

[TEXT OF THE FATCA COMMENT LETTER SUBMITTED
ON BEHALF OF SUVA]

October 28, 2010

Notice.Comment@irs.counsel.treas.gov
(NOT-121556-10)

Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

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

Re: Comment Concerning Notice 2010-60

Dear Sirs or Madams:

This submission concerning *Notice 2010-60*ⁿ¹ is made on behalf of Suva (“Suva”). In particular, this comment relates to whether other categories of foreign employee benefit or deferred compensation plans should be subject to the same treatment as foreign retirement plans for purposes of chapter 4 of the Internal Revenue Code of 1986, as amended.

As described in greater detail below, Suva is a non-profit, tax-exempt public law institution, established by the Swiss government in 1918 directly under the federal law of Switzerland to provide accident insurance to employees in high-risk sectors of the Swiss economy. For the reasons discussed below, it poses a low risk of tax evasion. Accordingly, Suva believes that it should be subject to the same treatment as foreign retirement plans for chapter 4 purposes. This letter is submitted in part because Suva is an unusual entity in that it is not related to any specific employer or employee organization, but is established directly under Swiss law and has on its Board of Directors governmental representatives. However, it is financially independent of the Swiss government. Thus, Suva would like to ensure that an entity like Suva is not inadvertently excluded, due to its unusual organizational status (*i.e.*, it is not sponsored by an employer or an employee group; while it is established directly under Swiss law, it is financially independent of the Swiss government), from a category of organizations that is exempted from withholding because it poses a low risk of tax evasion.ⁿ²

I. Description of Suva

Suva is a financially independent body established by the Swiss federal government (the “Swiss Government”) under Swiss Federal Accident Insurance Law (“UVG”).ⁿ³ Under Swiss law, Suva has its own legal personality.ⁿ⁴ Suva is under the supervision of the Swiss Government, exercised by the Federal Council. Suva is regulated by the Swiss Government and its annual reports and accounts require approval by the Federal Council.ⁿ⁵ Suva’s Board of Directors consists of 40 members. These

members include 16 representatives of employer groups and 16 representatives of employee groups insured by Suva, in addition to eight governmental representatives.

Under the UVG, Suva is the exclusive provider of mandatory accident insurance for employees in specific sectors of the Swiss economy, as enumerated by the UVG. These sectors typically include employees engaged in high-risk employment activities that make them prone to severe physical injury. Suva insures approximately 115,000 businesses with approximately two million employees and unemployed persons against the consequences of accidents and occupational diseases. In addition, Suva provides specialized rehabilitation services for employees with severe and unique injuries, in particular for loss of limbs. Suva is also responsible, by government mandate, for military insurance.

Suva's assets at the end of 2009 totaled approximately CHF 32.8 billion (approximately \$ 34 billion at current exchange rates). Suva's operations are conducted solely within Switzerland. Suva is not profit-oriented nor does it receive any state subsidies. Most of Suva's revenues consist of premiums paid by insured persons. It also has significant amounts of capital and recourse income.

SUVA does not have any shareholders. Suva operates as a non-profit organization and does not distribute earnings to any party. Under Swiss law, Suva is considered a public institution. Suva is generally exempt from direct federal, cantonal and local government tax in Switzerland pursuant to Article 80 of the Swiss General Social Insurance Law.

II. Burden on Suva

If an institution like Suva were required to exercise due diligence with respect to beneficial owners in order to avoid withholding with respect to payments made to it by banks and investment funds, very substantial costs and administrative burdens would result in view of the very large number of beneficiaries. Suva could be required to try to obtain waivers from Swiss data protection law in order to provide information about U.S. persons to a bank or investment fund that holds Suva's assets or in which Suva invests.

