

[TEXT OF THE FATCA COMMENT LETTER SUBMITTED BY
LEGAL & GENERAL GROUP]

Date June 2, 2011

Steven Musher
Internal Revenue Service
1111 Constitution Ave. NW
Washington, DC 20224

Dear Mr Musher

**LEGAL & GENERAL GROUP
RESPONSE ON NOTICE 2011-34 ~ FATCA**

Having heard you speak at a DLA Piper conference in London on 24 May 2011, we wanted to direct our response to you and your team. We appreciate that the IRS have acknowledged that they have yet to consider insurance in any detail and we hope that this response can assist in this process.

We support the spirit of the FATCA legislation to prevent the evasion of US tax. However, we are of the view that FATCA in its existing format disproportionately affects the insurance industry.

The FATCA regime needs to recognise that the majority of products offered by the insurance industry are likely to be very low risk from a US tax evasion perspective due to the:

- tax regime in the insurer location;
- long term nature of insurance products;
- very low number of US addresses identified among our policyholders (L&G has estimated this percentage at 0.1%).

Our goal is to achieve participating FFI status but the current regime makes this impossible for our business (please see the submission ABI for further details on this point). We would therefore like you to consider a more proportionate FATCA regime for the insurance industry to address your main concern of individuals transferring their funds to our industry subsequent to FATCA.

Our high-level suggestions can be summarised as follows:

- participating FFI status should be granted to insurance companies where
 - the FFI undertakes not to accept US customers post

FATCA implementation, and establishes appropriate customer on-boarding procedures; and

- the FFI undertakes a full review of pre-existing accounts to identify US accounts and communicates these accounts to the IRS.

- In relation to recalcitrant accounts, we would suggest that the IRS needs to either:
 - Simplify the passthru regime e.g. by use of a flat rate tax; or

 - Accept recalcitrant account details from the FFI without imposing obligations on the FFI to seek further information from the individual. You may wish to consider setting a de minimis limit for recalcitrant accounts above which FFI status is compromised.

Further specific points are addressed in more detail in the Appendix.

Should you require any further information or clarification on the points above, please do not hesitate to contact either Caroline Villar on +44 20 3124 2085 or myself on +44 20 3124 2070.

Yours sincerely

Simon Burke
Group Tax Director
Legal & General Group
London

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LEGAL & GENERAL GROUP

RESPONSE ON NOTICE 2011-34 REGARDING THE FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA) PROVISION INCORPORATED INTO THE HIRING INCENTIVES TO RESTORE EMPLOYMENT ACT

1. About Legal & General

1.1. The Legal & General Group is a leading provider of risk, savings and investment management products in the UK. We were established in 1836. This means

we've been in business for 175 years, which not only gives us credibility but it demonstrates our experience in every kind of economic climate. We currently have over 7 million customers for our life assurance, pensions, investments and general insurance plans.

1.2. Our fund management arm, Legal & General Investment Management, is responsible for £320 billion of assets under management, with holdings accounting for over 4% of all London-listed equities (as at 30 June 2010) on behalf of their customers, and is also the UK's largest pension fund manager.

2. Retirement plans

2.1. As detailed in our representations of 12 November 2010, we welcome the US Treasury's acknowledgement in section IIC of *Notice 2010-60* that non-US established retirement plans pose a low risk with regard to US tax evasion.

2.2. We note that *Notice 2011-34* states that the US Treasury and the IRS are still considering the comments received regarding the types of non-US retirement plans which should be treated as falling in the category "low risk".

2.3. We would like to take this opportunity to make suggestions in respect of the definition of retirement plans to ensure that bona fide non-US retirement plans are not subject to the compliance burden which the FATCA regime will impose.

2.4. We believe that in defining retirement plans the FATCA provisions should make use of the US double tax treaties' definition of pension scheme/retirement plan. That is, where a retirement plan established in an overseas territory meets the definition of "pension scheme" in the tax treaty then in force between the US and the territory in which the retirement plan is established, this should be sufficient for the retirement plan in question to fall into the "low risk" category for the purposes of the FATCA provisions.

