[TEXT OF THE FATCA COMMENT LETTER SUBMITTED BY
ASSOCIATION OF BRITISH INSURERS]

ABI RESPONSE ON NOTICE 2011-34 REGARDING THE FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA) PROVISIONS INCORPORATED INTO THE HIRING INCENTIVES TO RESTORE EMPLOYMENT ACT

7 JUNE 2011

SUMMARY

This submission from the ABI on the Foreign Account Tax Compliance Act (FATCA) provisions within the Hiring Incentives to Restore Employment Act should be read in conjunction with our previous papers of 20 August 2010 and 10 November 2010.

ABI supports the goal of the FATCA legislation to prevent the evasion of US tax and believes that any rules that are introduced must be well targeted and proportionate. In terms of new policies we are willing to modify our contracting processes to comply with FATCA. However, as the law currently stands no UK insurance company could comply with the existing account provisions and therefore be certified as a compliant foreign financial institution (FFI).

Data privacy remains the most significant barrier to compliance. This problem can only be resolved between the United States (US) Government and the EU. Until then, UK insurance companies will be unable to become compliant FFIs.

Due to the lack of insurance specific guidance and regulations, we have yet to begin the process of preparing for the implementation of FATCA. This problem is further compounded by the fact that system resources are already under a considerable strain dealing with the implementation of the EU wide Solvency II regime.

In light of this, we would ask that the application of FATCA to insurance companies should be delayed until after the data privacy issues are dealt with and that sufficient time is given to allow insurance companies to upgrade our systems, protocols, and make and seek regulatory approval for the appropriate changes in relation to new accounts.

We are particularly concerned about the possibility of FFI Agreements being terminated, and the scale of the financial risk this poses to insurers, if there is an unacceptable level of "recalcitrant" account holders. This problem stems from the need for FFIs to ask account holders with US indicia to complete W9's and W8-BENS. We view this as an unnecessary step, and while our preference would be for all existing accounts to be excluded, if that is not acceptable to you, we propose that we can simply advise Internal Revenue Service (IRS) of any policyholders that are found to have US indicia.

Furthermore, the FATCA regime needs to recognise that for insurance:

- in scope products in a number of jurisdictions present a very low risk of a US tax evasion due to the tax regime in the insurer location (eg UK life taxation regime) or the local withholding tax requirements

- the long term nature of insurance products and limited customer contact would make any exercise to document existing customers more challenging and ultimately unsuccessful

- the number of US policyholders holding UK policies is miniscule (estimated at 0.1 per cent), so the disproportionate impact of full FATCA applied to insurance is greater than elsewhere

While, not a complete list, to make the regime more proportionate we have the following suggestions:

1. Participating FFI status should be granted to insurance companies where the FFl undertakes a review of existing accounts to identify US indicia and provides this information directly to the IRS.

Under this suggestion the IRS will accept account details from the FFI without asking the FFI to seek further forms from the individual.

2. Pre-existing insurance accounts, which are subject to non-refundable local taxation, should be excluded from FATCA reporting unless they are enhanced after the effective date.

3. All retirement savings policies should be excluded from FATCA, as they present little or no risk of US tax evasion.

4. Deemed compliant status should be granted if the FFI undertakes not to accept US customers post the FATCA start date, and establishes appropriate procedures to achieve this.

5. All general insurance, pure protection and reinsurance policies should be excluded from FATCA.

6. Simplify the pass thru regime by introducing a

flat rate of tax.

7. Make various administration savers optional e.g. aggregation of accounts, lead FFI concept.

8. Allow the reporting on US accounts on the value as reported to the policyholder or whatever value is most easily available.

9. Provide a period of grace for company acquisitions.

1. INTRODUCTION

The ABI is the voice of insurance, representing the general insurance, investment and long-term savings industry. It was formed in 1985 to represent the whole of the industry and today has over 300 members, accounting for some 90% of premiums in the UK.

