[TEXT OF THE FATCA COMMENT LETTER SUBMITTED BY CANADIAN BANKERS ASSOCIATION]

June 7, 2011

Mr. Steven A. Musher
Internal Revenue Service
Office of the Associate Chief Counsel (Int'l)
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Mr. Musher:

Thank you for the opportunity to comment on *Notice 2011-34*, "Supplementary Notice to *Notice 2010-60* Providing Further Guidance and Requesting Comments on Certain Priority Issues Under Chapter 4 of Subtitle A of the Code" ("Notice").

The Canadian Bankers Association (CBA) works on behalf of 51 domestic banks, foreign bank subsidiaries and foreign bank branches operating in Canada and their 263,400 employees. The CBA advocates for effective public policies that contribute to a sound, successful banking system that benefits Canadians and Canada's economy. The Association also promotes financial literacy to help Canadians make informed financial decisions.

Our comments in this letter should be read in conjunction with those in our earlier comments on *Notice 2010-60* sent November 1, 2010. While we appreciate that the supplementary Notice provides insight in some areas and clarifies some issues raised in *Notice 2010-60*, it is silent on a number of important issues such as the identification and treatment of non-financial foreign entities (NFFEs). Therefore, our comments and concerns raised in the November 1, 2010 letter are still present. In an effort to provide to you a consolidated view of our recommendations on the issues raised by FATCA, attached in Appendix A is a table that lists all of the key elements of FATCA and the recommendations of the CBA that pertain to those issues.

The CBA continues to be of the view that countries such as Canada pose an exceptionally low risk of tax evasion due to substantial information sharing arrangements with the United States and our comprehensive domestic tax regime, and that some relief from Chapter 4 should be provided accordingly. The Canada-U.S. Tax Treaty (Treaty) provides for automatic reporting to the IRS by the Canada Revenue Agency (CRA) of virtually all taxable income where the recipient has a U.S. address and where the CRA uncovers any financial information that may be relevant to the IRS as part of an audit. n1 More generally, the Treaty provides that

> *The competent authorities of the Contracting States [IRS and the Canada Revenue Agency] shall exchange such information as is relevant for carrying out the provisions of this Convention or of the domestic*

laws of the Contracting States concerning taxes to which the Convention applies insofar as the taxation thereunder is not contrary to the Convention. n2

If there is additional information that the IRS feels would be relevant for the purposes of administering U.S. tax law, the Treaty also allows that "If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall endeavor to obtain the information to which the request relates in the same way as if its own taxation was involved notwithstanding the fact that the other State does not, at that time, need such information." n3 This relationship makes it virtually impossible for a U.S.-resident tax evader to use a Canadian financial account to evade U.S. income taxes and gives U.S. tax authorities an open-ended tool for obtaining information that they believe they need to enforce U.S. tax law. Moreover, Canada and the U.S. also have similar tax systems and personal tax rates. n4 The combination of the extensive information sharing associated with the tax treaty and the similar personal tax regimes means that there is little likelihood that accounts held by U.S. persons in Canada would be used as a tool for tax evasion. If additional information is required, however, our strong recommendation is that the U.S. tax authorities work with the Government of Canada to extend the Canada-U.S. tax information sharing arrangements to address those data points, Clearly there is an expressed international interest in improved tax information exchange as articulated by the G20, and extending information sharing arrangements between national authorities to include additional elements such as information related to assets would be consistent with that broad direction.

While this remains our overarching view, we appreciate that there are proposals on specific issues that have been raised in *Notice 2011-34* on which comment is sought. Therefore, the balance of this letter provides comment on those specific issues.

Section I – Pre-existing Individual Accounts

Notice 2011-34 takes a fundamentally different approach to the identification of preexisting accounts than *Notice 2010-60.* Specifically, *Notice 2011-34* takes a more risk-based approach to identification of accounts. We interpret this as an attempt to reduce the compliance burden associated with identification and focus scrutiny on those types of accounts that are the most likely to be attractive to high net worth U.S. persons. We appreciate and strongly support the intent. That being said, our concern is that the approach that has been taken will not achieve that objective without substantial modifications. To that end, we have made several suggestions below that we believe would reduce the compliance burden and facilitate implementation of Section I.A without impacting its effectiveness.