2.5. By way of further analysis, we have set out below our views on each of the current conditions.

2.5.1. Condition (i)

2.5.1.1. We agree that it is sensible that only those retirement plans which qualify as a retirement plan under the law of the country in which it is established should benefit from the exemption.

2.5.2. Condition (ii)

2.5.2.1. We believe that the “sponsored by a foreign employer” restriction will mean that UK residents who have decided to make retirement provisions through UK personal pensions n1 may see an increase in the management charges which are made by their retirement plan providers as a direct result of the administration burden which the FATCA regime will impose. Any increase in management charges will have a direct impact on the ultimate level of pension benefits available on retirement.

2.5.2.2. Self-employed people, who by definition, do not have access to an employer sponsored scheme, but who still wish to save for their future through a personal pension plan, will be a category of persons impacted significantly by this restriction.

2.5.2.3. Similarly, UK stakeholder pension schemes n2 do not require the beneficiary of the scheme to be in employment at the time at which he or she makes contributions. Beneficiaries of such schemes, who are sometimes the poorest members of our society, will be another category which could see a direct impact on the ultimate level of pension benefits available on retirement.

2.5.2.4. We believe that it is important for the US Treasury to appreciate that, in the vast majority of cases, personal and stakeholder pension schemes restrict eligibility to only UK residents.

2.5.2.5. Although we acknowledge that it is possible that a US person may become a UK resident and contribute to a personal or stakeholder pension scheme, we believe that it is unlikely that the motivation behind this will be to avoid US tax. These schemes are long term schemes operating in a strict regulatory environment where beneficiaries are unable to access funds once contributions have been made. Generally, benefits cannot be taken from personal and stakeholder pension schemes until the beneficiaries are aged 55.

2.5.3. Condition (iii)

2.5.3.1. We believe that condition (iii) will have the inadvertent effect of excluding all UK retirement plans from being viewed as low risk by the US Treasury. This is because it is possible for UK retirement plans to pay benefits on a member's death to his or her spouse or dependents.

2.5.3.2. It is feasible that in some cases the recipients of those benefits will be US beneficiaries and therefore condition (iii), as currently drafted, would be breached.

2.5.3.3. We do not believe that this is the intention of the US Treasury and would welcome the amendment of the condition such that the possibility of death benefits being paid to US beneficiaries does not take such a foreign retirement plan out of the low risk category.

2.5.3.4. Another concern which condition (iii) raises is the fact that it requires the employee to have worked in the territory in which the retirement plan is established. Although this condition will be met in the vast majority of cases, it is conceivable, especially where employees have an international remit, that this condition will be breached. We would recommend that the US Treasury caters for this by allowing a maximum period for which the employee (to whom the retirement benefits accrue) does not need to work in the same jurisdiction in which the retirement plan is established.

3. Insurance vehicles used by retirement plans

3.3. It is common in the UK, and to a lesser extent in continental Europe, for retirement plans to use insurance companies for the purposes of pooling their scheme assets into clearly defined sections of insurance companies' long term funds. The purpose of this pooling is to allow the retirement plans to benefit from economies of scale in respect of the investment management of their assets, and to allow retirement plans to diversify their assets in a cost effective manner. The UK insurance industry refers to this business as unit-linked pensions business. Where the retirement plan is established outside of the UK the business is referred to as unit-linked Overseas Life Assurance Business.

3.2. We believe that where a unit-linked pension fund of an insurance company is deemed to be a pension fund for the purposes of the "Dividends" article of the double tax treaty between the US and the territory in which the insurance company is resident, this should be sufficient for the unit-linked insurance fund to fall into the "low risk" category for the purposes of the FATCA provisions.

3.3. Unit-linked pensions business

3.3.1. Although the underlying assets which back unit-linked pensions business are legally and beneficially owned by the insurance company which writes that business, the policy holders (that is, the UK retirement plans) are allocated units in the relevant "sections" of the insurance company's long term fund. It should be noted that:

3.3.1.1. the value of the units allocated to the retirement plans are directly linked to the value of the underlying assets of the different sections; and

3.3.1.2. all of the investment return in respect of the underlying assets is allocated to the retirement plans' sections. The result of this is that the insurance

company which writes the unit linked pension business does not benefit from any of the investment return of the underlying assets.

