

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

Friday 20th August 2010

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Dear Mr Shay, Ms Corwin and Mr Musher,

Subject: ABI response on the Foreign Account Tax Compliance Act ("FATCA") Provisions Incorporated in the Hiring Incentives to Restore Employment Act

The ABI is the voice of the UK's insurance, investment and long-term savings industry. It has over 300 members, which together account for around 90% of premiums in the UK domestic market.

The UK insurance industry is the third largest in the world and the largest in Europe, helping individuals and businesses protect themselves against the everyday risks they face. It pays out over ?230 million per day in pension and life insurance benefits and over ?50 million per day in general insurance claims. The industry is an important contributor to the UK's economy: it manages investments of ?1.5 trillion, over 20% of the UK's total net worth; employs more than 300,000 people in the UK alone; is the fourth highest contributor of corporation tax; and is a major exporter, with one-fifth of its net premium income coming from overseas business.

I am writing to you to provide the ABI's comments on the Foreign Account Tax Compliance Act (FATCA) provisions in section 501 of the Hiring Incentives to Restore Employment Act (HIRE Act), ahead of the drafting of the regulations to implement these provisions. The ABI respects the intention behind the legislation of preventing the evasion of US tax and 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, whilst also endeavouring to minimise the cost burden placed on UK insurance companies and their policyholders to a minimum.

In the attached paper we explained why we believe that UK general (P&C) and life insurance policies present little or no risk to US tax flows revenues. We propose appropriate exclusions based on the characteristics of policies that indicate low risk to US tax revenues rather than geography. For those policies that remain within the scope of FATCA, we also address

the likely practical consequences and impediments to complying with the FATCA that will need to be addressed if any UK insurance policies considered not to be low risk are kept within the scope of the regime.

We would welcome the opportunity to meet with representatives from the US Treasury and IRS to discuss the implementation of FATCA. In the meantime, if there is any further information we can provide or questions raised by our comments and suggestions that you would like answered please do not hesitate to contact me.

Yours sincerely,

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Enclosure

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**ABI RESPONSE ON THE FOREIGN ACCOUNT TAX
COMPLIANCE ACT (FATCA) PROVISION
INCORPORATE
D INTO THE HIRING INCENTIVES TO
RESTORE EMPLOYMENT ACT**

20th August 2010

1. EXECUTIVE SUMMARY

The ABI n1 welcomes the opportunity to provide comments ahead of the drafting of 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 ABI respects the intention behind the legislation of preventing the evasion of US tax. We offer the information and suggestions in this paper in the spirit of working constructively with the US authorities to promote an outcome that:

[#186] secures the intention behind the FATCA.

[#186] keeps the cost burden placed on UK insurance companies and their policyholders to a minimum.

[#186] minimises any damage to the attractiveness of investments in US financial markets to foreign insurance companies.

UK general (P&C) insurance policies payout an agreed sum on the happening of the insured event and do not provide an investment return. Therefore, they do not create a 'financial account',

UK life insurance policies that do provide investment returns create little or no risk of tax evasion:

[#186] they are marketed to UK investors.

[#186] they are taxed in the UK and/or have significant investment restrictions imposed by HM Revenue & Customs (HMRC) that make them inherently unattractive for those seeking to evade US (or any other) taxes.

[#186] UK insurers avoid marketing investment policies to US residents due to the existing legal and taxation consequences.

[#186] our sampling suggests US residents are a very small proportion (0.1%) of UK life policyholders.

Consequently, we believe UK insurance companies should be excluded from the FATCA as they present little or no risk to US tax revenues.

We believe that appropriate exclusions can be based on the characteristics of policies that indicate low risk to US tax revenues rather than geography. We would suggest that low risk policies are excluded from the definition of 'financial account' and that insurance companies that only sell low risk policies should be deemed compliant with FATCA or excluded from the definition of Foreign Financial Institution (FFI). Policies should be classified as low risk when they have one or more of the following characteristics:

[#186] they have no investment element and the payout from the policy is wholly contingent upon the happening of the insured risk.