The UK insurance industry is the third largest in the world and the largest in Europe. It is a vital part of the UK economy, managing investments amounting to 24% of the UK's total net worth and contributing the fourth highest corporation tax of any sector. Employing over 275,000 people in the UK alone, the insurance industry is also one of this country's major exporters, with a fifth of its net premium income coming from overseas business.

The ABI welcomes the opportunity to provide comments on *Notice 2011-34* ("the Notice") regarding the Foreign Account Tax Compliance Act (FATCA) provision incorporated into the Hiring Incentives to Restore Employment Act. We appreciate that the United States (US) Treasury have recently acknowledged that they have yet to consider insurance in any detail in their deliberations on FATCA, and welcome the recognition that they need to. Insurance specific consideration is essential given the many nuances and peculiarities that arise when looking to apply FATCA in the insurance context.

The ABI supports the goal of the FATCA legislation to prevent the evasion of US tax. Whilst tax evasion is corrosive to the fairness of a tax system, any rules that are introduced to combat it must be able to comply with, well targeted, and proportionate.

Data privacy remains the most significant barrier to compliance. This problem can only be resolved between the US Government and the EU. Until then, there is no possible way that UK insurance companies can become a compliant foreign financial institution (FFI).

Despite this, in terms of new policies we are willing to modify our contracting processes to comply with FATCA, subject to local regulatory approval. For existing policies we are pleased that the Notice has reduced compliance requirements and has moved FATCA towards a more balanced approach. However, we still have significant concerns because as the approach is currently described, we would not expect that UK insurance companies could be certified as a compliant FFI. Furthermore, the rules are onerous and disproportionate to the risk posed by the insurance industry.

The compliance costs and administrative burdens associated with FATCA will ultimately fall on our policyholders. This will inevitably increase the cost of premiums on a global basis. Furthermore, by its very nature, it will result in US persons being excluded from the global insurance competition market, potentially resulting in higher costs for insurance.

We are particularly concerned that the withholding tax components of FATCA will damage the financial system. For example, one mid-sized UK insurer has estimated that withholding under FATCA, could potentially cost them £210 million per year. Such a level of withholding tax not only makes doing business with US persons commercially unviable, but also investment into US equity and corporate bond markets and the holding of US bonds.

UK life insurance savings policies are contractual in basis, the policyholder does not have a direct legal interest in the underlying investments. Instead there is a contractual right to receive returns on the sum originally invested. The contracts do not provide for withholding of tax under FATCA. It cannot be directed at US policyholders as the contractual basis for policies will not provide for such an allocation of costs or direct charging. Therefore, the burden of this will be absorbed by UK insurers and our policyholders. In effect, given the very low level of US policyholders, such withholding tax will be a loss to the UK economy, which is currently recovering from a recession.

In addition we are concerned about the:

- impact of recalcitrant accounts and that the rules described in the Notice will create, not prevent recalcitrant accounts.

- timing – We need to make significant system and policy changes and seek regulatory approval. Currently systems resources are scare due to Solvency II.

We believe these issues can be resolved or avoided altogether. Therefore, we offer the information and suggestions in this paper in the spirit of working constructively with the US authorities to promote an outcome that:

- secures the intention behind FATCA

- allows insurance companies to become compliant FFIs

- keeps the cost burden placed on UK insurance companies and their policyholders to a commensurate level; and

- minimises any damage to the attractiveness of foreign insurance companies investing in US financial markets.

This submission outlines our specific concerns and addresses the proposals outlined in the Notice. We also provide some additional suggestions and points for further clarification.

We would be happy to clarify any points raised in this submission and look forward to our continuing dialogue. Please do not hesitate to contact:

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  or

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2. DATA PRIVACY

As explained in our previous representations, UK insurers will be unable to comply, in respect of existing accounts, until the data protection issue is resolved between the US and the EU and any other territories that have data protection issues. This is because, based on our understanding of what has been published, the whole group will have to comply with the FATCA regulations in order for all the companies within the group to be compliant FFIs.

All FFI's based in the European Union are subject to EU data privacy law. This means that we cannot transfer personal data about our account holders except in prescribed circumstances. Those circumstances do not apply with regard to FATCA and hence the required personal information about account holders cannot be given to the Internal Revenue Service (IRS). This situation can only be resolved between the US and EU authorities.