Private Banking

The approach taken by the IRS and Treasury in *Notice 2011-34* is to create an activity-based definition of "private banking" and subject clients obtaining services that fall within that definition to enhanced scrutiny. The challenge is that the definition of "private banking" that has been adopted is exceptionally broad. As it is currently conceived, the "private banking" definition would capture any financial account in any part of the bank financial group that is referred to as being involved in "wealth management" and that offers "personalized service", and a "private banking relationship manager" is

deemed to be any employee who is assigned responsibility for specific clients and provides those clients with advice and referrals related to specific financial products or services. Our concern is that, absent additional refinement, what this definition captures is not *private banking* but rather a broad array of services including retail financial planning, discount and full-service brokerage, mutual fund sales, insurance sales, and potentially other services as well. This encompasses a large number and variety of clients. Consider the example of retail financial planning. According to the Financial Planning Standards Council of Canada, which is the licensing body for the Certified Financial Planner (CFP) designation in Canada, as of December 2009 there were 17,304 CFP-certified financial planners in Canada representing over 3 million clients across the country. n5 The overwhelming majority of the clients that these professionals serve are typical middle-class Canadians; however, under the private banking provisions in *Notice 2011-34,* the clients of these financial planners could be construed to be private banking clients and therefore subject to enhanced scrutiny. Clearly, that is not the intent of Chapter 4; however, given the broad definition that has been adopted by the Notice, it is the effect. That is not a desirable outcome for financial institutions in Canada or for Treasury/IRS officials.

The Notice requests comments on how the private banking test could be modified "in order to ensure that the test will apply, wherever practical, to accounts of high-net worth individuals who receive from FFIs (private banking services). . . ." In our view, the best way to better target this provision is to segregate "private banking" from the broader concept of wealth management. Private banking is a concierge service, typically within a deposit-taking institution, that provides personal service and account aggregation for those individuals who are willing to pay for such service. We believe this is the intended target of the private banking definition. Wealth management, which is usually associated with financial planning and brokerage, is a far broader concept. In the wealth management context, personalized service and collection of client information is commonplace for professional and regulatory reasons. Therefore, application of the private banking definition in *section 3* outside the deposit-taking environment will cast a net that is far broader than was intended. In those businesses, the CBA believes that the best option is to focus on account size as the decision variable for enhanced scrutiny. Since there is already provision for enhanced scrutiny for large accounts in step 5, we believe the best method to address those types of accounts is to simply build in some enhanced review elements in step 5 for accounts held by FFIs that are not deposit-taking institutions.

Recommendation: Restrict Step 3 ("Private Banking Accounts") to deposit-taking institutions and incorporate the enhanced review elements that were in Step 3 into Step 5 ("Accounts of $ 500,000 or More") for other types of FFIs.

Step 3 also prescribes how the enhanced review of private banking accounts is to be conducted. Specifically, step 3 dictates that the review must be conducted by the private banking relationship manager. We believe this is unnecessarily rigid since, depending upon the structure of the organization, it may be more efficient to centralize documentary reviews. Moreover, there may be instances where the FFI and/or the private banking manager is sufficiently comfortable, based on their knowledge of the client file, to certify that no additional information exists that would provide indicia of U.S. status. In those cases, we believe it would be administratively simpler to allow a certification, either by the private banking manager or the institution, that no further information exists in the client files with U.S. indicia. This would give U.S. authorities the same level of comfort without imposing the same uniform

rigorous search requirement in instances where the FFI views it as unnecessary for the purpose of satisfying itself that no indicia exists.

