

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

From: okumura@seiho.or.jp on behalf of kikaku@seiho.or.jp
Sent: Tuesday, June 07, 2011 12:20 AM
To: Notice Comments
Cc: IMCEAEX_0=SEIHOKYOUKAI_OU=SK_CN=RECIPIENTS_CN=KIKAKU@seiho.or.jp
Subject: Notice 2011-34LIAJ
Attachments: 20110607Comments_on_Notice2011-34_LIAJ.doc

The Department of the Treasury
The Internal Revenue Service

Dear Sir or Madam:

Attached please find the comments of The Life Insurance Association of Japan on *Notice 2011-34*.

Best regards,
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**The LIAJ's Comments on *Notice 2011-34* of the
Foreign Account Tax Compliance Act (FATCA)**

1. General Comments

The Life Insurance Association of Japan (LIAJ) is a trade association established for the purpose of developing a sound life insurance industry in Japan and maintaining its reliability. Its membership is comprised of all 47 life insurance companies currently operating in Japan.

In addition to providing insurance cover, Japanese life insurers also function as institutional investors providing the economy with an important source of investment capital. Total invested assets amount

to over 300 trillion yen (3.7 trillion dollars), over 10% of which is now invested in foreign securities including U.S. government bonds.

We understand that the Foreign Account Tax Compliance Act (FATCA) seeks to prevent the evasion of U.S. tax by United States persons (U.S. persons) through the financial products of Foreign Financial Institutions (FFIs). However, as Japanese life insurers provide products for residents in Japan only, it is practically impossible for U.S. residents to buy Japanese insurance products for the purpose of tax evasion.

The LIAJ still has deep concerns over the current proposal under which Japanese life insurers are likely to be subject to the FATCA, despite the fact that it is extremely difficult for a U.S. person to utilize Japanese life insurance products for the purpose of tax evasion.

Against this backdrop, the LIAJ discussed *Notice 2010-60* with Treasury and the IRS on February 7, 2011, seeking exemption from the FATCA for Japanese life insurers and life insurance products, and proposed the implementation of several measures if such exemption is not acceptable. These measures include the clarification of the scope of insurance products subject to the FATCA; reconsideration of the USD 50,000 reporting threshold; and exemption from the FATCA for insurance policies issued before January 1, 2013, etc.

Nevertheless, *Notice 2011-34* provides no guidelines for the treatment of life insurers and life insurance products. We hope that Treasury and the IRS will show the status and timeline for their consideration of life insurers/life insurance products, including a response to our proposals in the near future.

2. Comments on *Notice 2011-34*

As described above, the treatment of life insurers/life insurance products is still unclear under *Notice 2011-34*. However, we submit this letter to present our comments regarding the notice, since the notice includes issues on which direct comments from insurance companies are requested.

(1) Section I. Preexisting Individual Accounts

In *Notice 2011-34*, significant revisions have been made to the procedures for the identification of preexisting individual accounts as provided under *Notice 2010-60*. However, life insurance policies are long-term contracts and therefore, frequent fund transfers within a short period of time, which are expected to occur in the case of bank accounts etc., are not expected. In other words, opportunities for direct contact between policyholders and insurers are limited, and therefore it would be difficult to collect additional information regarding existing contracts. Accordingly, we request that existing life insurance contracts be exempt from the identification requirements.

We consider that the reporting threshold for life insurance products is an issue that needs further consideration. Even if the identification procedures are required for preexisting individual accounts held with life insurers, we keep proposing that the reporting threshold of 50,000 dollars for these

accounts be substantially raised, since there is only a very small risk that Japanese life insurers/life insurance products are used for the purpose of U.S. tax evasion.

Step 3 of *Notice 2011-34* provides procedures for the identification of private banking accounts, and public comments are sought concerning whether insurance companies should perform procedures similar to these with respect to holders of preexisting individual accounts, including private placement life insurance.

The definition of private banking account is provided in *Notice 2011-34*, and it is clear that no Japanese life insurance products are similar to such accounts as defined in the notice.

In Japan, terms and conditions of life insurance contracts are predetermined for each type of products, and, in principle, the same type of insurance policy is covered by the same terms and conditions. Moreover, no private banking relationship managers are appointed, nor are services equivalent to private banking (i.e. provision of advice according to the individual needs of each policyholder, etc) provided even for investment-type insurance products such as variable life insurance and annuity contracts.

As described above, Japanese life insurance products are clearly different from private banking accounts as defined in *Notice 2011-34*, given the nature of the products and associated services, and therefore we believe that it is inappropriate to impose the identification requirements as stipulated in Section I, Step 3 on Japanese life insurance products.

(2) Section III. Deemed-Compliant Status for Certain FFI's

We are pleased to learn that specific cases of deemed-compliant FFI status were included in *Notice 2011-34*. However, we suggest that the scope of such FFI be expanded further based on the nature of the business operations of respective financial institutions.

