

[TEXT OF THE FATCA COMMENT LETTER SUBMITTED BY
STANDARD LIFE]

29 October 2010

Dear Sirs,

Comments on *Notice 2010-60*

Standard Life welcomes the initial guidance on section 501(a) of the Hiring Incentives to Restore Employment Act of 2010 contained in *Notice 2010-60* as well as the opportunity to comment on a number of questions raised in that Notice.

Background

Standard Life is a long term savings and investments group headquartered in Edinburgh, Scotland. Although most of our business, and customers, are in the UK, we operate internationally and have a substantial Canadian insurance subsidiary.

We previously submitted initial comments on the provisions of Chapter 4 of Subtitle A of the Internal Revenue Code and the comments provided below address specific questions raised in *Notice 2010-60*.

We note the comments being submitted by the CEA, with which we agree. We particularly endorse the comments around the balance of administrative and technical difficulties in applying Chapter 4 to preexisting insurance contracts and the minimal US reporting information and tax which is likely to result.

Summary of representations

We have focused on the relevant areas of the Notice where Treasury and IRS expressed an interest in receiving specific comments. Wherever possible, we have proposed solutions which would allow us to comply with the Chapter 4 requirements and minimize the risk of loss of revenue to the Treasury and IRS.

We would be happy to discuss any of the issues identified with you in more detail, including via conference call, if you would find that helpful.

Yours faithfully,

Jonathan McHaffie
Head of Tax, UK Financial Services
Standard Life plc
Edinburgh, United Kingdom

1 Insurance and similar contracts

Section II(B)(2) of *Notice 2010-60* (“the Notice”) asks for “*comments with respect to the appropriate treatment under chapter 4 of entities that issue cash value insurance contracts, annuity contracts, or similar arrangements, and with respect to the appropriate definition of cash value insurance contracts, annuity contracts and similar arrangements for this purpose*” (pp 11-12 of the Notice).

1.1 Insurance contracts

Standard Life writes UK pension and life insurance policies through two UK resident life insurance companies. It also writes German and Irish life insurance business through branches of its UK life insurance companies.

UK regulatory restrictions mean that the types of insurance policies Standard Life is allowed to sell within the UK are restricted to pension policies or taxable domestic policies (we discuss this in more detail further below in response to a further specific question in the Notice).

Our Irish and German insurance branch operations are similarly restricted by regulation as to the type of product they are allowed to sell. Under the EU 3 Life Directive passporting arrangements these branches are regulated by the UK regulator, the Financial Services Authority. The authorizations of the branches only permit Standard Life to sell in the domestic markets to local residents.

Similarly our Irish insurance subsidiary company is regulated in Ireland by the Central Bank of Ireland. It is only permitted to sell insurance business in the United Kingdom (under the EU 3 Life Directive), Channel Islands and the Isle of Man. The vast majority of sales are in the UK.

By way of illustration a summary of the type of contracts written by Standard Life in the UK, which we expect are typical of those in the wider UK insurance market, is as follows. We have included a summary of the requirements to provide details of taxable amounts to customer and the UK tax authorities (HM Revenue & Customs (HMRC)):

Product

Pensions

Purpose of Product

Retirement Savings

Prohibited from sale to US residents by regulator

Yes

Requirements for purchasing policy

UK resident, taxable UK earnings

Tax Treatment of investment return

No UK tax Levied

Tax treatment of payments

Maximum tax-free lump sum of 25% of accumulated policy value, rest (annuity) subject to UK tax if policyholder
UK resident

Reporting for tax purposes of proceeds

Obligation on life assurance company to calculate maximum tax-free amount and to deduct tax from annuity payments to UK resident individuals.

Suggested treatment under Chapter 4

Exempted as retirement plans

Annuities

Purpose of Product

Regular income from accumulated lump sums

Prohibited from sale to US residents by regulator

Yes

Requirements for purchasing policy

Cannot be US Resident

Tax Treatment of investment return

No investment return

Tax treatment of payments

Pension annuity as above. Life annuity taxed on income element of annuity payment.

Reporting for tax purposes of proceeds

Tax is deducted by the life company from annuity payments to UK resident individuals.

Suggested treatment under Chapter 4

Exempted as no investment return

UK life Policies with no cash value

Purpose of Product

Protection against death or disability

Prohibited from sale to US residents by regulator

Yes

Requirements for purchasing policy

Cannot be US Resident

Tax Treatment of investment return

No investment return

Tax treatment of payments

Not subject to UK income tax; could be subject to UK inheritance tax.

Reporting for tax purposes of proceeds

Not applicable as no investment return.

Suggested treatment under Chapter 4

Exempted as no cash value

UK life Policies with investment content

Purpose of Product

Provision of income or gains

Prohibited from sale to US residents by regulator

Yes

Requirements for purchasing policy

Cannot be US Resident

Tax Treatment of investment return

Annual tax levied on insurance company, which reduces the customer's policy value.

Tax treatment of payments

Additional tax if subject to UK tax at rate above 20%; no refund of any annual tax levied on company

Reporting for tax purposes of proceeds

Life company must provide customer with details of amounts chargeable to income tax; this process is audited by HMRC. Amounts in excess of (currently) ?18,700 must also be notified to HMRC.

Suggested treatment under Chapter 4

Exempted as UK tax suffered on investment return and never refundable to customers.

Non-life policies with no investment content

Purpose of Product

Protection against specified events

Prohibited from sale to US residents by regulator

Yes

Requirements for purchasing policy

Cannot be US Resident

Tax Treatment of investment return

No investment return

Tax treatment of payments

Varies; if income-replacement, could be subject to UK income tax. Lump sum payments may not be subject to UK tax.