Recommendation: Modify Step 3 to:

- **provide FFIs with flexibility in determining how best to conduct the enhanced review of private banking records, and**
- **allow FFIs the option to certify that a private banking client record has no indicia of U.S. status as an alternative to conducting the specific searches outlined in step 3.**

Documentary Evidence

In the CBA's comment letter on *Notice 2010-60*, we noted that compelling the production of "documentary evidence" in excess of that which is required by domestic law for the purposes of opening an account is problematic from a legal perspective. We therefore recommended that FFIs only be required to review the documentary evidence they have obtained as part of their normal account opening procedures and assess whether it establishes the account holder as a U.S. person. We appreciate that Treasury and the IRS have made substantial strides in this direction and take the language contained in *Notice 2011-34* as an attempt to do that. However, after reviewing the "documentary evidence" standard contained in the Notice and comparing that against the standard ID that is used for customer identification purposes in Canada, one particular piece of ID remains problematic -- the Social Insurance Card (SIC).

The challenge associated with a Canadian SIC is that it does not contain an address field. Rather, the number of the card contains a limited amount of information about the place of issuance. In the QI attachment for Canada, the IRS dealt with this by effectively grandfathering accounts opened with an SIC provided that they did not indicate non-residence. While that solution was sufficient for QI purposes, it is more problematic in the case of FATCA because of the wider range of accounts to which FATCA applies. A SIC is explicitly listed as a valid piece of ID for the purposes of Canadian legislation/regulation that drives account opening requirements -- the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, and, in the case of banks, supplemented by the *Access to Basic Banking Services Regulations* -- and is widely held by Canadians. In this sense, it is very similar to a U.S. Social Security Card, which does not contain an address field but is nonetheless widely used as identification in the United States. The SIC issue is illustrative of the broader challenge of trying to fully capture all forms of national identification outside the United States -- it is exceedingly difficult to develop rules that are sufficiently robust to capture all possible forms of suitable identification. We believe that a better solution is to include, by reference, all forms of ID that are suitable for identification under local account opening/AML/KYC requirements.

Setting aside the issue of the specific pieces of physical ID that are acceptable for FATCA, *Notice 2011-34* presents a broader problem associated with "documentary evidence" that must be addressed – its reliance on physical documents for verification purposes. Technology has now made it possible for clients to enter into a relationship with financial institutions without ever setting foot inside a branch or meeting with a representative of the firm. As a consequence, allowances have been made for identification techniques that are not based on the acquisition and recording of a specific piece of physical identification. In the case of Canada, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* allows for alternative KYC methods that do not require the customer to show government-issued identification to an employee of the financial institution, and may not require a customer to show government issued identification at all. Details on these methods are attached (see Attachment B) but, broadly speaking, fall into four categories:

- Reliance on a third party authentication service;
- Reliance on information on the applicant that is already on file with a credit bureau;
- Reliance on the existence of an account with another deposit-taking institution with which the client already has a relationship;
- Reliance on an attestation from a public official or guarantor.

These techniques are used in combination to verify the identification of the applicant without requiring the applicant to present physical identification in person.

Neither *Notice 2011-34* (for pre-existing accounts) nor *Notice 2010-60* (for new accounts) contemplate the opening of an account in a manner that does not require the production of a physical document or interaction with an FFI employee. The reality is, however, that this type of bank-client relationship is commonplace in Canada and other countries (including the United States) as the growth of internet banking has taken off. In Canada, there are millions of banking accounts that were opened solely through the Internet, and a number of financial institutions that only offer accounts through virtual means. Moreover, non-physical forms of identification are the wave of the future. In the U.S., the White House recently launched a *National Strategy for Trusted identities in Cyberspace* that is focussed on how to improve identity management in the e-commerce age. Chapter 4 regulations must make some allowance for alternative non-physical identification techniques modelled along the lines set out in legislation in the FFI's home country. Adopting the recommendation to reference identification acceptable under an FFI's domestic law for account opening would address this issue.

Recommendation: Clarify that "documentary evidence" includes all forms of identification that are acceptable under an FFI's domestic Law for the purposes of account opening, including techniques that do not involve the presentation of a physical document.

We would also like clarification about whether the documentary evidence standards outlined in *Notice 2011-34* apply equally to new accounts and pre-existing accounts. Our working assumption is that they do; however, they have been outlined in Section I which deals principally with pre-existing accounts.

Recommendation: Clarify that "documentary evidence" standards in Section I of *Notice 2011-34* also apply to new accounts.

