

[TEXT OF THE FATCA COMMENT LETTER SUBMITTED BY
ALECTA PENSIONS FÖRSÄKRING, ÖMSESIDIGT]

CC:PA:LPD:PR (NOT-121556-10)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044
USA

30 May, 2011

Dear Sirs,

Comments on *Notice 2011-34*, Guidance on the Foreign Account Tax Compliance Act (FATCA)

We are writing to provide comments on the Foreign Account Tax Compliance Act (“FATCA”) provisions of the Hiring Incentives to Restore Employment (“HIRE”) Act of 2010. According to *Notice 2011-34* the Treasury and IRS request comments regarding various categories of entities that should be treated as deemed-compliant FFI:s under *section 1471(b)(2)* or *1471(b)(2)(A)*.

Notice 2011-34 refers to *Notice 2010-60* and states that Treasury and the IRS intend to exempt certain retirement plans from withholding under FATCA, on the grounds that such retirement plans pose a “low risk of tax evasion” within the meaning of *section 1471(f)(4)*. *Notice 2010-60* states that Treasury and the IRS anticipate that a foreign retirement plan will be identified as posing a low risk of tax evasion only if the plan meets three requirements:

- (i) the plan must qualify as a retirement plan under the law of the country in which it is established;
- (ii) the plan must be “sponsored by a foreign employer;”
and
- (iii) the plan must not allow U.S. participants or beneficiaries other than employees that worked for the foreign employer in the country in which such retirement plan is established during the period in which benefits accrued.

The requirements raise issues for Swedish pension insurance companies that manage retirement accounts (occupational pension insurance policies). Due to this we would like to comment as follows.

Swedish retirement accounts/policies

In Sweden the occupational (employee) pension is a supplement to the national-funded pension and is based on agreements between the trade unions and employers. The majority of employees in Sweden are covered, on the basis of employment, by these collective occupational pension insurance schemes. The employers establish, on the basis of agreements with their employees, commitments for the provision of future pension benefits in the form of collective pension insurance. As explained, the majority of these agreements are collective agreements which have been entered into between the parties on the labour market.

By occupational (employee) pension insurance is meant life insurance which is linked to employment and where the payment of the insurance amount (one-off amount or periodical payments) is dependent on one or a number of individuals achieving or expecting to achieve a certain age, and this term also refers to the insurance provided as a supplement to such life insurance. According to the definition in the Swedish Income Tax Law, occupational pension insurance is pension insurance for which the insured's employer has committed to be responsible for payment of all of the premiums.

The legislation in this area has focused on securing the benefits of the occupational pension insurance, The employer ensures, in advance, the pension benefits to the employee.

The Swedish Income Tax Law provides a description of a method for securing pension benefits through the payment of premiums for occupational pension insurance. Further, Swedish tax law states certain criteria for pension insurance policies. One of these is that the retirement pension amounts under the policy must not be paid out before the insured person (i.e. the employee) has reached the age of 55 years.

“Institutions for Occupational Retirement Provisions” is a collective term for those institutes managing funds with the aim of providing occupational pension insurance benefits and to which the Directive 2003/41 EU (Occupational Pension Insurance Directive) applies. In Sweden only two categories of *pension funds* securing commitments for a minimum of 100 persons are covered by the regulations of this Occupational Pension Insurance Directive. *Life insurance companies*, such as Alecta, providing occupational pension insurance are not Occupational Retirement Provisions Institutions, but do apply certain of the regulations of the Directive.

About Alecta

Alecta pensionsförsäkring, ömsesidigt, is a Swedish mutual life insurance company. This means that the company is owned by the policyholders (companies) and the insured (the companies' employees) and that any surplus in operations is returned to the policyholders and the insured in the form of a bonus.

Alecta administers occupational pension insurance (as explained above under “Swedish retirement accounts/policies”). Occupational pension insurance relates to insurance with retirement, disability and survivors' pension, which is linked to occupational circumstances and for which the employer pays premiums.

Privately employed salaried employees have the “ITP” agreement (Industry and commerce’s supplementary occupational pension insurance for salaried employees). ITP is based on a collective agreement between the Confederation of Swedish Enterprises and the Federation of Salaried Employees in Industry and Services. The ITP occupational pension contains retirement pension, disability pension and family pension.

Alecta is assigned by the collective agreement parties, the Confederation of Swedish Enterprises and the Council for Negotiation and Co-operation, to manage the defined benefit part of the ITP Plan (ITP 2). For the defined contribution part, which includes ITP 1 and “ITPK” (complementary retirement pension for ITP 2), Alecta is both a default alternative and an available choice for traditional insurance. Alecta is also assigned to manage the entire disability insurance business in the ITP Plan. Alecta is also an available choice of supplier in the Contractual Pension Plan agreed between the Swedish Employers’ Confederation and the Swedish Trade Union Confederation for wage earners in the private sector and for government employees in the “PA 03” agreement area. Alecta is also an available choice and default alternative within “PA-KFS” for salaried employees in municipal companies. All collectives are offered Alecta Optimal Pension which is Alecta’s defined contribution insurance product. Alecta also manages part of the Pension Registration Institute’s operations on an assignment basis.

We manage approximately SEK 500 billion on behalf of 32,000 companies (employers) and 1,9 million individuals (employees).

Comments

The issue that is of importance to Alecta is how to define exempt “retirement plans” in FATCA.

We are of the view that “retirement plans” should not be defined as pension plans (pension funds) under the terms of double tax treaties, nor should the categorization rely on whether the retirement plan is recognized as (and regulated as) a retirement plan according to local legislation (Alecta does not fall under either of these definitions). We are of the view that the definition of “retirement plans” should be broad enough to cover the Swedish retirement account system, where employers are securing their pension commitments towards employees via payments of pension insurance premiums to companies such as Alecta, i.e. companies that manages the pension funds. As should be evident from the above, the Swedish retirement account system present no or very little opportunity for U.S. tax evasion.

Respectfully yours,

Alecta Pensionsförsäkring,
ömsesidigt

Katarina Thorslund
CFO