[#186] they are primarily marketed in the home jurisdiction of the insurance company and not marketed into the US.

[#186] they are taxed at more than a nominal rate in the home jurisdiction of the insurance company and that tax is not refundable to the policyholder except on the making of a claim under the relevant US double taxation convention.

[#186] they are reported to the tax authorities of the home jurisdiction of the insurance company under the home jurisdiction's tax law and there is an appropriate exchange of information article in the relevant US double taxation convention.

[#186] they have limits imposed by the law of the home jurisdiction of the insurance company on the amount that can be invested in them which are at a level considered not to present a significant risk to US tax revenues.

[#186] they have restrictions imposed by the law of the home jurisdiction of the insurance company on the timing (e.g. minimum age) and manner of any monetary

withdrawals.

[#186] they are designed to provide benefits in retirement or on death if earlier

For those policies that remain within the scope of FATCA, further accommodations will need to be made to ensure that compliance with the FATCA regime is practicable and possible. At present the policyholder data held, systems development limitations and the timing of the commencement would make it impossible for UK insurers to be able to fully comply with the FATCA requirements in respect of such policies. For existing policies UK insurance companies will not hold data enabling them to identify all categories of US persons within their policyholder base. System changes to do so can only be prospective and will require time to implement. The timing of system changes needs to take account of the system development demands on UK (and European) companies of implementing the European Solvency II requirements that come in to effect at the end of 2012. For any categories of policies which the US believe present risk, we would suggest that the following steps be taken to minimise the cost burdens associated with the introduction and operation of the regime and to ensure it is possible to comply with:

[#186] a simple election and verification regime be used for an FFI to certify that it has no US accounts

[#186] the regulations should only require a FFI Annual Report to contain the minimum amount of information necessary, as each data element that must be captured will increase costs to the FFI.

[#186] the requirement for compliance should be at the individual company level and not the worldwide group level.

[#186] an efficient and timely process for the refund of excess withholding is developed.

[#186] the regulations should provide for the grandfathering of existing accounts so that only new accounts opened after a prescribed future date will be subject to the legislation, or the definition of US person be narrowed to US residents for existing business so that companies have a better chance of capturing the information necessary to enable compliance with FATCA.

2. INTRODUCTION

The ABI welcomes the opportunity to provide comments ahead of the drafting of 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 ABI respects the intention behind the legislation of preventing the evasion of US tax. We offer the information and suggestions in this paper in the spirit of working constructively with the US authorities to promote an outcome that:

[#186] secures the intention behind the FATCA

[#186] keeps the cost burden placed on UK insurance companies and their policyholders to a minimum

[#186] minimises any damage to the attractiveness to foreign insurance companies of investing in US financial markets.

In section 3 of this paper we seek to explain why we believe that UK general (P&C) and life insurance policies present little or no risk to US tax flows revenues. We propose that such policies and the companies writing them should be excluded from the scope of the regime or deemed to be compliant with it and propose how this could be done based on indicators or risk rather than geographical exclusions. We also address in section 4 the likely practical consequences and impediments to complying with the FATCA that will need to be addressed if any UK insurance policies are considered not to be low risk and are to remain within the scope of the regime.

3. RISK ASSOCIATED WITH UK INSURANCE POLICIES

This section provides a short description of insurance and savings policies sold by UK insurance companies in the UK and an assessment of the likely risk posed to US tax revenues.

3.1 General insurance business

There are eighteen classes of general insurance business specified under the Financial Services and Markets Act (2001) as being regulated activities n2 . It is usually referred to as property and casualty insurance in the U.S. and non-life insurance in continental Europe.

These can be divided into three areas: personal lines, commercial lines and London market. Personal lines policies are designed to be sold in large quantities. This would include motor (private car), homeowners (household), pet insurance, creditor insurance. Commercial lines policies are usually designed for relatively small businesses and other legal entities. These would include employers' liability, public liability, product liability, commercial fleet and other general insurance policies sold in a relatively standard fashion to many organisations. The London market insures large commercial risks. In none of these cases can the policy proceeds obtained by the policyholder exceed the financial loss arising from the event insured against.