Account Aggregation

In responses to *IRS Notice 2010-60,* the CBA and other respondents highlighted the challenges associated with aggregating accounts. Specifically, we noted that aggregation is extremely difficult to effect with certainty and that, as a practical matter, it would be difficult to envision an individual opening up a series of $ 50,000 accounts with the same institution in order to evade Chapter 4 reporting. Therefore, the CBA recommended that the IRS and Treasury eliminate the aggregation requirement since it would greatly reduce the compliance burden, and make the $ 50,000 exemption more functional, without impairing the policy intent of Chapter 4. *Notice 2011-34* does not eliminate the aggregation requirement; however, it does modify it to require aggregation of "all accounts maintained by the FFI or its affiliates that are associated with one another due to partial or complete common ownership of the account under the FFI's existing computerized information management, accounting, tax reporting, or other recordkeeping systems." Given the number of systems that large financial institutions operate, this statement can be interpreted in one of two ways:

- The first interpretation would be "aggregate where you can." Under this interpretation, an FFI would be required to aggregate where it already has systems in place to achieve such aggregation, including both relating the accounts and aggregating the financial data associated with the accounts. Therefore, there would be no requirement to build new systems for aggregation but rather just a requirement to utilize those systems that are already in place that are capable of aggregating account information and associated financial data at a client level.

- The second interpretation would be "aggregate wherever you know anywhere in your systems that there is some relationship between accounts." This is a far more complex undertaking. Large financial institutions have multiple systems across different product lines and different functional purposes. In some cases, they may indicate a relationship between two accounts but they may not have the capacity to aggregate account level information as envisioned by Chapter 4 (e.g. tax systems or customer databases compiled for marketing

purposes). Moreover, there will be instances where aggregation is not possible for legal reasons because the accounts exist in separate legal entities. This interpretation would be of little value in terms of simplification because it is unclear whether existing systems of the type described could be modified to aggregate data in the manner contemplated by the Notice and Chapter 4.

Since the objective of including this measure in the Notice is to reduce compliance costs then it follows that our clear preference would be for the first interpretation rather than the second, and our belief is that that is what was intended.

Recommendation: Eliminate the requirement to aggregate across accounts. If Treasury and the IRS are unwilling or unable to do that then, at a minimum, clarify that the aggregation requirement in Section I.A(2) of the Notice is only meant to require aggregation across systems that already have the functionality to aggregate account-level information and associated financial data (i.e. "aggregate where you can").

Certification

Notice 2011-34 also contains a new provision requiring an FFI's chief compliance officer or another equivalent-level officer of the FFI (responsible officer) to provide certain certifications. These certifications relate to the completion of the steps set out in the Notice, actions during the period between the publication date of the Notice and the effective date of the FFI Agreement and certain policies and procedures to be established in the period following the effective date of the FFI Agreement. Serious concerns have been identified with these later two certifications.

In respect of the period between the publication date of the notice and the effective date of the FFI Agreement, the responsible officer would be required to certify that FFI 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 U.S. accounts under the procedures described in the Notice. For the period following the effective date of the FFI Agreement, the responsible officer would have to certify that the FFI had written policies and procedures in place prohibiting its employees from advising U.S. account holders on how to avoid having their U.S. accounts identified.

The certification respecting the period prior to the effective date of the FFI Agreement assumes that the responsible officer can have knowledge of individual manager activity at a "per transaction" or "per relationship" level. For a large banking organization, such as a large Canadian bank, it is practically impossible for such individual knowledge to exist. Further, no amount of diligence could provide the individual with a suitable level of comfort respecting the accuracy of the certification. A CCO cannot be expected to have this level of knowledge. Rather, the role of a CCO is to ensure an effective control environment is in place to address regulatory and compliance expectations. This is achieved by ensuring

adequate policies, procedures, standards and guidelines are in place across the organization, supported by communication and training requirements. CCOs use a risk-based approach to compliance using sampling and other forms of monitoring to assess the level of compliance across the organization. A risk-based approach recognizes the impracticality of monitoring for compliance at the transactional level in large, complex banks. Further, for the period following the FFI Agreement, the responsible officer must certify that there are policies and "procedures" in place to prohibit the stated conduct.