The penalty for failure to comply with UK data protection legislation is a fine of up to £500,000 by the Information Commissioner and an unlimited fine by the Financial Services Authority. Repeated breaches could lead to a suspension of the licence to conduct insurance business. This will give UK insurers no choice but to suffer the withholding tax on their US investments.

In light of this, the issue of the application of EU Data Privacy law must be resolved between the US and the EU before FATCA can proceed. If the issue cannot be resolved before the implementation date, we would suggest that some form of transitional relief is granted, for existing accounts. For example, it may be possible for the FFl to provide more limited information where there is a conflict of law issue. For example, the FATCA regulations could request that in the event of a conflict of law issue, the FFl could provide details of the total number of relevant policies with a total valuation. The IRS could then decide if this was a matter that it wished to pursue separately with the relevant local tax authority.

We therefore, offer the comments and suggestions in the rest of this submission on the basis that the data privacy issue will be solved.

3. TIMING

We recognize that the IRS and US Treasury are under significant time pressure to issue comprehensive guidance on priority issues for more typical FFIs. However, the insurance industry has received very little detailed guidance as to how FATCA will apply to them, reducing our ability to begin preparation for implementation of these rules. Before systems and process redesign and policyholder communications can begin we require certainty as to the requirements that FATCA will impose. Unlike the banking sector, insurers have not been subject to the Qualified Intermediary ("QI") program. In order to comply with this, banks were required to collate more customer account information and invest in sophisticated systems to retain such information. Insurers will therefore need more time, than banks to ready our systems for FATCA compliance. Changes will also have to be approved by our regulator and this process alone could take a considerable amount of time. Ideally with something as significant as FATCA, we would need at least 18 months to upgrade our systems, protocols and make the appropriate changes in relation to new accounts.

Furthermore, insurers in the UK and the EU are in the process of implementing a comprehensive new EU wide regulatory capital and risk management regime in the form of Solvency II. This is placing significant strain on systems and other resources that would be required for FATCA implementation. The implementation date for Solvency II is also January 1, 2013.

We therefore ask that the regulations either include a placeholder on the application of FATCA to insurance companies or explicitly defer the target dates for implementation of FATCA to insurance companies for at least 18 months beyond those provided for other FFIs. This deferral will provide Treasury and the IRS time to focus on and provide dedicated rules regarding the application of FATCA to insurance companies and products. It will also allow insurers to implement FATCA in a practical manner following the issuance of the regulations and guidance applicable to us.

4. EXISTING POLICIES

The Notice does ease some of the difficulties of dealing with existing accounts, and we welcome this improvement. However, it still poses significant challenges with resultant costs.

We believe that the costs are disproportionate to the risks. For the reasons set out in our earlier submissions, it is still our view that UK life insurance business does not pose a significant risk for US tax evasion. In the UK life company taxation regime where the policyholder is effectively taxed as part of the taxation of the life company n1 , combined with the policyholder tax reporting requirements, it is unlikely that a UK life policy would be attractive to anyone looking to evade tax. Therefore, pre-existing insurance accounts, which are subject to non-refundable local taxation, should be excluded from FATCA reporting unless they are enhanced after the effective date.

In the absence of total exclusion, we have the following comments and proposals for changes to the processes set out in the Notice. We believe that these should make the reporting of data on existing accounts workable and greatly reduce the burdens and costs of reporting.

Need for W9's and W8-BENS

The Notice outlines the procedure a FFI must undertake once US indicia is found through an electronic search, or through the additional diligence requirements for accounts over $ 500,000. These additional requirements are very burdensome to FFIs; will come at a significant cost; and are unnecessary in today's data-matching electronic world. Furthermore the requirements for an FFI to seek this information coupled with the legal inability of insurers to lawfully apply withholding tax to policyholders or unilaterally terminate contracts, will mean that recalcitrant accounts will persist. The current structure set out in the guidance does not provide the insurer with any leverage to obtain the necessary information.