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. The Federal Deposit Insurance Act defines a "deposit" as something which creates a liability from the depositor to the depositor, which general insurance premiums do not. Any payout on a policy is contingent upon the happening of the insured event. General insurers do not, "as a substantial part of their business, hold financial assets for the account of others". The investments they hold are to support their insurance business and are the property of the insurer not the policyholder. Therefore, we believe that general insurance companies should not be classed as FFIs as the policies they write present no risk to US tax revenues.

Insurance premiums are made "withholdable" by section 1473. This would mean that failure to apply the FATCA could lead to 30% withholding tax being applied to premiums, as well as investment income. However premiums should be carved out along with general insurance. This issue has been considered in the past by the US Treasury Decision 8881 (2001), which finalised regulations with respect to withholdings on Fixed, Determinable, Annual, Periodical (FDAP) income. The IRS noted that although insurance premiums fall within the definition of FDAP, they should nevertheless not be subject to withholding. We believe the same approach should apply here.

3.2 Life Insurance

For UK life insurance policies, the market is the UK market not an "offshore" market and the UK life company taxation regime and the policyholder tax reporting requirements reflect this, making the policies inherently unattractive to those seeking to evade tax. UK resident insurers avoid marketing investment policies to US residents due to the existing legal and taxation consequences so the number of US account holders is very low. From a sample of 10 million UK savings type policies by two major UK life insurers; we estimate that 99.9% are not US residents. The most likely sources of US

resident policyholders are US citizens who have previously worked in the UK, and UK citizens now living in the US. We believe that these very low levels of US resident policyholders are indicative of a similarly very low level of "US persons" within the policyholder base although, as discussed elsewhere, current policyholder data does not permit a full search for such persons. At these very low levels we believe that the administrative and compliance costs, for both UK insurers and the IRS of reporting all policy details would outweigh the benefits the US is seeking to obtain.

We have summarised the UK insurance policies into six categories below.

3.2.1 Life and insurance policies that insure purely against risk of death and disability

These policies are designed to payout a lump sum or income benefit upon death or disability of the insured. They can be regular or single premium policies but they do not provide any investment return for the policyholder. Payouts are contingent upon the happening of the insured event and fixed in the terms of the insurance contract. Therefore, the policies do not create an account and present a no low risk to US tax revenues and should be excluded from the scope of FATCA.

3.2.2 Life insurance based savings and investment policies

The UK life insurance industry provides a number of policies designed to produce an investment return as well as life cover. The returns from these policies can be linked to a number of asset classes such as equities, Government and corporate bonds, real estate or a combination of such assets. There are no limits on the amounts that can be invested.

We recognise that at first sight these might look like potential policies for a US person who wants to deposit money outside the US. However, there are three reasons why we believe such policies are very unlikely to pose any significant risk to the US, and that they should be excluded from the scope of FATCA:

[#186] The UK tax system makes it an unattractive proposition.

The insurance company s pays corporation tax on income and gains as they accrue to the policyholder under the UK's I minus E systemⁿ³. This levies tax on both the company profits and the policyholder investment returns in a single system. The tax levied in respect of the policyholders investment return effectively satisfies the individual's liability to UK basic rate income tax (also currently 20%), but cannot be reclaimed by a non-taxpayer (whether UK resident or otherwise).

[#186] On withdrawal of funds from an investment bond gains are reported to the UK revenue authorities under the UK Chargeable Event Certificate (CE)ⁿ⁴ regime.

[#186] Due to the legal and taxation consequences of marketing policies to US residents, UK resident insurers vigorously avoid such activity.

3.2.3 Registered pension scheme policies

The other major type of insurance policies for saving in the UK is registered pension scheme policies. These are savings policies designed to provide benefits in retirement or on death if earlier. There are various types of pension policies:

[#186] Stakeholder and Personal Pensions are both individual policies, the investments backing them are typically held in internal funds managed by the insurer or

are invested in collective investment vehicles managed by an investment management company which may be a fellow group company or a third party. The investments may be in equities, cash or cash-like instruments, real estate or similar.