Recommendation: As it would be unreasonable to require that an individual provide a certification where the individual could not have any reasonable degree of confidence in their certification, we recommend that the certification requirements be removed. Alternatively, the certification for the period prior to the effective date of the FFI Agreement should be limited to whether the FFI had a formal policy directing, encouraging, or assisting account holders with respect to strategies for avoiding identification of their accounts as US accounts. For the period following the effective date of the FFI Agreement, the certification should be limited to whether the FFI has a policy and/or procedures in place that prohibits employees from so doing.

Long Term Recalcitrant Account Holders

Like *Notice 2010-60, Notice 2011-34* indicates that Treasury and the IRS are still of the view that so-called "long-term recalcitrant account holders" are unacceptable and are contemplating how to address the issue "including whether, and in what circumstances, FFI agreements should be terminated due to the number of recalcitrant account holders remaining after a reasonable period of time." As the CBA noted in our submission on *Notice 2010-60,* embodied in this statement are two key issues, each of which is addressed below.

- *Defining a "long-term recalcitrant account holder"*
  -- In making this definition, one needs to separate out the concept of a recalcitrant account from that of a dormant account. Banks around the world constantly deal with the problem of dormant accounts, which are accounts on which there is no activity and where the account holder cannot be contacted either because they have moved without closing their account or, in some cases, because they are deceased. It certainly would not be in the interest of either the IRS or the FFI to penalize the FFI because of dormant accounts that have indicia of U.S. status as the FFI is powerless to address the problem. To reconcile this situation, the term "long-term recalcitrant account holder" should be clarified to only capture active accounts.

- *Determining whether to terminate an FFI agreement*
  -- In making this judgement, one needs again to consider

> a risk-based approach. As noted earlier, the risk that accounts located in countries with an elaborate tax-information sharing arrangement with the U.S. and with comparable personal tax rates are harbouring U.S. tax evaders is very low. Terminating an FFI agreement on the basis of a significant number of deemed recalcitrant accounts would be an exceptional and unwarranted step from a risk-based perspective. It should also be noted that the laws of some countries will not permit accounts to be terminated solely for failure to comply with FATCA information requirements. It would not be in the interest of either the FFI or the IRS/Treasury to terminate agreements in such circumstances because termination would have a cascading effect on the compliance of the rest of the financial group.

Section II ~ Passthru Payments

Perhaps the most problematic proposals of *Notice 2011-34*, and indeed perhaps the problematic element of Chapter 4, is the issue of passthru payments. Section II notes that "Treasury and the IRS have received several comments proposing that a payment attributable to a withholdable payment should include only payments that are either withholdable payments or directly traceable to withholdable payments." The CBA counts itself among those commentators. Therefore, it is unfortunate that the Notice states that "Treasury and the IRS have not adopted the limited definition of a passthru payment proposed in such comments."

There are numerous challenges associated with withholding on passthru payments as outlined in the Notice. First among them is the simple fact that withholding is normally done under the auspices of domestic tax law. In Canadian tax law, the purpose of withholding tax is to ensure that domestic income accruing to non-residents is subject to some level of domestic taxation. The passthru payment concept can result in FFIs having to withhold and remit U.S. tax on amounts that, for other tax purposes, are non U.S.-source, could be domestic or non-domestic source and might also be subject to taxation in another jurisdiction. Domestic tax law therefore does not contemplate this concept and therefore does not provide any clear safe harbour that FFIs can use for the purposes of withholding.

With the absence of specific provision in domestic tax law, FFIs will be required to look to contract law as an alternative to provide the appropriate legal framework for withholding. That presents its own issues. For large financial institutions, this would involve research and, where necessary, modifying the terms and conditions governing every contractual relationship with every account holder across all affiliates and product lines to permit such withholding. There will almost certainly be instances where such flexibility does not exist, where the client refuses to consent to changes to the contract, and where the FFI may face substantial legal risk were it to unilaterally terminate the contractual relationship.

