

[TEXT OF THE FATCA COMMENT LETTER SUBMITTED BY
GENERAL INSURANCE ASSOCIATION OF JAPAN]

June 7th, 2011

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

GIAJ Comments on “IRS Notice 2011-34” related to the FATCA

First of all, we, the General Insurance Association of Japan (GIAJ), appreciate that the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) have provided us with this opportunity to comment on the “IRS Notice 2011-34” concerning the Foreign Account Tax Compliance Act (FATCA) provisions of the Hiring Incentives to Restore Employment Act. As mentioned in our comment to “IRS Notice 2010-60”(refer to the attached ANNEX), as an industry organization whose 25 member companies account for about 95 percent of the total general insurance, which is the same as Property and Casualty insurance, premiums in Japan, we have serious concerns about the possible effects that FATCA may have on Japanese general insurance companies, and therefore have a vested interest in the developments related to this matter.

In general, we acknowledge and support the objective of the FATCA provisions, which is to prevent evasion of U.S. tax and appreciate the various efforts made by Treasury and the IRS to publish clear and practical FATCA guidance.

With respect to “IRS Notice 2011-34”, it did not include any detailed guidance surrounding the insurance industry. GIAJ strongly requests that Treasury and the IRS provide such guidance, including a clear definition of the term “Cash Value” for purpose of Chapter 4 as soon as is practicable.

Although the definition of cash value insurance has not yet been clarified, our belief is that Japanese general insurance companies should not be categorized as “Foreign Financial Institutions (FFIs)” in light of the characteristics unique to contracts underwritten in Japan.

We would very much like our comments below to be understood, and to ensure that no excessive burden is imposed on Japanese general insurance companies.

1. Insurance contracts of Japanese general insurance companies

Under “IRS Notice 2010-60”, the traditional Property and Casualty insurance (general insurance) is out of scope of FATCA. We assume that this is because this type of insurance does not have investment factors and it is recognized that the risk of tax evasion is low, though some part of the insurance pre-

mium paid for future periods is refunded when the insurance contract terminates due to cancellation during the insurance term.

On the other hand, insurance contracts unique to Japan have a long-term policy period where an amount which comes from a certain portion of the paid premiums will be returned to policyholders when the policy period is terminated without the policy concerned being void as a result of claims payment for total loss (hereinafter referred to as “general insurance contracts with maturity payment”).

The premium return is not available when the policy is void as a result of claims payment for total loss, and this is why we understand that general insurance contracts with maturity payment are quite different from deposits in nature, and that such contracts are considered to be traditional Property and Casualty insurance (general insurance) contracts defined on “IRS Notice 2010-60”.

Policy periods of most general insurance contracts with maturity payment are up to 5 years, and the amount to be returned to policyholders when the policy period has terminated without the policy concerned being void as a result of claims payment for total loss would be less than the amount of premiums paid up to the termination of the policy period. Therefore we do not believe the general insurance contracts with maturity payment can be used for the purpose of tax evasion.

2. Application of an exceptional provision

As mentioned in our comment to “IRS Notice 2010-60”, the GIAJ stands on the position that Japanese general insurance companies should not be categorized as FFIs. Furthermore, we believe that even if Japanese general insurance companies are to be categorized as FFIs, an exceptional provision (in the case of fewer possibilities of tax evasion) should be made for Japanese general insurance companies underwriting the types of insurance contracts described in 1 because the likelihood that these contracts may be used to avoid tax is quite remote.

(1) The possibility of people from the U.S. taking out general insurance contracts with maturity payment

- General insurance contracts with maturity payment are only available in Japan, and U.S. persons generally do not become policyholders in Japan. From an administrative and practical perspective, the possibility of U.S. persons purchasing these policies for tax avoidance purposes is significantly low because policyholders must be resident in Japan and understand the policy conditions that are written in Japanese.

(2) Tax system in Japan

- Income tax rates in Japan range progressively from 5% to 40%. Such rates are not low according to international

standards, and therefore it is difficult to think that general insurance contracts with maturity payment would be used for tax avoidance purposes.

- Japanese residents are obligated to pay tax on income earned in Japan. Therefore, it is difficult to consider the possibility that general insurance contracts with maturity payment will be used for tax avoidance purposes.
- When Japanese general insurance companies pay a refund in excess of a specified amount (e.g. more than 1 million yen, approximately US\$ 12,000, in the case of refund upon maturity), they are required to submit a payment record to the tax office in Japan. Therefore, it is not likely that general insurance contracts with maturity payment would be used for tax avoidance purposes.
- We believe that the U.S. tax authorities should be able to obtain the necessary information from the Japanese tax authorities under Article 26 of the Japan-U.S. Tax Treaty.

3. Insurance contracts with lower possibilities of tax evasion

Even if the general insurance contracts with maturity payment are treated as insurance contracts with cash value, the following two types of insurance contracts should be excluded from characterization as a financial account prescribed in *section 1471(d)(2)* because these general insurance contracts would pose low or no risk of tax evasion.