[#186] Retirement Annuity Contracts (RACs) ~ are a type of pension plan that individuals could take out before 1 July 1988 and were available to those in employment where there was no access to an occupational scheme and to those in self-employment, provided they had earnings subject to UK taxation. From 6 April 2006, RACs were put on the same basis as personal pensions. Group Personal Pensions (GPP) are collections of personal pension plans provided by an employer for its employees. Both employers and employees may contribute to such plans.

[#186] Self-Invested Personal Pensions (SIPP) ~ are investment accounts that provide more flexibility in terms of the investments held and are designed for people who want to have more control over the management of the investments backing their pension policies.

The UK revenue authorities regularly conduct audits of UK insurers to ensure that the eligibility conditions are strictly enforced. HMRC require detailed annual returns from personal pensions providers of all personal pension holders who have received tax relief on their contributions in a tax year (these details include the individual's name, national insurance reference number and level of contributions paid into their pensions in each tax year). Whilst it is possible for a US person who is UK tax resident to contribute to a registered pension, it is highly unlikely, in the view of the significant restrictions on eligibility, making contributions and how benefits must be taken, that such a policy would be used for US tax evasion.

Investment in pension policies is limited to those who are resident in the UK for tax purposes. UK tax reliefs are available on pension contributions (within limits) and provide an incentive to save into pension accounts. However, the reliefs are limited by reference to earnings chargeable to UK income tax. The extent of tax relief on pension contributions is currently undergoing review and change. The UK Government is currently considering limiting the size of contributions that can qualify for tax relief to as little as £30,000 a year. No conclusions are expected to be reached and final decisions made in time for changes to apply from 5 April 2011. We will be happy to provide an update on the outcome of the current considerations if needed.

The rules on when payments can be taken from a registered pension scheme, without penal tax charges are, we understand, much more restrictive than US retirement accounts. Funds in pensions cannot be accessed before the minimum retirement age of 55, except in circumstances of serious ill-health and disability.

The pension accounts provide the funds from which income is drawn in retirement. Up to 25% of a fund can be drawn as a tax free cash lump sum, but the balance must be used to provide income which is then subject to income tax at the point of payment (i.e. through the UK Pay As You Earn withholding system) in the same way as any other employment income. Where a pension is drawn down early because of serious ill-health and disability, the same tax treatment would apply.

There are three ways in which income can be drawn:

[#186] A pension annuity (compulsory purchase annuity) ~ purchased at retirement, thereby converting pension

fund savings into a taxable income stream for life.

[#186] Income drawdown ~ allows an individual not to annuitise their pension fund but to continue to keep their retirement savings invested and draw income directly from the pension investments of up to 120% of annuity rates each year. At age 75, either an annuity must be bought or the money transferred into an ASP.

[#186] Alternatively Secured Pensions (ASP) ~ at age 75 an individual can continue to invest their pension savings and draw an income from their fund within stricter limits based on annuity rates. This offers the benefit of continuing capital growth of funds within the pension fund rather than greater access to the funds. There is still the requirement to draw a taxable income from the pension funds. Any funds left on death of the individual that are used for inheritance will be subject to Income Tax charges of up to 70 per cent ~ some payable by the recipient of the 'inherited' funds and some payable by the scheme administrator. The funds may also be subject to Inheritance Tax. The UK Government is currently considering amending the age 75 rules and ASPs. n6
We will be happy to provide an update on the outcome of the current considerations if needed.

Because of the restrictions on payments into a registered pension, access to funds only after retirement age and the manner in which benefits can be taken as taxable income, we believe that these contracts are not attractive to those wishing to evade a US tax liability.

3.2.4 Life annuity

A life annuity is a financial contract in the form of an insurance policy according to which a life insurance company makes a series of future payments to the annuitant in exchange for the immediate payment of a lump sum or a series of regular payments prior to the onset of the annuity. These can be purchased with funds from any source. It differs from a pension annuity in that the payments are a combination of return of capital and interest and tax is deducted only from the interest element of these payments through the Pay As You Earn system. People not resident in the UK are taxable on income from a UK annuity.