At a higher level, it is also unclear how tax authorities in Canada and other countries will react to this development. In effect, the U.S. Government is asserting that it has tax authority over any income, earned anywhere, by anyone that in any way has come in contact with a U.S. source payment, much of which in the normal course would not be viewed as U.S.-source income. That occupies tax room that is currently occupied by domestic tax authorities and therefore erodes the tax base of those countries. It is quite possible that tax authorities in some affected countries could put in place countermeasures to block this form of tax leakage.

Our understanding is that the concept was originally proposed with the context of a collective investment vehicle, and indeed the example in the Notice is that of an investment vehicle. While there may be some theoretical reason for using an asset-based approach in that context, it makes absolutely no sense in the context of a deposit-taking institution. The dollar value of the interest that a client earns on a deposit account is no way related or attributable to the proportion of the assets that reside in the United States.

Recommendation: Treasury and the IRS should reconsider the passthru payment provision given problems that it causes with particular reference to the challenges it creates in the context of deposit-taking institutions.

Focussing more broadly on the topic of withholding, given the breadth of Chapter 4 and the number of circumstances that can trigger withholding, it is certain that there will be a number of instances where foreign residents are subjected to overwithholding. In those instances, they will have a legitimate right to reclaim funds from the IRS funds that were withheld. To date, no process for reclaim has been published,

Recommendation: Treasury and the IRS should publish for comment a proposed process for recovering withheld funds.

Section III – Deemed Compliant Status for Certain FFIs

The CBA submission in response to *Notice 2010-60* highlighted that the Government of Canada, like the U.S. government, has developed individual, registered savings plans that are designed to help individuals provide for their retirement as well as other long term financial needs. In the U.S., the Government has established Individual Retirement Accounts (conventional and Roth) to encourage private retirement savings; in Canada, the government has established Registered Retirement Savings Plans (RRSPs) and Registered Retirement Income Funds (RRIFs). The Canada-U.S. Tax Treaty recognizes the similarity of the products, both in design and intent, and classifies all of them as pensions for the purposes of the Treaty. We are therefore pleased that *Notice 2011-34* indicates that Treasury and the IRS are considering exemptions for retirement plans and accounts and would strongly recommend that those exemptions be made as broad as possible. In Canada, there are 6.2 million active contributors to RRSPs; however, the median contribution size is only CDN$ 5,371 (US$ 5,640) and the median cumulative value of an RRSP is only CDN$ 25,000 (US$ 26,250).

In addition to RRSPs, the Government of Canada has also created tax-advantaged registered savings products to help Canadian residents achieve other socially desirable objectives such as saving for education and providing financial assistance to people with disabilities -- Registered Education Savings Plans (RESPs), Registered Disability Savings Plans (RDSPs), as well as the general-purpose Tax-Free Savings Accounts (TFSAs). These are registered with Canadian tax authorities, are strictly limited in allowable contribution levels, and are targeted at middle-class Canadian residents. They therefore pose no risk of being used as tools for U.S. tax evasion but do serve a very important public policy objective shared by both of our Governments.

In general, the CBA believes that any government-registered savings or investment account or plan that is subject to regular reporting to the government and has restrictive features such as an annual contribution limit, a lifetime contribution limit, or a finite lifetime should be exempted from FATCA since it clearly poses a very low risk of being used as a tool for tax evasion.

We note that the reference to retirement savings products was included under the section on deemed compliant FFIs. As the CBA noted earlier, such products may take the form of FFIs but they may equally take the form of accounts. For completeness and equity, our expectation is that both forms would be given similar treatment since the risk of use for tax evasion is equally negligible for both. We take comfort that the section makes specific reference to "foreign retirement plans or retirement accounts."

Recommendation: Treasury and the IRS should exempt from Chapter 4 any government-registered savings or investment account or plan that is subject to regular reporting to the government and having restrictive features to limit its ability to be used as an effective tool for tax evasion.