- a. Group general insurance contracts with maturity payment underwritten under the condition that a policy holder belongs to a certain business association.
- b. General insurance contracts with maturity payment which pay insurance claims when the properties of policyholders are damaged.

4. Deemed-Compliant Status

Japanese general insurance companies should not be categorized as FFIs and that even if they underwrite general insurance contracts with maturity payment, an exceptional provision (in the case of fewer possibilities of tax evasion) under *section 1471(f) (4)* should be applicable.

Should this not be the case, we would propose that the following companies should be treated as deemed-compliant FFIs under *section 1471(b)(2)(A)* because they possess certain characteristics and implement appropriate policies and procedures that are consistent with the purpose of the passthru payment rules of *section 1471* which prevent entities from being used by non-participating FFIs to avoid compliance with chapter 4.

We suggest the requirements for the Deemed-Compliant Status.

Certain Insurance Companies

An insurance company that issues cash value insurance contracts, annuity contracts, or similar arrangements should be deemed-compliant under *section 1471(b)(2)(A)* if it meets the following three requirements;

- (1) The insurance company is, under the laws of its country of organization, licensed and regulated as an insurance company or similar organization authorized to underwrite insurance contracts in the ordinary course of its business;
- (2) The insurance company does not underwrite insurance contracts and solicit holders of insurance policies subject to FATCA provisions outside the country of organization; and
- (3) The insurance company implements policies and procedures to ensure that it does not conclude insurance contracts with non-residents of the country of organization.

5. Other comments on *Notice 2011-34*

Comments with respect to Japanese general insurance companies that underwrite insurance contracts with maturity payment meet the conditions to be classified as an “FF1”.

- (1) Comment to Section I (Preexisting Individual Accounts)
 - General insurance companies mainly underwrite insurance contracts through agents without direct contact with customers, management system such as private account does not exist, therefore there is no procedure of step 3.

- If diligent review of the preexisting accounts is applied to the accounts of \$ 500,000 or more, the same amount could be applied to new account. The administrative workload is quite large, and we suppose it is necessary that the administrative workload of the companies be reduced to realize the appropriate procedure.
- Regarding the balance or value of the account, since it is not definite claim during the insurance terms, it should be determined at the time of termination of the insurance contract. Therefore we suggest the balance or value of the account for insurance contracts should be determined by the amount of any refund at the time the insurance contract is terminated.
- We request that the FATCA requirements be applied only to new accounts since we did not expressly represent such compliance requirements for preexisting account holders when the contracts were made.

(2) Comment to Section II (Passthru Payments)

- To recognize appropriate passthru payment percentage of insurance companies, passthru payment percentage of investment trust need to be taken into account. It is difficult to recognize passthru payment percentage of investment trust timely due to the variance of accounting terms and timing of disclosure.
- We suggest calculating passthru payment percentages based on the composition of assets shown in the prospectus of the investment trust.
- Insurance companies required to determine passthru payment percentages should base the calculation on the assets related to the insurance contracts subject to the FATCA provisions. Such percentages are required for proper withholding upon making payments to recalcitrant account holders. This is consistent with the idea that some Japanese insurance companies, which only issue insurance contracts without cash value, are not required to calculate passthru payment percentages since they are considered NFFEs.

- We also recommend that the frequency of passthru payment percentage calculations be reduced from quarterly to annually or semi-annually at most.

(3) Comment to Section III (Deemed-Compliant Status for Certain FFIs)

- Regarding pension plans, we request that pension plans, which are exclusively for employees, be out of scope for purposes of FATCA.

(4) Comment to Section IV(Reporting on U.S. Accounts)

- Since the settlement value of the general insurance contracts with maturity payment is not available until the policy term has expired as indicated in our comments on Section I, the account balance or value to be reported under *Section 1471(c)* should be based upon the amount of any maturity payment. We would propose the report under *Section 1471(c)* be made when the actual payment is made, the same as US financial institutions.

We would highly appreciate it if you would continue to provide us with the opportunity to comment on these matters and work with you throughout the implementation of FATCA. We would also appreciate receiving your responses to our comments as future guidance or temporary regulations, and if you would please share any findings and concerns discussed with other foreign countries.

Sincerely,

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General Insurance Association of
Japan
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1st November 2010

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GIAJ Comments on “IRS Notice 2010-60”

First of all, we, the General Insurance Association of Japan (GIAJ), appreciate that the IRS has provided us with this opportunity to comment on “IRS Notice 2010-60”. We are an industry organization whose 26 member companies account for about 95 percent of the total general insurance premiums in Japan. We have serious concerns about the possible effects of “IRS Notice 2010-60” on Japanese general insurance companies, and have a particular interest in any developments in this matter.