3.2.5 Overseas Life Assurance Business (OLAB)

This class of business is defined as being life assurance business other than pensions business, individual savings account business and child trust business, which is with a policyholder who is not UK resident. OLAB is within the regime for taxation of UK life insurers and is restricted to policies written by insurance companies, although not all life insurers have chosen to write business within this class. OLAB policies are marketed at persons not habitually resident in the UK, and who have no substantial beneficial interest held in the UK. However, as already mentioned insurers avoid marketing investment policies to US residents due to the existing legal and taxation consequences. UK life contracts do not qualify as life insurance under US tax law and annuity investment contracts do not meet the US tax law requirement for annuity contracts. The result is that the owners of such contracts may be subject to different bases of taxation under both tax regimes, making these unattractive to US residents. The essential difference between OLAB and its counterpart for UK residents is that any investment return accrues tax free ("gross"). An insurer writing OLAB is taxed on the profits made from

that business and the personal tax liability on maturity of the policy will depend on the policyholder's country of residence.

The following types of policies may be found within OLAB:

[#186] policies designed to pay out a lump sum on death or disability, to which the comments in 3.2.1 above are equally applicable, although it should be noted that the tax basis often makes protection business written as OLAB more expensive.

[#186] savings or investment policies as described in 3.2.2 above, except that the insurance company pays no corporation tax on income and gains accruing to policyholders. However, the requirement for reports to HMRC still applies.

[#186] policies for retirement benefit provision. Some of these are designed for UK nationals working abroad, in which case UK reliefs on contributions are generally unavailable, but the constraints on form and timing of benefits described in 3.2.3 above will generally not apply.

3.2.6 Life reinsurance business

Reinsurance policies indemnify an insurer against all or part of the loss that the insurer may sustain under the original policy or policies it has issued. Reinsurance policies do not provide a means for savings or create a financial account and therefore should be excluded.

3.3 Individual Savings Account (ISA)

ISAs (Individual Savings Accounts) are not insurance policies but some insurers do market and sell them within the UK. With this savings product an investor has no UK liability to tax on income or gains on the investment. However to subscribe to an ISA a person must be a resident and ordinarily resident in the UK, as such they are not marketed outside the UK. The annual investment is limited to a maximum of £10,200, only half of which can be cash or cash-like investments. These conditions are strictly enforced and audited under UK tax law. Due to these restrictions, it seems to us highly unlikely that ISAs pose a risk to US tax revenues and they should be excluded from the scope of FATCA.

4. OPERATIONAL ISSUES

In the event that UK insurance companies are to be treated as FFIs or certain policies are deemed to be financial accounts then further accommodations will need to be made to ensure UK insurers will be able to comply with the reporting rules. At present the policyholder data held, systems development limitations and the timing of the commencement would make it impossible for UK insurers to be able to fully comply with the FATCA requirements in respect of such policies. For existing policies UK insurance companies will not hold data enabling them to identify all categories of US persons within their policyholder base. System changes to do so can only be prospective and will require time to implement. The timing of system changes needs to take account of the system development demands on UK (and European) companies of implementing the European Solvency II requirements that come in to effect at the end of 2012.

As we understand the intended process of complying with the FATCA is that:

[#186] A FFI must enter into an agreement with the IRS to

report to the US tax authorities details of accounts held by US persons. In the case of a NFFE, the beneficial owner or payee must provide the withholding agent with either a certification that the owner has no "substantial United States owners" or information with respect to them.

[#186] Otherwise, the FFI or NFFE faces the withholding of tax on all "withholdable amounts". These are not limited to those with a connection with offshore accounts or investments of US persons.

[#186] The 30 percent withholding is refundable upon a showing that a lesser amount of tax is due (by reason of a treaty).

[#186] Financial institutions must comply with verification and due diligence procedures relating to the identification of such accounts and must report information with respect to existing accounts to US authorities.

