

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

[October 27, 2010]

Mr John Sweeney
Attorney-Advisor, Branch 5
Internal Revenue Service
Room 4562
1111 Constitution Avenue NW
Washington, DC 20224

Dear Mr Sweeney

***Notice 2010-60* Guidance Under the Foreign Account Tax Compliance Act**

I am writing to you on behalf of the United Kingdom's Building Societies Association to offer comments on *Notice 2010-60* ("Notice") and future efforts by the Internal Revenue Service ("IRS") to implement the Foreign Account Tax Compliance Act ("FATCA"). In Notice 2010-60, Treasury and the IRS solicited comments on possible approaches to reduce the burden imposed on participating foreign financial institutions ("FFIs") under the FATCA.

Our comments are high level and limited to the effect of FATCA on the building society sector in the UK. We do not discuss any of the detail as this has already been covered well by the British Bankers' Association's n1 submissions.

Under FATCA, withholding is not required with respect to payments to an FFI that enters into a reporting agreement with the IRS, under which the FFI agrees to comply with the verification and due diligence procedures required by the IRS with respect to the identification of U.S. accounts. An FFI may be deemed to satisfy this requirement if it complies with such procedures as the IRS may prescribe to ensure that the FFI does not maintain any U.S. accounts.

We should like to emphasise that we support the goals of the US government in enacting FATCA ~ to ensure that all its citizens, wherever they live, pay their fair share of tax. But we are concerned that compliance with the act brings huge challenges that appear to be at odds with its objectives.

The Building Societies Association represents mutual lenders and deposit takers in the UK including all 49 UK building societies. Mutual lenders and deposit takers have total assets of over £365 billion (\$ 585 billion) and, together with their subsidiaries, hold residential mortgages of almost £235 billion (\$ 376 billion), 19% of the total outstanding in the UK.

UK building societies are mutual organisations, owned by their members, similar to but not the same as, thrifts; membership is achieved by becoming a mortgage or a savings customer (or both). Building societies would fall within the definition of FFI.

Building societies are incorporated and governed by the Building Societies Act 1986 (as amended in 1997) which requires societies to have as their main business the making of residential mortgage loans funded by the savings of members, and describes how they are to be regulated in order to ensure that members' money is safe.

Building societies are also covered by the Banking Conduct of Business Sourcebook and Payment Services Regulations 2009, and are generally regulated by the UK's Financial Services Authority (FSA), under the Financial Services and Markets Act 2000.

Generally speaking the majority operate straightforward savings and mortgage accounts. A minimum of 75% of their lending must be in residential mortgages. Building society law forbids them to take risk positions in commodities, currencies or derivatives. As a general rule, they are not in the business of offering to their members complex structured transactions such as inheritance tax planning or involve themselves in opaque remuneration practices.

Most building societies open accounts only for UK resident individuals or trusts. As a consequence, there will be few "US persons" (as defined) among their account holders.

The average account balance is low (£12,106 for the top 16 societies; £8,872 for the 23 in the second tier; £11,320 the 13 in the third tier).² Most societies have a maximum limit on balances (usually £1 million per member, although most accounts have limits around £50,000). Most account holders will therefore fall below the "de minimis" limit in the Notice.

Some entities have already been recognised in the Notice as presenting a low risk of evasion of US taxation: non-US governments; international organisations; non-US central banks; and retirement plans.

We believe that UK building societies similarly present a low risk of evasion for the reasons set out above. To comply would be a massive, expensive and disproportionate exercise for the low number of legacy British customers who may have moved to USA or the potentially low number of US nationals who now live in the UK and have accounts. Most likely, however, the outcome would be a nil return or a low number of accounts with modest balances and interest receipts. The cost of being able to certify that there are no US persons holding accounts, or to identify the very few who do hold balances, is out of all proportion to the cost of adapting and interrogating the societies' systems to make the annual reports required. Any such charges will have to be passed on to the member in terms of lower savings and higher mortgage rates. It seems unfair that UK customers should suffer the not inconsiderable costs or compliance with US tax legislation where the risk of tax evasion is so very low.

We would ask that, in all the circumstances, UK building societies be granted exclusion from the due diligence, registration and filing requirements in the same way as other entities identified as being of low risk of tax evasion.

I am happy to discuss our suggestions further and how they might streamline compliance with FAT-CA.

Thank you for your consideration.

Yours sincerely

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cc Ms Manal S Corwin
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FOOTNOTES:

n1

An example would be the BBA letter of 27 April 2010 to Mr Shay, Ms Corwin, Mr Musher and Mr Danilack of the US Department of the Treasury/Internal Revenue Service.

n2

The Sterling values respectively translate to approximately: \$ 19,385; \$ 14,207; and \$ 18,127. None has average balances above £23,000 (\$ 36,830) and only two have balances over £20,000 (\$ 32,026). Source: Building Societies Database 2010: Insight into the shape of UK Building Societies, KPMG, Leeds, UK. (Since the report's statistics were compiled, three building societies have been merged into three of the largest four societies.)