Section VI -- Expanded Affiliated Groups

One of the challenges of Chapter 4 is its "all or nothing" compliance requirement whereby an entire affiliated group must be in compliance for any of its members to be in compliance. This can be very problematic for financial groups that operate in multiple countries across multiple lines of business. Therefore, we are encouraged that the Notice indicates that Treasury and the IRS are studying "whether and under what conditions it may be possible to allow an FFI Group to include one or more non-participating FFI affiliates." We strongly support such flexibility since it may be necessary in some cases where legal or other reasons in one part of the expanded affiliated group will not permit compliance. While the CBA does not have a specific proposal on this section at this time, it is clearly an issue of substantial importance to a number of institutions operating in multiple jurisdictions. We strongly encourage Treasury and the IRS to work directly with affected institutions to develop guidelines in this area. In addition, we encourage Treasury and the IRS to allow institutions to make proposals for variations on a case-by-case basis in instances that do not fit the general guidelines but where the institution believes that flexibility would be in the best interest of both itself and U.S. authorities.

Implementation Time

Collectively *Notices 2010-60 and 2011-34* have addressed a large number of issues, and we recognize that Treasury and IRS staff have put substantial thought and work into the proposals that have been drafted, as have the CBA and other commentators into responses to those proposals. While a great deal of work has been done, an even larger body of work remains. The CBA and our member banks are very concerned that, with the passage of time and the January 1, 2013 effective date for Chapter 4, financial institutions will simply not have sufficient time to be implement the changes necessary to comply with Chapter 4 even if solutions can be found to the legal and operational issues that it presents. We are not suggesting that development of the regulations be rushed -- unworkable regulations would not be in anyone's interest -- but rather that there be a phase-in period following January 1, 2013 where Chapter 4 compliance elements are introduced in stages over time and where regulators exercise substantial forbearance appreciating that initial compliance will be spotty given the exceptionally short development time that financial institutions are likely to have. The CBA would welcome the opportunity to work with Treasury and IRS officials to determine the order in which Chapter 4 elements could be phased in and the timing between phases.

Recommendation: Phase in Chapter 4 requirements in stages.

Conclusion

In conclusion, we would like to reiterate that our intention in submitting these comments is to be as constructive as possible in providing Treasury and the IRS with input on how to make Chapter 4 workable. That being said, nothing that has been stated above should be seen as taking away from, or contradicting, our underlying view of this issue, which is that the best way to address the information requirements that Chapter 4 is attempting to fill is through enhanced information exchange between national tax authorities. The mechanisms already exist; where they fall short, they can be built upon. The domestic legislative environment already provides for reporting by financial institutions to those authorities. We strongly believe that the authority-to-authority route would provide a better, more cost-efficient and more durable solution than the proposals set out in Chapter 4.

We would welcome the opportunity speak with Treasury and IRS staff about our recommendations.

Sincerely,

Terry Campbell
President & Chief Executive Officer
Canadian Bankers Association

CC:
Michael Plowgian, Treasury
John Sweeney, IRS

Attachments (2)

FOOTNOTES:

n1

Includes the following income documentation: Statement of amounts paid to non-residents (NR4), Statement of Fees, Commissions, or other amounts paid to non-residents for services rendered in Canada (T4A-NR), Employment Income (T4), Statement of Pension, Retirement, Annuity and Other Income (T4A), Statement of Old Age Security (T4(OAS)), Statement of Registered Retirement Savings Plan Income (T4RSP), Statement of Income from a Registered Retirement Income Fund (T4RIF), and Statement of Investment Income (T5).

n2

Canada-U.S. Tax Treaty Article XXVII(1), "Exchange of Information".

n3

Canada-U.S. Tax Treaty Article XXVII(2), "Exchange of Information".

n4

The OECD Tax Database indicates that the combined personal income tax rate at the average wage in the United States is 22.4% and in Canada is 22.8%. (http://www.oecd.org/dataoecd/44/3/1942514.xls) The combined top marginal personal income tax rate is 41.7% in the United States vs. 46.4% in Canada. (http://www.oecd.org/dataoecd/46/18/2506453.xls)

n5

Financial Planning Standards Council Annual Report 2009-10. Statistics for total clients is an estimate based on the breakdown of CFP professionals by number of clients found in the annual report.