3.3.2. The UK government recognises the importance of affording these sections of insurance companies' long-term funds the same favourable tax treatment as retirement plans receive themselves. The UK government therefore does not tax the investment return which is allocated to the unit-linked pensions business sections.

3.3.3. We strongly believe that the US Treasury should view an insurance company's unit-linked pensions business in exactly the same way as it views UK registered retirement plans for the purposes of FATCA such that where the retirement plan is viewed as low risk, so should the relevant part of the insurance company's long term fund of which that business is a part.

3.3.4. We believe that a precedent has already been set, in respect of the corollary between a UK retirement plan and a UK insurance company writing unit-linked pension business, in the US-UK 2001 Double Tax Convention.

3.3.5. For the purposes of Article 3(b) of the Convention, the term pension scheme includes: "A fund, plan or arrangement to which an occupational or individual pension scheme contributes by paying premiums to an insurance company . . ." (part (b) of the UK/US Competent Authority Agreement which was signed by Robert H. Green, the US Competent Authority, on the 11th of April 2005).

3-4. Unit-linked Overseas Life Assurance Business

3.4.1. UK insurance companies can also offer investment pooling arrangements to non-UK retirement plans on the same basis as that which they offer to UK retirement companies as detailed above. For example, the UK government does not tax the investment return which is allocated to the unit-linked Overseas Life Assurance Business.

3.4.2. Again, we strongly believe that the US Treasury should view a UK insurance company's unit-linked Overseas Life Assurance Business as low risk in exactly the

same way as it does for those retirement plans. So where the retirement plan is itself viewed as low risk, so should the relevant part of the insurance company's long term fund of which that business is a part.

3.4.3. Where an insurance company writes only unit-linked pension business (relating to UK retirement plans) and unit-linked Overseas Life Assurance Business (relating to non-UK retirement plans) and all of the policy holders of the insurance company, that is the non-US retirement plans, meet the relevant conditions, we believe that that the insurance company itself should also be seen as low risk by the US Treasury.

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Date June 7, 2011

Steven Musher
Internal Revenue Service
1111 Constitution Ave. NW
Washington, DC 20224
USA

Dear Mr Musher

**LEGAL & GENERAL GROUP
RESPONSE ON NOTICE 2011-34 ~ FATCA**

Further to our letter of the June 2, 2011, we would like to make one further representation in response to *Notice 2011-34*.

In this letter, we would like to draw your attention to the results, which we presume are unintended, of applying the passthru payment concept, as set out in Section II of *Notice 2011-34*, to an insurance company. For illustrative purposes, this letter focuses on Legal & General Assurance (Pensions Management) Limited ("PMC") which is a subsidiary of Legal & General Group Plc.

Description of PMC

PMC offers a vehicle by which retirement plans can pool their assets in order to achieve economies of scale with regard to the investment management of those assets and a greater degree of asset diversification than would otherwise be the case. The vehicle is one of the largest of its kind in the UK with total assets of approximately £225 billion (c. \$ 370bn) as at 31 December 2010.

Recommendation

We believe that where the regulatory regime under which an FFI operates requires there to be a link between the assets which are held by the FFI and investors in the FFI such that it is possible for an FFI to trace with certainty the source of the payments which it makes to its investors, this should over-ride the passthru payment methodology outlined in *Notice 2011-34*.

Should you require any further information or clarification on the points above, please do not hesitate to contact either Caroline Villar on +44 20 3124 2085 or myself on +44 20 3124 2070.

Yours sincerely

Simon Burke
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London

FOOTNOTES:

n1

UK Personal Pensions are contractual arrangements made directly between the beneficiary and an insurance company (and without the need of an employer).

n2

UK stakeholder pension schemes were introduced by the UK government in 2001 with the aim of ensuring that all UK citizens have the opportunity to save for their futures.