In view of the fact that Suva insures approximately two million persons, of whom only a very small portion likely are U.S. persons (e.g., U.S. persons who were employed in Switzerland became entitled to benefits from Suva or non-U.S. persons who were employed in Switzerland, became entitled to benefits from Suva, and thereafter moved to the United States or otherwise became U.S. persons). These categories of persons are substantially the same as the categories of U.S. persons that may receive income from a foreign pension plan, a class that is recognized as presenting a low risk of tax evasion. Suva's beneficiaries do not have any control over the investment of Suva's funds, and thus even if a beneficiary is (or becomes) a U.S. person, the beneficiary cannot use Suva to make investments in the U.S. and avoid reporting the income therefrom. Indeed, a beneficiary of Suva becomes entitled to payments from Suva only as a result of circumstances generally outside the control of the beneficiary, such as the occurrence of an industrial accident or an occupational disease. As the considerations affecting employee welfare benefit plan are very similar to those affecting employee pension plans. Suva does not perceive any reason why organizations that provide pensions should receive more favorable treatment than organizations that provide insurance and other welfare benefits.

Suva invests in U.S. securities and in investment funds with U.S. managers and U.S. assets as part of a diversified investment portfolio which provides returns to finance the benefits and pensions it provides. Suva has an obligation to keep its cost structure low to return by payment of benefits to its insureds as much as possible of the premium proceeds it receives. Suva currently returns to insureds approximately 95 Rappen on every Swiss Franc (i.e., 95%) of premium it receives. The compliance costs to Suva of undertaking due diligence with respect to its insurance beneficiaries, in consideration of the low risk of tax evasion, seem very difficult to justify and may have an impact on Suva's decision to invest in U.S. assets.

III. Scope of Proposed Exemption

Suva believes that, like foreign retirement plans, foreign employee benefit plans that cover only foreign participants pose a low risk of tax evasion. Suva suggests that the following definitions would set forth an appropriate exemption that would cover both Suva and other foreign employee welfare benefit plans. Suva notes in particular that any requirement that the foreign plan be sponsored by a foreign employer would exclude Suva and any other plan that does not have an employer as its sponsor. Suva does not perceive any reason that an organization like Suva should be excluded from eligibility for an exemption from withholding because it does not have a traditional sponsor.

The term "employee welfare benefit plan" means any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, or established as a public institution pursuant to statute, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits, pensions on retirement or death of employees, or benefits in the event of sickness, accident, disability, death or unemployment (collectively, "welfare benefits").

The term "qualifying foreign employee welfare benefit plan" means any employee welfare benefit plan (i) generally exempt from income taxation under the laws of the jurisdiction in which it is organized, (ii) the assets of which are held exclusively for the purpose of providing and ensuring welfare benefits, (iii) is established or maintained by a foreign employer or foreign employee organization, or by both, or established as a public institution pursuant to a foreign statute, and (iv) does not allow U.S. participants

or beneficiaries other than employees that worked in the country in which such employee welfare benefit plan is established.

* * * * *

Suva appreciates the opportunity to express its views on *Notice 2010-60*. Any questions concerning this submission may be addressed to Gary A. Herrmann, (415) 442-1380; gherrmann@morganlewis.com.

Thank you very much for your consideration.

Respectfully submitted,

Gary A. Herrmann
Morgan, Lewis & Bockius LLP
San Francisco, CA

FOOTNOTES:

n1

2010-37 I.R.B. 329 (Sep. 13, 2010).

n2

In submitting this comment letter, Suva does not take any position as to its treatment under existing law, regulations or pronouncements. Suva reserves all rights with respect to future positions as to its status under existing or future law, regulation, or pronouncements.

n3

Suva has its headquarters in Lucerne and has 19 agencies throughout Switzerland,

n4

Switzerland Federal Accident Insurance Law, Art. 61. For example, Suva can own property in its own name and can sue and be sued,

n5

Id.

n6

The due diligence would be carried out to permit Suva to certify to U.S. banks and investment funds that Suva has no substantial U.S. owners or if it does, it would be required to provide tax identification information with respect to U.S. owners to the withholding agent. If such certification is not provided, the withholding agent would be required to withhold 30% of any withholdable payments paid to Suva.

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100 Rappen = one Swiss Franc.