

[TEXT OF THE FATCA COMMENT LETTER SUBMITTED BY  
THE CHILEAN ASSOCIATION OF PENSION FUND ADMINISTRATORS]

December 28, 2011

Michael Plowgian  
International Tax Counsel Office  
Department of the Treasury  
1500 Pennsylvania Avenue NW  
Washington DC 20220  
USA

Dear Sir,

**The Foreign Account Tax Compliance Act (“FATCA”) effect on the Chilean Pension Fund system**

The Chilean Association of Pension Fund Administrators (AFP) welcomes the opportunity to provide comments on *Notices 2010-60, 2011-34 and 2011-53* regarding the regulations to implement the Foreign Account Tax Compliance Act (FATCA) provisions in section 501 of the Hiring Incentives to Restore Employment Act (HIRE Act). The AFP seeks to explain why Chilean pension funds and assets within them present a very low risk that a US person could choose to use them to evade or avoid a U.S. tax liability and why we believe that these entities should be excluded from the scope of FATCA provisions.

We understand that in relation to the implementation of FATCA you are seeking comments from relevant organizations on the impact of FATCA internationally. We are writing to express our concern about its effect on the Chilean Pension Fund system, regarding the importance this institution represents for the working force of our country, as per the social security nature role it pursues.

Our understanding is that the intention of the FATCA is to ensure that, amongst other things, overseas investment vehicles are not used by US tax payers to avoid tax. In this regard, full disclosure of holdings in Foreign Financial Institutions (“FFIs”) and Non-Financial Foreign Entities (“NFFEs”) are required in order to avoid a 30% withholding tax on payments such as dividends.

Our concern is to introduce you to the Pension Fund System under the Chilean legislation, in order to clarify its functioning, by means of traducing through that lecture its social security nature, disassociating AFP’s from FFI, by demonstrating its NFFEs nature.

As per the above mentioned, next you can find some Chilean Pension Fund key points, which may enlighten you for a whole understanding.

- (i) The current Chilean pension fund system was created by law in 1980 as a social security system to provide pension benefits for dependent and independent workers in Chile. Chilean workers make mandatory contributions

of their earned income to individual accounts held at and managed by legally designated AFPs, which are subject to supervision of the Pension Superintendence, among others (Financial Analysis Unit).

(ii) Pension accounts may be opened only by individuals (natural persons) resident and working in Chile as dependant or independent workers. These individuals are required to register with the Chilean tax authority and obtain a tax identification number. In addition to the aforementioned, foreign individuals, beside the said requirements, also need a working visa to perform remunerated activities within the country.

(iii) AFP's consist in private institutions (corporations), which administrate the funds collected from the individual capitalization account. Regarding the social role these institutions develop, the AFP's equity and the funds equity are complete independent and separate.

(iv) Regarding the social security nature of the AFP system, law thoroughly regulates the instruments in which the AFP can invest the administrate funds.

(v) Affiliates resources may be invested in 5 different funds, the aforementioned is known as a multi fund system. Al though affiliates do have certain liberty to choose in which of these funds invest their resources, this does not change the fact that the money administration is AFP's exclusively matter.

(vi) In order to carry out savings, the Pension Fund system offers different accounts. However, 96.2% of the administrate resources corresponds to a mandatory saving. The above mentioned corresponds to the individual saving account, by means the law obligates dependant workers (through their employers) to pay a 10% of their income periodically.

(vii) The existences of other accounts mainly respond to the possibility for affiliates to increase their future pension, in this sense, in order to participate of these accounts is required to be an affiliate.

(viii) One of the main characteristics of the Chilean Pension Fund system consist in the long term saving period it involves, strongly limiting the resources free disposition.

Regarding the aforementioned, we hope you could realize that Chilean Pension Fund system grounds on its obligatory nature; by means law states a minimum rate as mandatory payments in order to secure society's future pensions. As per that, administrate funds mainly pursue social purposes, and as so, are strongly regulated and supervised by several Chilean institutions.

According to the above mentioned, we believe there are good grounds to sustain, and hoping your understanding through this report reaches the same conclusion, that AFP's and their account holders do not represent FFI, and as per that, should not be included in FATCA.

In this regard, we do not believe that there is any reason for a significant concern that AFP's and their account holders could use this mechanism to avoid US tax, particularly given the extended regulation and limitation concerning this matter. Said that, it would appear appropriate, to exempt them from the proposed reporting requirements and withholding tax.

As per the aforementioned, please find attached a report prepared by KPMG Chile regarding the Chilean Pension Fund system, hoping its lecture helps to translate the system's functioning as well as it NFFEs nature.

Best regards

Francisco Margozzini  
Gerente General  
Asociacion AFP  
Santiago, Chile