

[TEXT OF THE FATCA COMMENT LETTER SUBMITTED BY
EUROPEAN FEDERATION FOR RETIREMENT PROVISION]

CC:PA:LPD:PR (NOT-121556-10)

Internal Revenue Service
Room 5203
PO Box 7604
Ben Franklin Station
Washington, DC 20044

Brussels, 29 October 2010

SUBJECT: *NOTICE 2010-60*~ FOREIGN RETIREMENT PLANS.

Ladies and Gentlemen,

1. We refer to *Notice 2010-60* and the invitation to provide comments on the definition of a foreign retirement plan for the purpose drafting an exemption from withholding under *section 1471(a)* based on the reference in *section 1471(f)(4)* to a class of persons identified by the Secretary as posing a low risk of tax evasion.
2. The European Federation for Retirement Provision (EFRP) represents the various national associations of pension funds and similar institutions for workplace pension provision in 16 EU member states and 5 other European countries, totaling 28 member associations. The occupational pension plans of about 75 million EU citizens are covered by our members. Through its member associations, we represent over \approx 3.5 trillion in assets, managed for future workplace pension payments.
3. The intent of the Foreign Account Tax Compliance Act is clear to us and we are interested in providing you with the relevant information to design a framework that accomplishes the compliance objectives of the US government and serves the interests of the US capital markets without overly burdening the operation of foreign retirement plans.
4. Within the European Union, the design, institutional organization, regulation and supervision of entities

that provide retirement benefits is principally the responsibility of each individual Member State. Consequently, in Europe there is great diversity in institutional arrangements for the provision of retirement benefits under what is generally referred to as a “pension plan”. These arrangements include (but are not limited to) book reserves in the books of the employer, pension funds sponsored by the employer or by an association of employers in the same sector, pension plans where the sponsor is an association, syndicate or labour union and plans where assets are managed by financial institutions under a regulatory and taxation framework for pensions.

5. Directive 2003/41/EC of the European Parliament and of the Council of June 3, 2003 on the activities and supervision of institutions for occupational retirement provision is the Directive that is aimed at contributing to the creation of an internal market in the European Union for the provision of occupational retirement benefits. It sets a European regulatory framework for pension plans and we believe that it is a good starting point in the design of an exemption for European retirement plans. The Directive governs areas such as:

- investment policy's based on the prudent person principle and limits on investing in the sponsor;
- separation of assets between the sponsor and the institution;
- registration with and supervision by a national competent authority;
- regulatory own funds and solvency margins;
- sufficient technical provisions when the institution provides cover against biometric risks;
- the provision of information to members, beneficiaries and competent authorities.

6. The Committee of European Insurance and Occupational

Pensions Supervisors (CEIOPS) has an important role in coordinating the rules and regulations governing the institutions that are subject to the Directive. CEIOPS is composed of high level representatives from the national insurance and occupational pensions supervisors. CEIOPS is authorized to provide advice to the European Commission on drafting of implementation measures for framework directives and regulations on insurance and occupational pensions and is authorized to issue supervisory standards, recommendations, and guidelines to enhance convergent and effective application of the regulations and to facilitate cooperation between national supervisors.

7. One key aspect of the Directive is that it provides for the authorization of an authorized institution from one Member State to engage in cross-border activity within the European Union such that it can accept sponsorship from a sponsor located in another Member State and provide retirement benefits to employees of such sponsor. Likewise a sponsor located in a Member State is allowed to sponsor an authorized institution of another Member State.

8. In designing an exemption as referred to above we believe there is merit in analyzing whether such an exemption could include and refer to European institutions that are subject to the regulatory and supervisory regime of the Directive 2003/41. At the same time, and perhaps on a country by country basis, it could be established which other organizations or plans ~ that are outside the scope of the Directive ~ should qualify for the exemption for foreign pension plans. The scope of the Directive includes European institutions that provide retirement benefits but excludes:

- social security schemes;
- insurance companies;
- institutions which operate on a pay-as-you-go basis;
- institutions where employees of the sponsoring undertakings

have no legal rights to benefits and where the sponsoring undertaking can redeem the assets at any time and not necessarily meet its obligations for payment of retirement benefits; and

- companies using book-reserve schemes with a view to paying out retirement benefits to their employees.

9. We appreciate the opportunity to provide you with our insights in possible ways of designing an exemption for pension plans. We are happy to provide you with any further information or clarifications that you may need.

Yours sincerely,

Chris Verhaegen (Ms.),
Secretary General
European Federation
for Retirement Provision
Brussels