While we understand the legislative intent of FATCA, which is one of the measures taken by the U.S. government to prevent taxpayers in the U.S. from transferring their assets overseas for tax avoidance purposes, our belief is that Japanese general insurance companies should not be categorized as “Foreign Financial Institutions (FFI)” in light of the characteristics peculiar to products these companies deal with as well as the tax system in Japan. We would very much like our comments below to be understood, and to ensure that any excessive burden not be imposed on Japanese general insurance companies.

1. Insurance products which Japanese general insurance companies deal with

Among certain insurance products which Japanese general insurance companies deal with only in Japan, there are products with a long-term policy period in which an amount from a portion of paid premiums will be returned to policyholders when the policy period is terminated without such policy becoming void due to the occurrence of certain major events (hereinafter referred to as “Special Products”). However, premiums will not be returned if such policy becomes void due to the occurrence of certain major events, and this is why we understand that these Special Products are quite different from deposits in nature, and that they should be treated like any other general insurance product.

2. Application of the exception to FFIs

GIAJ is taking the position that Japanese general insurance companies should not be categorized as FFIs. Furthermore, even if Japanese general insurance companies are treated as FFIs, we believe that the exception (that is available when the possibility of tax evasion is low) should be applicable to Japanese general insurance companies dealing with Special Products due to the following reasons (on top of the reason mentioned in the above paragraph).

(1) The possibility of U.S. persons taking out Japanese general insurance policies

- Special Products are only available in Japan, and people resident in the U.S. generally do not become policyholders in Japan. From an administrative and practical perspective, the possibility of U.S. persons

purchasing these policies for tax avoidance purposes is significantly low because policyholders must be resident in Japan and understand the policy conditions that are written in Japanese.

(2) About the products

The policy term for most of the Special Products is up to 5 years, and the amount to be returned to policyholders when the policy term is terminated (without such policy becoming void due to the occurrence of certain major events) is less than the total premiums paid.

(3) Tax system in Japan

- Income tax rates in Japan range progressively from 5% to 40%. Such rates are not low according to international standards, and therefore, it is difficult to think that Special Products will be used for tax avoidance purposes.
- People who are resident in Japan will be obligated to pay tax on income earned in Japan. Therefore, it is difficult to think that Special Products will be used for tax avoidance purposes.
- When Japanese general insurance companies pay a refund in excess of a certain amount (e.g. more than 1 million yen in the case of refund upon maturity), they must submit a payment record to the tax office in Japan. Therefore, it is difficult to think that Special Products will be used for tax avoidance purposes.
- We believe that the U.S. tax authorities are able to obtain the information they need from the Japanese tax authorities under Article 26 of the Japan-U.S. Tax Treaty.

3. Others

As mentioned above, we believe that Japanese general insurance companies should not be categorized as FFIs, and that even if they are treated as FFIs, that the exception should apply.

Should this not be the case, a lot of time and expenses will be required in order to respond to the FATCA requirements even though the possibility for Special Products to be used for tax avoidance purposes is low as mentioned above.

If Japanese general insurance companies are treated as FFIs, therefore, we request the following in order to avoid excessive burden from being imposed when complying with the FATCA requirements from the perspective of cost-effectiveness.

(1) We respectfully request that the scope of U.S. persons subject to the reporting requirement be duly consistent with actual business practices.

- Some of the information regarding U.S. persons subject to the reporting requirement includes information that is not collected when the contract is entered into and/or there is a change in contract details. Japanese general Insurance companies will not be able to collect such information unless policyholders provide such information of U.S. persons even if we were to try to collect the required information. Therefore, we would request you to consider ways to identify the specific U.S. person(s) based on information that is collected when the contract is entered into.
- Japanese general insurance companies cannot terminate policies unilaterally during policy periods without obtaining consent from existing policyholder. Therefore, we would request you to consider limiting U.S. persons subject to the reporting requirement to new policyholders.
- Under the Personal Information Protection Law in Japan, it is impossible to disclose personal information to a third party without his/her consent. If the reporting requirements apply, there is a possibility that we will be prohibited from disclosing personal information unless we take the necessary steps to obtain consent from the policyholder, since no decision on this matter has been made in court cases yet. Going through this process with existing policyholders will require a lot of time and expense, and therefore, we respectfully request you to consider limiting U.S. persons subject to the reporting requirement to new policyholders.

(2) We respectfully request you to reconsider the account balance threshold.

- We noticed that the definition of “U.S. Account” will not include depository accounts held by individual that are valued at less than \$ 50,000. However, such amount is considerably low as an incentive for international tax avoidance. Therefore, we request that this threshold be raised to a much larger amount (e.g. USD 1 million), and that due consideration be given to instituting an exception that applies to different business entities.

Last but not least, we would highly appreciate it if you would please continue to provide us with the opportunity to comment on this matter, and that future considerations will continue to proceed in a transparent manner.

We look forward to continued consultation with Treasury and the IRS regarding these matters. If you have any questions concerning our comments, or would like further information, please contact me.

Sincerely,

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