[#186] In addition, they must deduct and withhold 30 percent from payments to "recalcitrant account holders" and must comply with requests from the IRS for additional information with respect to U.S. accounts.

[#186] If there is a foreign law that would prevent the reporting of account information, the institutions must seek a waiver of that law from the holder of the accounts or, failing in that effort, must close the accounts to be in compliance with the FATCA.

We explore in more detail below the areas in which UK insurance companies would be able to comply with minimal administrative burdens as well as areas that are substantially more difficult for UK insurance companies to administer and operate.

4.1 Compliance Costs

Our primary concern is the level of compliance costs and administrative burdens (both set up and annual) that will fall on UK insurers and their policyholders, given the very low level of US policyholders. The costs will comprise of not just the obvious initial system development to capture and report new data requirements, but of generating annual reports, ongoing systems development to accommodate business changes and any FATCA changes, dealing with policyholder enquiries, staff training and familiarisation, auditing of processes and procedures to ensure correct application and function, seeking agreement of compliance from US authorities. Those costs will ultimately fall on all policyholders and will not be able to be directed at US policyholders as the contractual basis for policies will not provide for such an allocation of costs or direct charging.

The FFI agreement process itself should be made as simple as possible given the potential volume of data and compliance costs for businesses involved. We believe that following principles would assist in achieving this aim:

[#186] The regulations should only require a FFI Annual Report to contain the minimum amount of information necessary, as each data element that must be captured

will increase costs to the FFI.

[#186] The requirement for compliance should be at the individual company level and not the worldwide group level.

Inevitably occasions will arise where refunds will need to be made of tax withheld, with a corresponding need to process refund claims from beneficial owners who would qualify for either statutory or treaty reductions amounts paid to them. We urge that alongside the withholding provisions and mechanics an efficient and timely process for the refund of excess withholding is developed.

4.2 Identification of US Persons

The Act requires a FFI to obtain such information regarding each holder of each account maintained by such institutions as is necessary to determine which (if any) of such accounts are United States accounts.

The challenge of identifying US customers for existing accounts differs substantially from that of identifying US customers setting up new accounts.

Existing life savings policies may have been written many years ago, in accordance with the then applicable take-on procedures. In the UK as elsewhere, take-on requirements for new policies have typically become stricter over time, but there is no UK requirement which retrospectively applies new take-on procedures to in force policies. Under current UK rules, the identity of a new policyholder must be established as part of anti-money laundering requirements, but as part of such checks UK insurers are not required to record (e.g.) the citizenship of prospective policyholders. Anti-money laundering checks are typically carried out by the regulated person giving the investment advice and they make a declaration to that effect. The personal data collected and that an insurer is able to retain is that required to meet legal requirements and maintain the policy. For example, for an investment bond application a life company will typically ask for name, address, date of birth, contact telephone, occupation, salary (for affordability) and bank details.

We believe that the regulations should provide for different procedures for identifying US persons in existing accounts compared to new accounts established for new customers after implementation of the final FATCA regulations. In terms of practicality, it is thought that a search of customer addresses would be effective in identifying US residents on existing policies. This would still be dependent upon policyholders providing information on changes of circumstance. US citizens for whom companies have not been given a US address would not be identifiable as information on citizenship is not recorded or even acquired.

We urge the US Treasury and IRS to consider including a grandfathering provision so that only new accounts opened after a prescribed future date will be subject to the legislation, or the definition of US person be narrowed to US residents for existing business so that companies have a better chance of capturing the information necessary to enable compliance with FATCA.

The ABI understands that FATCA provisions go beyond the concept of beneficial owner. This presents a problem for UK insurers. When dealing with vehicles like trusts, UK insurance companies will not necessarily know who the beneficial owner is. The trust may simply include various classes of possible beneficial owners such as children or grandchildren. Until the trustees choose to distribute money, a beneficiary might have no absolute right to anything under the trust. As part of the UK Chargeable Event Reporting (CER) regime, UK insurance companies report to HMRC details of the legal owner (the trustee) rather than the beneficial owner, and therefore UK insurers will not have the information to comply with FATCA.

