

[TEXT OF THE FATCA COMMENT LETTER SUBMITTED BY
THE GOVERNMENT OF JERSEY]

Date: 10 November 2010

Mr Michael F Mundaca
Assistant Secretary for Tax Policy
Treasury Department
1500 Pennsylvania Avenue
Washington, DC 20220

Dear Secretary Mundaca

When I and my colleague Martin de Forest-Brown met with you at the Treasury Department on March 16, 2010 you may recall that among other things we discussed FATCA. At the conclusion of our meeting you kindly extended an invitation to us to provide Jersey's views on FATCA.

In response to your invitation the attached comment has been prepared which we hope you will find helpful. Should the comment give rise to any questions or issues that you believe would benefit from further consideration either in writing or at a meeting we would be pleased to make ourselves available. With best regards.

Yours sincerely

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FOREIGN ACCOUNT TAX COMPLIANCE ACT

(COMMENTS FROM THE GOVERNMENT OF JERSEY)

1. In March, 2010 a delegation from the Government of Jersey met with Treasury Assistant Secretary Michael Mundaca in Washington. At that meeting the delegation referred to the IMF's endorsement of Jersey's high level of compliance with international standards of financial regulation, and to the valuable information being provided to the U.S. tax authorities in response to requests received in accordance with the provisions of the Tax Information Exchange Agreement signed between Jersey

and the United States in 2002. The delegation expressed the hope that these factors would be taken into account by the US when applying the Foreign Account Tax Compliance Act to Jersey based financial institutions, and Assistant Secretary Mundaca asked the Jersey delegation to submit in writing their views on how this might best be achieved. This note is in response to that request.

2. Under the Foreign Account Tax Compliance Act, withholding on United States accounts is not required if the Secretary of the U.S. Treasury reaches an agreement with any foreign financial institution (as defined) under which the institution agrees to meet the following reporting requirements –

(b)(1) “(A) to obtain such information regarding each holder of each account maintained by such institution as is necessary to determine which (if any) of such accounts are United States accounts,

(B) to comply with such verification and due diligence procedures as the Secretary may require with respect to the identification of United States accounts, and

(C) in the case of any United States account maintained by such institution, to report on an annual basis certain information with respect to such account.”

3. The information required to be reported with respect to each United States account maintained by the foreign financial institution includes two matters on which the Secretary has a degree of discretion –

(c)(1) “(C) the account balance or value (determined at such time and in such manner as the Secretary may provide), and

(D) except to the extent provided by the Secretary, the gross receipts and gross withdrawals or payments from the account (determined for such period and in such manner as the Secretary may provide).”

4. Applying the verification and due diligence procedures that the Secretary may require with respect to the identification of U.S. accounts could be extremely burdensome for a foreign financial institution if it is required to approach every one of its account holders and ask them to show proof of the fact that they are not a U.S. person. For this reason it is proposed that the extent of the action a foreign financial institution is required to undertake to reach an agreement with the Secretary of State should be risk based, having regard for the factors referred to in the following paragraphs.

5. Certain jurisdictions, such as Jersey, have been independently assessed, by bodies such as the IMF, as to their compliance with international standards of know your customer (“KYC”)/customer due diligence (“CDD”). For these jurisdictions, we believe that the assessments can be used to establish whether the KYC/CDD procedures in place – which require identification and verification of customers and of the beneficial owners of legal persons and legal arrangements, and the ongoing due diligence of the business relationship which includes scrutiny of transactions – are such that any information maintenance requirements should be deemed to be met.

6. *IRS Notice 2010-60* provides preliminary guidance in which specific comments are sought on verification requirements applicable to participating foreign financial institutions. We suggest that, in respect of the reporting requirements referred to in paragraph 2 above, no additional verification and due diligence procedures should be considered necessary for the identification, documentation and classification of client relationships than those presently undertaken to satisfy prudential regulatory and AML/CFT obligations in respect of KYC/CDD, if –

- i) the foreign financial institution is located in a jurisdiction that has been assessed by the IMF, the FATF or an FATF style regional body as having a high level of compliance with international standards such that there can be confidence that the KYC rules applied would ensure that any US accounts – and the information required thereon – are known to the foreign financial institution;
- ii) there is an effective tax information exchange agreement with the US;
- iii) the KYC procedures in place provide for the identification and verification of individual customers and of the beneficial owners of legal persons and the beneficiaries of legal arrangements, and for accurate and adequate information to be accessible to all relevant authorities if requested; and, if required,
- iv) the foregoing is certificated by an external auditor, who is approved by the regulatory body of the jurisdiction concerned, to the effect that the identification and verification procedures in place are such as to ensure that the foreign financial institution is able to satisfy the information requirements of the Foreign Account Tax Compliance Act if called upon to do so.

7. We suggest that this also might be a reasonable approach to adopt in respect of a foreign financial institution that is required to satisfy to the Secretary that it complies with such procedures as the Secretary may require to ensure that the institution does not maintain United States accounts.

8. In respect of the information required to be reported on United States accounts, to which paragraph 3 above refers, it is proposed that consideration be given to providing a “safe harbour” from the requirement that the foreign financial institution report on the account balance or value and the gross receipts and gross withdrawals or payments from the account. We support the proposal that the Secretary apply an appropriate monetary limit to all financial accounts whereby only if that limit is exceeded should the information requested need be reported. We suggest this limit should be higher if the foreign financial institution is based in a jurisdiction, such as Jersey, that is certified as meeting the required standards of KYC and there is evidence of the effective application of a tax information exchange agreement with the US.

9. To the extent required by FATCA, the approach proposed in paragraph 5 above should have equal application to regulated non-financial foreign entities. Trust and company service providers would appear to be covered by the definition of a foreign financial institutions. However, if they are to be considered to be a non-financial foreign entity, it should be noted that in Jersey all trust and company service providers are regulated and are subject to the same requirements for KYC/CDD as banks.

10. Overall Jersey is of the view that in the application of FATCA there should be appropriate recognition of jurisdictions, such as Jersey, that have received an independent assessment undertaken by the IMF showing a level of compliance with international standards of financial regulation, particularly in respect of KYC/CDD, that is equal to if not higher than that of G20 members, and there is evidence of the effective application of a tax information exchange agreement with the US. In addition, for what Jersey suggests should be a risk based approach, there should be appropriate recognition of those jurisdictions where, as in the case of Jersey –

- the evasion of US taxes is capable of predicating a money laundering offence;
- any person having reasonable grounds to suspect such evasion would be committing an offence by failing to report it to the relevant authorities;
- there is a track record of criminal enforcement against persons that have facilitated foreign tax evasion.

Chief Minister’s Department
Government of Jersey

November 2010