avoid a regulatory reporting requirement.
- In the US IRS’s proposed FATCA regulation,<sup>6</sup> there is a category of institution termed “non-registering local bank” and such institutions are entirely exempt from the FATCA arrangements. We think, given the profile of our membership and the great efforts that the UK Government – and devolved and local governments – are making to expand the sector to meet a range of policy objectives (see introduction above), the “non-registering local bank” category should be introduced in the UK agreement and it should apply to credit unions. Another alternative would be, as suggested in the consultation, to allow some institutions to apply the US IRS’s FATCA regulations as opposed to the terms of the Agreement.<sup>7</sup> Not to take either of these measures is effectively to require credit unions to comply with the FATCA arrangements in the manner that any other institution would and, therefore, to allow no flexibility to small firms with social objectives. Though credit unions do not actively serve US

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<sup>5</sup> The Foreign Account Tax Compliant Act (FATCA), which is codified at sections 1471 through 1474 of Title 26 of the United States Code, and is available at: <http://www.law.cornell.edu/uscode/text/26/subtitle-A/chapter-4> and The Internal Revenue Service’s FATCA Notice of Proposed Rulemaking entitled “Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities,” which was printed on February 15, 2012 in the *Federal Register* at Volume 77, pages 9022 through 9109, and is available at: <http://www.gpo.gov/fdsys/pkg/FR-2012-02-15/pdf/2012-2979.pdf>.

<sup>6</sup> The IRS’s proposed definition of “nonregistering local bank” appears on page 9091 of Federal Register Volume 77, and is available at: <http://www.gpo.gov/fdsys/pkg/FR-2012-02-15/pdf/2012-2979.pdf>.

<sup>7</sup> The World Council of Credit Unions (WOCCU) has argued for credit unions to be included under the “non-registering local bank” definition see WOCCU’s April 30, 2012 comment letter to the US Internal Revenue Service (IRS) regarding the IRS’s FATCA Notice of Proposed Rulemaking, which is available at: [http://www.woccu.org/functions/view\\_document.php?id=WOCCU\\_IRS\\_FATCA\\_Comment\\_REG-121647-10\\_April\\_30\\_2012](http://www.woccu.org/functions/view_document.php?id=WOCCU_IRS_FATCA_Comment_REG-121647-10_April_30_2012).

residents and are not involved in complex cross-border transactions we think it is entirely reasonable to allow an extra level of flexibility in line with wider Government policy on credit unions rather than simply to apply, in effect, the exact same arrangements to our sector.

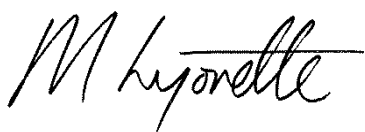
- In the event that the “non-registering local bank” category is not introduced and / or not applied to our members we would like also to suggest some further improvements. We believe it would be more appropriate to denominate the reporting threshold for individuals in pounds sterling rather than US dollars. Credit unions who do not deal in foreign currency would otherwise be required to update their systems in such a way as to enable them to factor into calculations exchange rates between sterling and dollars and this is likely to come at a significant cost in respect of IT upgrades. Therefore, at the very least, a threshold denominated in pounds sterling indexed periodically by HMRC should be favoured over a \$50,000 trigger.
- Furthermore, we feel it would also be appropriate to increase the threshold to £85,000 to align it with the FSCS protection limit. This would make the process much simpler for our member credit unions since their systems are already calibrated with the £85,000 figure as a standard trigger. Very few, if any, credit union members hold funds in excess of the £85,000 limit and so a threshold set at this level would significantly reduce the potential burden of FATCA reporting for credit unions.
- We would also like to suggest a further level of clarity in relation to the residency test determining which accounts are required to be reported under FATCA. In order that non-UK and EU citizens are not unduly restricted in opening accounts in the UK where they spend some time in the US, we would like to suggest that the following groups are considered local UK resident for FATCA purposes:
  - I. citizens of the UK (including British Overseas Territories) or another EU Member State or a Crown Dependency; or
  - II. those holding a visa allowing residency in the UK or another EU member state or a Crown Dependency including temporary residency such as student and work visas; or
  - III. those meeting the UK tax residency test.

To conclude, we hope that a compromise can be reached in order that undue burdens are not placed upon the credit union sector in respect of FATCA compliance. We appreciate the attempts that have been made to formalise special arrangements for the sector, however it appears as though these will have very little practical impact since they continue to require “deemed compliant” firms to monitor accounts and report as normal where US resident accounts appear.

We hope that consideration can be given to our proposed alternative arrangements which we think will be more effective in what we believe the Government’s intention to be, i.e. the maintenance of a proportionate regime conducive to the continued expansion of the credit union sector.

We are more than happy to discuss any of the issues raised in this response or any related matter further if required.

Yours sincerely,



Mark Lyonette  
Chief Executive – ABCUL