4.3 Legality of UK Withholding on Recalcitrant Accounts

UK life insurance savings policies are contractual in basis, the policyholder does not have a direct legal interest in the underlying investments, but a contractual right to receive returns on the sum originally invested. The contracts do not provide for withholding of tax under the FATCA. UK tax law on insurance policies sets out a comprehensive scheme of taxa-

tion that defines the limits of taxation in the UK and which does not provide for withholding on payments to non-UK persons in the circumstances circumscribed by FATCA. The contractual terms of policies will not provide for discretionary withholding by insurers of sums lawfully due to policyholders. Therefore, to be able to comply with the requirement on withholding on recalcitrant accounts in the UK would require the application of US law in the UK and for that US law to both override UK domestic tax law and the UK-US double taxation treaty.

5. CONCLUSION

Given the very low risk to the objectives of the FATCA presented by UK insurance policies, UK general and life insurers should be excluded from FATCA. We believe this can be done on a principled basis by providing for low risk policies to be excluded from the definition of 'financial account' and insurance companies that only sell low risk policies to be deemed compliant with FATCA or excluded from the definition of Foreign Financial Institution (FFI). Policies should be classified as low risk when they have one or more of the following characteristics:

[#186] they have no investment element and the payout from the policy is wholly contingent upon the happening of the insured risk.

[#186] they are primarily marketed in the home jurisdiction of the insurance company and not marketed into the US.

[#186] they are taxed at more than a nominal rate in the home jurisdiction of the insurance company and that tax is not refundable to the policyholder except on the making of a claim under the relevant US double taxation convention. they are reported to the tax authorities of the home jurisdiction of the insurance company under the home jurisdiction s tax law and there is an appropriate exchange of information article in the relevant US double taxation convention.

[#186] they have limits imposed by the law of the home jurisdiction of the insurance company on the amount that can be invested in them which are at a level considered not to present a significant risk to US tax revenues.

[#186] they have restrictions imposed by the law of the home jurisdiction of the insurance company on the timing (e.g. minimum age) and manner of any monetary withdrawals.

[#186] they are designed to provide benefits in retirement or on death if earlier

For any categories of policies which the US believe present risk, we would suggest that the following steps be taken to minimise the costs and administrative burdens associated with the introduction and operation of the new regime:

[#186] by providing a simple election and verification regime for an FFI to certify that it has no US accounts

[#186] the regulations should only require a FFI Annual Report to contain the minimum amount of information

necessary, as each data element that must be captured will increase costs to the FFI.

[#186] the requirement for compliance should be at the individual company level and not the worldwide group level.

[#186] an efficient and timely process for the refund of excess withholding is developed.

[#186] the regulations should provide for the grandfathering of existing accounts so that only new accounts opened after a prescribed future date will be subject to the legislation, or the definition of US person be narrowed to US residents for existing business so that companies have a better chance of capturing the information necessary to enable compliance with FATCA.

We would welcome the opportunity to meet with representatives from the US Treasury and IRS to discuss the implementation of FATCA.

In the meantime, if there is any further information we can provide or questions raised by our comments and suggestions that you would like answered please do not hesitate to contact Mark Edwards (mark.edwards@abi.org.uk +44207 216 7509)

ANNEX 1

Table on the UK Financial Services Authority (FSA) classes of GI business

General Insurance contracts set out in the First Insurance Directive

1. Accident
2. Sickness
3. Land vehicles
4. Railway rolling stock
5. Aircraft
6. Ships
7. Goods in transit
8. Fire and natural forces
9. Damage to property
10. Motor vehicle liability
11. Aircraft liability
12. Liability of ships
13. General liability
14. Credit
15. Suretyship
16. Miscellaneous financial
17. Legal expenses
18. Assistance

FSA Accounting classes for treaty reinsurance

- ___ Non-proportional treaty

- ___ Proportional treaty
- ___ Marine, aviation and transport (MAT) treaty

(Note: the first 18 classes should include both directive and facultative insurance contracts)

ANNEX 2

The income minus expenses (I-E) system

The UK regime for life assurance tax seeks to tax income, gains and profits arising to shareholders and policyholders via a single corporation tax charge. The income and gains arising in a period are apportioned between policyholders and shareholders with the policyholders share being taxed at the basic rate of UK income tax (20%) and the shareholders share being taxed at the standard UK corporate tax rate (28%). It is important to note that both these amounts are corporation tax charged to the company. The policyholder tax liabilities are charged to the policyholders share investment funds. Policyholders are therefore deemed to have suffered basic rate income tax on their policies and get a tax credit when they realise their policies.