We are concerned that the Notice raises the possibility of FFI Agreements being terminated if there is an unacceptable level of "recalcitrant" account holders. The very nature of the rules, and the current lack of a data privacy solution, means that we will always have recalcitrant account holders, and therefore will continually live with the threat of losing our compliant status.

As outlined in our previous submissions, the response rate from policyholders to a request for a W9, W8-BEN etc, is expected to be low n2 . Actively following up on non-responses would be prohibitively expensive and still be unlikely to generate a significantly higher response rate. Furthermore, as our estimates show that only 0.1 per cent of policy holders are US persons, then the majority of recalcitrant account holders will be non-US persons. These policyholders will have no nexus with the US and therefore no understanding of the requirement for them to satisfy the FATCA requirements.

For the reasons outlined above, insurers not policyholders will suffer the withholding tax if recalcitrant accounts persist. The primary objective of the regime is to report details, not to impose a withholding tax. To this extent, the legislation currently, is not acting in accordance with its objectives.

Our understanding is that the IRS has invested significant sums of money into improving data retention and data matching systems. We therefore suggest that if our searches indicate any US indicia we simply report this directly to the IRS, without the need for any follow up with policyholders requesting W9's, W8-BENS and any additional information. The IRS could then use this information to follow up directly with the policyholder if they are a US taxpayer.

If this is acceptable then we believe the current de minimis threshold, outlined in the Notice, would be workable. We ask you to consider the following comments on the $ 500,000 threshold and on the recalcitrant accounts proposals.

Accounts of $ 500,000 or more

While the Notice provides a relaxation of the rules, we consider that for life insurance policies the $ 500,000 threshold is still too low. We asked some of our members to run datasets to see what the effect of this will be. On average, from this sample, a UK insurance company will have between 24,000-35,000 policies with a value above $ 500,000 n3 .

As per our previous paper we have estimated that 0.1 per cent of our UK policies have US indicia. Therefore "diligent" checks will need to be performed on 1000 policyholders for every one reportable policy that will be identified. At an estimated cost of £50-70 per diligent check, the cost of each report will be £50-70,000.

We therefore consider this threshold to be too low, and the administrative cost to insurers far outweighs the benefit to the US Government. We ask that you consider a higher threshold of $ 1,000,000.

Valuation of policies

Many problems arise with valuing policies. In terms of UK insurance company systems, some are only able to provide values for unit-linked contracts, based on unit price and number of units allocated. For conventional policies, it is necessary to interrogate the policy records individually to obtain their current surrender value. Furthermore, due to an unusual event in the policy's history some valuations can only be found via manual calculation.

Consideration will also need to be given to the impact of currency fluctuations when valuing policies.

We therefore strongly support valuation rules that:

- are sufficiently flexible to reflect the value of the policy that is communicated to the customer or other representative value currently maintained on the insurer's systems; and

- do not impose the need for the insurance company to perform an entirely new calculation purely for the purposes of FATCA.

Other threshold mechanisms

In our conference call with Jesse Eggert and Josephine Firehock of 5 May 2011, we were asked if focussing on the value of the death benefit or premium, as opposed to the valuation of the policy, would be less burdensome.

Very few policies have any significant fixed death benefit. For some contracts, the death benefit is only marginally higher than the surrender value. For identification purposes the current unit value would be easier to extract from records than either the surrender value or the death claim value. Some systems do not even hold the death benefit value. Furthermore, the death benefit value is a less accurate indicator of current policy value.

If we focussed primarily on premium value, this would still result in a disproportionate number of policies being subject to the diligent review. Furthermore, with single premium policies the systems cannot identify policies which have had a "top up".

Therefore, for these reasons we would not support these other threshold mechanisms.

Long term recalcitrant account holders

"Good Faith Effort" clause

As outlined in our previous submissions, for existing accounts contract law may preclude enforcing a waiver or closing a policy to a recalcitrant policyholder. Furthermore, a simple clerical error might cause a US account to go unidentified or we simply do not get a response from a policyholder. All these factors will result in recalcitrant accounts through no fault of the insurance company.