Japanese laws do not restrict sales of life insurance products to non-residents in Japan. However, in Japanese underwriting practice, life insurers, in general, sell their products only to individuals who live in Japan, have a good command of the Japanese language (terms and conditions and other contract documents are written in Japanese only), and have accounts with banks or other depository institutions in Japan. In addition, when setting premium rates, the Japanese life insurers generally calculate mortality rates based on the data derived from their existing customers in the first place and not on the assumption that an unlimited number of foreigners obtain life insurance. In short, it is practically impossible for U.S. residents to buy life insurance products underwritten by Japanese insurance companies.

All residents of Japan are obliged to pay taxes on income they earn in Japan. Japanese life insurers are required to submit a record of insurance benefit payouts to the Japanese tax authorities except for cases in which the insurers pay annuity benefits of 200,000 yen (2,500 dollars) or less per year, or a lump sum payment of one million yen (12,000 dollars) or less to their customers as provided for

under the relevant laws and regulations. It is not likely that a U.S. person would make use of Japanese insurance products for the purpose of tax evasion because the tax rates in Japan are not low compared with other countries.

The members of the LIAJ currently have more than 130 million individual life insurance and annuity policies. We undoubtedly believe that given the state of the Japanese life insurance industry described above, only a very limited number of U.S. persons are covered by Japanese life insurers, although no definitive data on the number of contracts owned by U.S. persons exists.

In fact, out of a total Japanese population of 127 million, the number of U.S. persons (U.S. citizens) residing in Japan is only 52,000, which accounts for mere 0.04% of the total population. A sampling survey we conducted on new life insurance policies contracted with a major life insurer between April 2010 and March 2011 identified a mere 35 contracts, or 0.015% of total, as possible non-Japanese residents by reviewing contract names out of approximately 235,000 saving-type contracts with a single premium. Apparently, the share of contracts held by a U.S. person should be even much lower.

Based on the actual situation of the Japanese life insurance industry, as we suggested in the meeting at February 7, we believe that Japanese life insurers should be treated as FFIs identified as posing a low risk of tax evasion for the purpose of the FATCA and that they should be exempted from the application of the FATCA.

If the IRS determines that this treatment is not acceptable, we believe that more simplified procedures should be applied to these insurers based on the level of tax evasion risk in light of the purpose of *Section 1471(b)(2)*, and that at least they should be treated as deemed-compliant FFIs under *Section 1471(b)(2)(A)*.

We also propose that the most simplified application and documentation procedures be applied to deemed-compliant FFIs to exempt these FFIs from the requirements for review of preexisting contracts, etc.

Specifically, we propose that the following provisions be included in the FATCA rules.

Certain Insurance Companies

An insurance company that issues cash value insurance contracts, annuity contracts, or similar arrangements (insurance contracts) will be deemed-compliant under *section 1471(b)(2)(A)* if it meets the following four 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 underwrites insurance contracts outside the country of organization;

(3) The insurance company does not solicit insurance contracts outside the country of organization; and

(4) The insurance company implements policies and procedures to ensure that policyholders reside in the country of organization when concluding insurance contracts.

Certain Foreign Branch or Affiliate of an Insurance Company

A foreign branch or affiliate of an insurance company that issues cash value insurance contracts, annuity contracts, or similar arrangements (insurance contracts) will be deemed-compliant under *section 1471(b)(2)(A)* if it meets the following four requirements:

(1) The foreign branch or affiliate is, under the laws of its country of registration, licensed and regulated as an insurance company or similar organization authorized to underwrite insurance contracts in the ordinary course of its business;

(2) The foreign branch or affiliate does not underwrite insurance contracts outside the country of registration;

(3) The foreign branch or affiliate does not solicit insurance contracts outside the country of registration; and

(4) The foreign branch or affiliate implements policies and procedures to ensure that policyholders reside in the country of registration when concluding insurance contracts.

(3) Section VI. Application of *Section 1471(e)* Regarding Expanded Affiliated Groups of FFIs

The treatment of partnerships, offices and branches in the same expanded affiliated group is clarified under *Notice 2011-34*. However, we consider that the treatment of corporations in expanded affiliated groups is still not clear.

As we suggested in the meeting on February 7, Japanese life insurers do not maintain the infrastructure necessary to combine the balances of accounts held within an expanded affiliate group, and the development of such systems would place a significant burden on these insurers. In addition, more difficulties are expected with the combination of the balances of accounts held by member institutions located outside of Japan.

Accordingly, we request that an FFI agreement with the IRS be made and relevant information reported to the IRS on a stand-alone basis and that the balances of accounts under the same expanded affiliated group be not required to be combined.

3. Others

As mentioned above, we, the LIAJ, believe that Japanese life insurers should be treated as FFIs identified as posing a low risk of facilitating tax evasion and that they should be exempted from the application of the FATCA or be classified as FFIs with deemed-compliant status, in light of the actual situation of non-Japanese holders of Japanese life insurance products.

However, if the IRS determines that it is still difficult to allow this exemption for Japanese life insurers, we believe that the FATCA rules should be thoroughly reviewed to ensure the most effective and efficient operation for the benefit of both the IRS and Japanese life insurers.

To that end we made a series of proposals at the meeting on February 7, including the limitation of the scope of insurance products subject to the requirements under the FATCA, etc. We would appreciate consideration being given to these proposals so that the original purpose of the FATCA can be accomplished in the most effective and efficient manner.