

[TEXT OF THE FATCA COMMENT LETTER SUBMITTED BY  
EUROPEAN FEDERATION OF BUILDING SOCIETIES]

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Dear Mr. Corwin, dear Mr. Caballero,

Regarding the forthcoming application of the Foreign Account Tax Compliance Act (FATCA) in Europe, we would like to express our concerns.

FATCA, which has entered into force in the United States of America on the 18 March 2010, will affect most of the non-US financial institutions worldwide. Presumably, the Bausparkassen in Europe will not be spared. Yet, according to our opinion, as to Bausparkassen the intention of the US to register effectively, via FATCA, all assets of US citizens as well as investments in US shares by non US citizens or entities for tax purposes will not be reached for the following reasons:

1. The Bauspar system does not lend itself to tax evasion. Bausparen means predetermined saving for housing finance purpose. In compliance with national rules the tax on the interests is usually withheld before the payment of the interests to the client is executed. A double taxation agreement established between the EU member State and the US applies to the border crossing tax relations.
2. FATCA's scope only affects assets which are more important than 50,000 US-Dollars. As most of the clients of Bausparkassen are individuals the average sum of Bauspar savings amounts to around 30,000 [EURO]. Therefore, the interests on savings of the Bauspar contracts will never reach the sum of 50,000 US-Dollars.

3. Additionally, the deposits of Bauspar contracts managed by the Bausparkassen are strictly secured by the national law applicable to Bausparkassen. The national authority supervises the correct appliance of these regulations. The Bausparkassen are only authorized to invest ~ in the event the deposits are not used as loans granted to clients ~ in assets hold by European credit institutions or regional administrative units or if they are particularly well secured and explicitly enlisted in the national law texts (cf. e.g. *section 4* provision 3 BSpkG). As the Bausparkassen do not benefit of interests of US origin the US withholding tax of 30 % does not apply.

4. Furthermore, FATCA could only be practically realized and applicable to Bausparkassen if the requirements enabling identification or legitimation of clients are not stricter than the requirements set by the law of an EU Member State. The alignment of the client identification data to US standards would demand with regard to the high amount of clients an inappropriately high effort of the Bausparkassen.

For these reasons, we consider the exemption of Bausparkassen of the requirements imposed on Foreign Financial Institutes (FFI) by FATCA as justified. In accordance with *IRC 1471(b)(2)(A)* the Bausparkassen should be treated as “deemed-compliant FFI”. Thus, the US Secretary would consider Bausparkassen as aligned with the requirements of FATCA if they proof through a procedure prescribed by the US Secretary that they do not maintain US accounts. This would exempt them of due diligence, verification and reporting requirements to US Secretary. If a credit institution offers aside of traditional banking services Contractual Savings for Housing, the Contractual Savings for Housing accounts should not be understood as an US Account.

Therefore, we would appreciate ~ in due consideration of the above mentioned ~ your commitment to our cause in order to achieve an exemption of the Bausparkassen of the requirements of FATCA for FFIs.

Yours sincerely,

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