If our suggestion to do away with the requirement to seek W9s and W8-BENs is not adopted, in order to avoid insurers being penalised for this by losing their compliant status, despite our best efforts to comply, we recommend that the FFI Agreement contain "good faith effort" clause.

This would make a provision to the effect that the company will not be considered non-compliant for failing to identify all US accounts as long as the company adhered to all the requested procedures on a good faith effort basis.

5. ADDITIONAL POINTS ON EXISITNG ACCOUNTS PROCEDURE

Private Banking Accounts

Insurance company within a wider FFI group

The Notice includes more stringent requirements for "private banking" clients. Insurance companies do not have private banking departments, so as a practical matter, stand alone insurance companies and insurance company groups will not be impacted by the private banking step. However, whether the private banking step is required to be followed by an insurance company which is part of a larger financial group which includes FFIs is not clear and the application of this step is also problematic.

The private banking clients of the banks in the group may buy insurance policies from the insurance company. Yet, in many cases the insurance company does not itself segregate or accurately identify these clients within the policy administration systems upon which it will rely to retain and report information for FATCA purposes. Therefore, the private banking step will introduce more process change, burden and complexity for just a particular subset of the insurance industry. This seems both unjust and unnecessary when the higher risk insurance contracts by value may be detected through the application of the step for accounts of $ 500,000 or more. In light of this we ask that the private banking step does not apply to insurance contracts

Private placement life insurance

The Notice also seeks thoughts on whether other FFI's, and in particular insurance companies, should perform similar procedures with respect to holders of pre-existing individual accounts. This includes private placement life insurance.

Insurance companies fundamentally do not have the same relationship with clients as private banking managers. Moreover, when a recommendation to invest is made by an independent financial advisor, the insurer will have no personal contact with the policyholder at all. Furthermore, any high risk policies will be picked up in the added diligence step. As outlined, we estimate that only 0.1 per cent of UK policyholders are US persons. Therefore it is unlikely that any additional step would uncover any additional US persons. For these reasons we do not believe a special category for private placement life insurance is required.

Accounts with US Indicia

The Notice set out a list of indicators of US indicia. We have already demonstrated that we can search our electronic records based on addresses. However, we do not have information on citizenship, residence or birthplace for example. We therefore ask for confirmation that the intention of the guidance for electronic searches, is that searches are to be on the information currently held by FFIs and that there will not be further requirements for FFIs to extend the scope of information held within systems and seek the data from policyholders.

We note that in the Notice, the PO Box requirement has been eased to cover US PO boxes only. We believe that when looking at "in care of" or "hold" addresses this should also only cover US addresses.

Aggregation of accounts

The Notice states that FFIs will have to aggregate the value of all accounts owed by the same person – whether alone or jointly with another. Insurance companies tend to operate multiple systems across product lines and due to historic consolidation in the industry, there can even be multiple systems in a single company for the same product. This problem is further compounded by the number of old legacy policyholder systems that continue to operate. Very few companies have the facility to be able to aggregate data and even where possible it would involve considerable difficulty and cost to adjust.

Certifying completion of customer identification procedures

We ask for more detailed guidance in relation to the Chief Compliance Officer ("CCO") certification requirements. In particular the requirement that between 9 May 2011 and the effective date of its FFI Agreement management personnel did not engage in any activity, or have any formal or informal policies and procedures in place, directing, encouraging, or assisting account holders with respect to strategies for avoiding identification of their accounts as US accounts. What evidence, if any, does the CCO need to maintain and retain to be able to prove that the above requirement has been diligently applied and more broadly that the Customer Identification Programme has been diligently performed and is complete?

6. PASSTHRU PAYMENTS

The regulations impose an obligation on participating FFI's to withhold a 30 per cent tax on payments to recalcitrant account holders and non-participating FFI's. While we may be able to achieve this for new business by the addition of a suitable clause in the terms and conditions of an account, for pre-existing business no such clause exists. Therefore, the withholding of monies due to the account holder will pose contractual difficulties. For this reason we have proposed that there is no requirement to obtain W9's and W8-BENs as outlined in *section 4* of this submission, which would prevent the occurrence of recalcitrant accounts while still ensuring reporting of US indicia accounts.