There are certain classes of business on which policyholder returns are not subject to tax as they arise. These classes of business are:

[#186] Pensions (including company and individual pensions)

[#186] Overseas Life Assurance Business

[#186] Life Reinsurance Business

[#186] Individual Savings Account Business and Child Trust Fund Business.

ANNEX 3

The Chargeable Event Reporting regime

UK Chargeable Event Reporting (CER) regime applies to the excess of benefit received (or surrender value in the event of a death claim) over premium paid. An event can occur on maturity, death of policyholder, surrender (full or in part), assignment (full or in part) for consideration. Insurers have to report all chargeable event gains (i.e. where the policy has shown a profit) to the policyholder; this includes details of gain arising and basic rate of tax treated as paid. This must be reported within a 3-month time limit from the date of the event. Insurers also have to report the gain to HMRC where the gain exceeds 50% of the basic rate income tax threshold (i.e. gains in excess of ?18,700 for 2010/11). The insurer would report to HMRC the substantial gains that relate to gains from investments, that basic rate of tax is treated as paid and also all full assignments for consideration. This is completed in a prescribed format and again within a strict time limit.

ANNEX 4

UK anti-money laundering legislation and guidance

'Know Your Customer' (KYC) is in essence very similar to Customer Due Diligence and means verifying a customer's identity and gathering other personal information such as occupation, intended business relationship or the source of their wealth and funds. It can also extend to account activity and ensuring a customer is not named on any designated lists of terrorists, money launderers or financial crime activity. KYC also extends to beneficial owners and third parties involved and will apply through the term of a contract.

The verification of the customers' identity is carried out before entering a business relationship or occasional transaction.

Under the Proceeds of Crime Act 2002 (POCA) POCA there are 3 different *categories* of money laundering offences:

[#186] Concealing, disguising, converting, transferring or removing from the country any property which is the proceeds of crime.

[#186] Arranging for yourself or another to benefit from property which is the proceeds of crime.

[#186] Acquiring the use and possession of property that may be the proceeds of crime.

Other legislation and guidance in this area includes:

[#186] The Terrorism Act 2000, as amended by the Ant-Terrorism, Crime and Security Act 2001.

[#186] Money Laundering Regulations 2007

[#186] Joint Money laundering Steering Group 'JMLSG', guidance

[#186] Financial Services Authority 'FSA' rules

FOOTNOTES:

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The ABI is the voice of the UK's insurance, investment and long-term savings industry. It has over 300 members, which together account for around 90% of premiums in the UK domestic market.

The UK insurance industry is the third largest in the world and the largest in Europe, helping individuals and businesses protect themselves against the everyday risks they face. It pays out over ?230 million per day in pension and life insurance benefits and over ?50 million per day in general insurance claims. The industry is an important contributor to the UK's economy: it manages investments of ?1.5 trillion, over 20% of the UK's total net worth; employs more than 300,000 people in the UK alone; is the fourth highest contributor of corporation tax; and is a major exporter, with one-fifth of its net premium income coming from overseas business.

n2

Annex 1 ~ Full list of categories of general insurance (GI) business provided, UK Financial Services Authority classes

n3

Annex 2 ~ Summary of the UK regime for life assurance

n4

Annex 3 ~ The Chargeable Event Reporting regime

n5

http://www.hm-treasury.gov.uk/consult_pensionsrelief.htm

n6

http://www.hm-treasury.gov.uk/consult_age_75_annuity.htm

n7

Annex 4 ~ Summary of money laundering requirements