

[TEXT OF THE FATCA COMMENT LETTER SUBMITTED BY
SCOTIABANK]

November 1, 2010

Mr. John Sweeney
Office of Associate Chief Counsel (International)
CC:PA:LPD:PR (NOT-121556-10)
Room 5203
Internal Revenue Service
PO Box 7604
Ben Franklin Station
Washington, DC 20044

Dear Mr. Sweeney:

Notice and Request for Comments Regarding Implementation of Information Reporting and Withholding Under Chapter 4 of the Code

Scotiabank appreciates the opportunity to provide the U.S. Treasury and U.S. Internal Revenue Service (IRS) with input on *Notice 2010-60*, "Notice and Request for Comments Regarding Implementation of Information Reporting and Withholding Under Chapter 4 of the Code." Scotiabank is supportive of the intent to address tax evasion and our aim is to work with Treasury and IRS to achieve this goal. To be effective, we believe it is essential that the Foreign Account Tax Compliance Act ("FATCA") and its associated regulations be implemented in a manner that targets the sources of significant risk while reducing the compliance burden to manageable proportions.

We have commenced our assessment of the impact of FATCA on the Scotiabank Group. The broad scope of the legislation, without benefit of pending regulations, will necessitate ongoing assessment and we may have further comments in future. We endorse the practice of issuing guidance and soliciting comments prior to finalizing regulation and hope that this iterative process will continue.

We are submitting this letter both to underscore our endorsement of the submissions of the Canadian Bankers Association (May 19 and November 1, 2010) and the Institute of International Bankers and European Bankers Federation (April 23, 2010), to which we have contributed, and to highlight two aspects of FATCA that will have a particularly significant impact on Scotiabank because of the size and nature of our international operations.

Our objective with this submission is to maximize the potential that the Scotiabank Group can opt in to FATCA.

1. The Scotiabank Group

Scotiabank is Canada's most international banking group with about one third of its income generated outside Canada. Our international presence has been significantly strengthened in recent years through both acquisitions and organic growth and we expect this to continue. Scotiabank is well diversified by business line, geography and product offering, and this has been a key contributor to our stability and sustained profitability during challenging times.

The Scotiabank Group consists of more than 100 Canadian legal entities and close to 200 international legal entities. The Group has about 68,000 employees based in 51 countries and serves approximately 15 million clients worldwide. In addition to our presence in the three NAFTA countries, we operate in 21 Caribbean countries; 10 Central and South American countries; 6 European and Middle Eastern countries; and 11 Asia-Pacific countries each with multiple regulatory and legislative requirements.

2. Requirement that an FFI-agreement cover group-wide subsidiaries and affiliates

The FATCA requirement ~ that the entire affiliated financial group (unless exempted by the Secretary) must be covered by, and comply with, either its own or its parent company's FFI Agreement, or all other members of the group may be viewed as non-compliant and face punitive withholding ~ raises several challenges for the Scotiabank Group. We note that this matter was not addressed in the guidance, which did address a number of other potential reliefs and exemptions, and we therefore thought it timely to raise our concerns now.

The Scotiabank Group operates in over 50 national jurisdictions, some of which have a multitude of regulatory jurisdictions (including federal and sub-national jurisdictions and/or sectoral/functional regulators, such as bank, insurance, securities regulators, and or prudential and market conduct regulators). Assessing all possible legal and regulatory challenges FATCA may pose in these various national and regulatory jurisdictions is a huge undertaking. We are particularly concerned that the Scotiabank Group could be penalized (e.g., its FFI Agreement cancelled and its worldwide customer base subjected to 30% withholding) because a domestic conflict-of-law issue prevents a particular subsidiary from complying with FATCA. We have started a broad review of potential conflicts between FATCA requirements and local laws in the jurisdictions in which we operate, including Canada. While this assessment is complex and far from complete, we have already gathered information that points to the possibility of local compliance roadblocks with FATCA requirements.

Privacy laws exist in most of the jurisdictions in which we operate and these laws would generally prohibit the sharing or disclosing of confidential customer information. Also, some jurisdictions expressly prohibit the cross-border sharing of banking information. We are reviewing the extent to which customer consent will address privacy and other concerns in our many jurisdictions. We have also determined that "requirements to serve" exist in some of the jurisdictions in which we operate, and our legal ability to compel required information or to close recalcitrant accounts is far from clear. In this latter respect, we note that the guidance suggests that the Treasury and the IRS will consider terminating FFI Agreements due to the number of recalcitrant account holders remaining after a reasonable period of time.

While we do not yet have a full understanding of all the potential roadblocks that we may face in the multiple jurisdictions where we operate, we are very concerned that roadblocks in even a single jurisdiction could subject Scotiabank clients on a global scale to a 30% withholding on U.S. source income. We do not believe that the IRS or Treasury will further U.S. aims by imposing consequences on our Group in circumstances where a conflict of laws situation prevents an entity within our Group from entering into its own FFI Agreement or complying with a parent Scotiabank agreement. An “all-or-nothing” approach that forces the entire Group into a state of non-compliance would reasonably be seen by our customers as unwarranted. Customers would be loath to put themselves through the withhold-and-reclaim process and the potential for large numbers of reclaims would represent an unnecessary cost and burden to the IRS.

We recommend that FATCA/regulations make it clear that no FFI or FFI Group would be considered to be non-compliant if signing or complying with an FFI Agreement would put a member of the group in conflict with local laws. We would appreciate greater clarity and guidance on this issue as we work through other issues.

3. Requirement to aggregate across accounts

The Scotiabank Group’s diverse systems infrastructure has proven to work effectively for us but is fundamentally challenged by certain requirements of FATCA.

Scotiabank has a multiplicity of customer information and account systems operating around the world, many of which do not “speak” to each other. Many of our systems are country-specific. Some of our systems cover more than one country (and work across a whole region) but may be functionally specific to certain account types. For example, our core banking system in the Caribbean is separate from, and not interactive with, our insurance and wealth management systems in the region. There are a number of examples where multiple systems are used in the same country. As a result of our multiplicity of systems, we are not well-positioned to make linkages across borders, across some legal entities and across account types. Data aggregation on a global scale for purposes of meeting the \$ 50,000 exclusion threshold would likely be such a compliance challenge for the Scotiabank Group that it will necessitate us trying to document millions of low-risk accounts.

We respectfully suggest that permitting the application of the \$ 50,000 exemption on an individual account-by-account basis would dramatically cut down on the volume of reportable accounts and greatly enhance the feasibility of complying with FATCA without compromising FATCA’s policy objectives as there is minimal income associated with small accounts.

In our view, the successful implementation of FATCA can best be achieved through a risk-based approach that effectively targets material sources of evasion and promotes efficient compliance measures.

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We would like to thank you once again for allowing Scotiabank the opportunity to comment on *Notice 2010-60* and on this important piece of legislation, and we appreciate the willingness of the Treasury and IRS to work with the industry on the implementation of FATCA. We look forward to continuing this cooperation as the legislation and associated regulations are rolled out.

Sincerely,

Joan C. Smart
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