Nevertheless, with regard to the definition contained in the Notice, the calculation of "passthru payment percentage" ("PPP") imposes yet another complexity. We can see no possible way that this can be applied to insurance companies.

Given that our policyholder funds are largely invested with external managers, it is difficult to see that the sort of calculation envisaged is possible without substantial input from them. That too, will provide problems. In a simple scenario, the payment we make to Policyholder A will be the value of units in Fund X. This will be based on the relevant unit price declared by the manager of Fund X. We will have no data on what part of the unit price is attributable to US source income accrued during the period the policyholder has invested in Fund X. From the fund manager's perspective, they have no knowledge of Policyholder A -- the fund holder is the insurance company who has invested the pooled investments of certain of our policyholders. The payment to Policyholder A will not correlate with any transaction between us and the manager of Fund X.

Specifically, the Notice states that the term "pass thru payment" includes "any payment". Therefore, even payments which are not payments of income (under any country's tax or accounting regime) such as wire transfers, death benefits on insurance policies or repayments of loan principle are potentially subject to FATCA withholding. Further, payments of service fees or to purchase assets and other ordinary business payments are also potentially covered. We would therefore appreciate clarification on this.

The purpose of the FATCA withholding requirements is to act as a "stick" to encourage FATCA compliance, not to collect tax on withholdable (or pass thru) payments. The goal is to obtain information on US tax evaders. The relationship of pass thru payments as calculated using the FFI's PPP (as proposed) to actual US income earned by the FFI is approximate at best. Employing such a complex calculation to arrive at such a "rough justice" result does not seem appropriate or justifiable.

In light of the above, one alternative is that, in lieu of the proposed PPP methodology, a fixed flat tax be applied by participating FFIs to payments to recalcitrant customers (and NPFFIs). A fixed rate tax would be relatively easy to apply, eliminating much of the complexity and burden discussed above. Further, this simpler approach would accomplish the stated purpose of providing a stick to encourage compliance while reducing the burden on participating FFIs.

7. REPORTING ON US ACCOUNTS

The Notice specifies that the gross amounts of income (dividends, interest or other income) and the gross proceeds of sale or redemption of property paid or credited to an account must be reported for US accounts.

However, UK life insurers do not track these amounts at individual policy level. There is no requirement to report these either to the account holder or to the UK tax authorities. Typically, all that is measured in respect of a life insurance policy is the overall growth (or fall) in the value of the policy rather than the amount contributed by dividends, interest, capital growth. It would be extremely costly and wholly disproportionate to build systems to track these separate items, and we would urge that for life insurers an overall figure for growth (or loss) could be reported instead.

8. DEEMED COMPLIANT FFIS

We welcome the inclusion of deemed compliant status for certain FFIs. However, as it currently stands there is not much benefit to being a deemed compliant FFI. We ask that you consider reducing the reporting requirements for deemed compliant FFIs.

Furthermore, the conditions outlined in the Notice, are so stringent that we believe that few, if any, UK insurance group will be able to use them. In the EU context, there would be particular legal issues around the requirement not to open or maintain accounts for non-residents for example.

We therefore would like to work with you to develop deemed compliant FFI categories that are more workable and provide a "FATCA light" regime for insurance companies. These could incorporate some general principles (most of which are embedded in the categories proposed in the Notice), such as:

- the FFI undertakes not to accept US customers post the FATCA start date, and establishes appropriate procedures to achieve this

- the FFI undertakes a full review of pre-existing accounts to identify US accounts

As explained in our previous submissions, terminating or transferring policies presents particular issues for insurers because of the contractual nature of the relationship. We would therefore suggest de minimis rules that allow some accounts to be maintained without jeopardizing the deemed compliant FFI status.

In the event that a UK resident becomes a US person, it is highly unlikely that that person took out an investment to avoid US taxes. Furthermore, we understand that SEC regulations could restrict the ability of US persons to pay additional premiums or indeed make fund switches. Therefore, we suggest that any reporting obligations should be limited to existing policies.

This would provide a more proportionate approach that recognises that for insurance:

- in scope products in a number of jurisdictions are very, low risk from a US tax evasion perspective due to the tax regime in the insurer location (eg UK life insurance taxation regime) or the local withholding requirements

- the long term nature of insurance products and limited customer contact would make any exercise to document existing customers relatively more challenging and ultimately unsuccessful

- that the number of US policyholders in the UK is insignificant, so the disproportionate impact of full FATCA applied to insurance is greater than elsewhere.

Specific exclusions

We consider that insurers that only distribute low risk products e.g. pooled pension companies etc should be treated as deemed compliant FFIs.

9. RETIREMENT PLANS

We look forward to receiving the future guidance on foreign retirement plans that qualify as posing low risk tax evasion.

As per our previous submissions, we believe that all retirement savings policies should be excluded from FATCA, as they present little or no risk of US tax evasion. In addition to our suggestions in our previous representations UK life assurers sometimes insure corporate and local government pension schemes. In such transactions, the individual members of the pension schemes would have no contractual relationship with the life assurer.

UK pension schemes trustees have an obligation to deduct income tax at source from payments to pension scheme annuitants, often at income tax rates that exceed tax rates applicable to US individuals. Hence, such pension schemes are very unlikely to be used as methods of sheltering income from taxation.

Therefore we would request that FATCA rules should not apply on insurance agreements between Life Assurers and UK Pension Plans which are themselves exempt from FFI reporting.

10. PARTICIPATING FFI GROUP AND "LEAD FFI"

Whilst these concepts would appear to reduce the number of contacts with the IRS, it will be a difficult process to set up in practice, for some large multi-national insurance companies. We therefore ask that this is optional.

11. FURTHER SUGGESTIONS AND POINTS FOR CLARIFICATION

Period of Grace

It is entirely possible that a general insurer outside the scope of FATCA could acquire a small group with some investment business that they wished to immediately dispose of. Under the current rules this could bring the company into FATCA, for what could be a very short period. Under Solvency II there will be more consolidation in Europe to deal with the new capital requirements.

The same could apply to a life insurer who acquires a non-complying FFI. Therefore, we ask for a short grace period (say, 18 months) following change in ownership. This will give groups time to "put the house in order," without being subject to FATCA.

Reinsurance

Neither FATCA nor its legislative history suggests that reinsurance contracts between insurance companies should be treated as US Accounts as US individuals and trusts should not be party to those contracts. Indeed, given the nature of reinsurance agreements and the purposes of FATCA we see no reason why reinsurance contracts should give rise to the documentation and reporting requirements of FATCA. Accordingly, we urge you to specifically exclude all reinsurance contracts from the definition of a US Account.

General insurance and pure protection policies

General insurance companies do not create financial accounts. They do not accept deposits and do not engage (or hold themselves out as being engaged) primarily in the business of investing, reinvesting, or trading in securities for their policyholders. We therefore ask that it is clarified in future guidance that general insurance and pure protection policies will be excluded from FATCA. This includes but is not limited to:

- Accident
- Sickness
- Land vehicles
- Railway rolling stock
- Aircraft

- Ships
- Goods in transit
- Fire and natural forces
- Damage to property
- Motor vehicle liability
- Aircraft liability
- Liability of ships
- General liability
- Credit
- Suretyship
- Miscellaneous financial
- Legal expenses
- Assistance
- Term life

New Accounts

For new accounts we ask that a $ 50,000 de minimis applies.

In terms of the documentary evidence for new accounts, as far as possible we ask that this is aligned to EU anti-money laundering, Customer Due Diligence and Know Your Customer procedures.

FOOTNOTES:

n1

This tax suffered at life fund level, is not a withholding tax or refundable to the policyholder. It does not matter if they are a non-UK taxpayer, even on a treaty claim.

n2

10% is the industry estimate for the response from policyholders to such requests from their insurers.

n3

Ignoring pension and pure protection policies.