Reporting for tax purposes of proceeds

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Suggested treatment under Chapter 4

Exempted as no cash value

1.1.1. Pension products

Our pension products can take a variety of legal forms, including:

1. Insurance based, where the assets of the pension fund are beneficially owned by the insurance company but back legal obligations of the insurance company to the pension policyholder. It is important to note that the assets we manage, and which give rise to income and gains, are not themselves a retirement plan, but are assets which form part of a retirement plan. This has implications for an appropriate definition of “retirement plan” for the purposes of Chapter 4.
2. Trust-based products where assets are held in a trust for the benefit of pension policyholders and a record is kept of the assets of the trust in which individual customers have invested, as well as any income from those assets. The underlying assets are beneficially owned by the trustees of the scheme.

In all cases, UK pension schemes are subject to regulation by the UK Financial Services Authority (FSA) and to strict tax requirements administered by HM Revenue & Customs (HMRC). Similar regulation and oversight exists for Irish and German retirement products. We believe that the following features of UK pension products mean that they pose a very low risk of being used for evasion of US taxes:

1. The maximum annual tax-deductible contribution by individuals to pension products will be £50,000 (around \$ 80,000) per year from 6 April 2011. This limits the amount which could be sheltered by individuals from UK tax.
2. In order for an individual to contribute to a UK pension product, the individual must be UK resident and, if contributions of more than £3,600 (around \$ 5,750) per year are to be made, must have sufficient taxable UK income out of which the pension contribution is made. This means that for contributions of more than £3,600 tax relief can only reduce an existing UK tax liability and that there is no tax relief where there is no such liability.

3. Once contributions have been made to a pension policy, the funds cannot be accessed until at least age 55. There is no possibility for a policyholder to receive any of the accumulated pension fund for any other purpose.

Irish pension products operate similarly to those in the UK although there are differing amounts for maximum contributions, the age when access to funds is permitted etc.

In Germany, many pension arrangements are employer sponsored but under personal pension arrangements the benefits cannot be taken until age 60 (or 62 for contracts to be taken out after 31st December 2011) and the benefit must take the form of a monthly annuity which will be subject to tax at marginal rates.

1.1.2. Definition of “retirement plan”

A further question is asked on p16 of the Notice:

Comments are requested on the definition of a retirement plan for this purpose, and on how such a plan could appropriately identify or document itself to a withholding agent to verify its compliance with any such definitional requirements.

The Notice suggests three conditions for a product-level exemption from the Chapter 4 provisions:

1. *qualifies as a retirement plan under the law of the country in which it is established* ~ we would expect that UK, Irish and German pension products would meet this condition, subject to the comment above that insurance-based products are not themselves necessarily retirement plans but are policies which back such plans;

2. *is sponsored by a foreign employer* ~ this is unlikely to be met by a large proportion of mainstream UK and Irish pension products as many of those products are set up independent of employers; and

3. *does not allow US participants or beneficiaries other than employees that worked for the foreign employer in the country in which such retirement plan is established during the period in which benefits accrued* ~ again, a large proportion of regulated

UK and Irish pension products will not meet this condition.

However, all retirement plans are subject to regulatory oversight and, in order to obtain beneficial tax treatment, must meet specific legislative requirements. We would suggest that the following could be used as a basis for further consultation on an appropriate definition of “retirement plan” to ensure that the different legal forms of retirement plans are reflected and the associated products exempted from the provisions of Chapter 4:

“Retirement plans and products (including insurance-based products) which are associated with a retirement plan are exempt from the provisions of Chapter 4. A retirement plan means one which is treated as such by the double taxation agreement between the United States and the State in which the retirement plan is established.”

The definition should cater for the differing legal structures that pension arrangements and provision for pension arrangements can take. For example there are a variety of forms that employer sponsored pension arrangements can take in Germany (often legally autonomous and often sponsored by more than one employer and which invest in insurance products as an asset class).

Each country in which we operate has established clear taxation (and regulatory) conditions governing which type of products qualify as retirement plans and we consider it appropriate to rely on the existing local definitions rather than seek to find a new definition which covers the wide range of products in all countries affected by Chapter 4.

1.1.3. Other categories of foreign employee benefit or deferred compensation plans

Page 16 of the notice asks for comments on other products which should be subject to the same treatment as foreign retirement plans for Chapter 4 purposes.

A specific UK product which is not strictly a deferred compensation plan is the “Individual Savings Account” (ISA). This is a tax-advantaged product which allows contributions of up to only ?10,200 (around \$ 16,000) per year to be made and all income and gains on those assets are free of UK tax, including when funds are removed from the ISA. Similar to UK pensions, an individual has to be resident in the UK for taxation purposes in the year in which investments are made in an ISA. In addition, an individual has to be “ordinarily resident” in the UK; this test requires a more permanent residential status in the UK. We believe that this, in conjunction with the low level of maximum contributions permitted makes this a product which poses a very low risk of being used for evasion of US taxes.

We therefore suggest that Individual Savings Accounts could be exempted from the provisions of Chapter 4 without any significant risk of US tax evasion resulting. This could be achieved by exempting (subject to further consultation on an appropriate definition) any product

1. which is tax-advantaged under the law of the country

in which is it established;

2. is subject to specific taxation provisions which exempt the income and gains from local income or corporate taxation;

3. is subject to a limit on overall annual contribution levels;

4. can only receive contributions from individuals who are resident for taxation purposes in the country in which the product is established.

In Ireland proceeds from pension arrangements can be transferred into an Approved Retirement Fund (“ARF”) or an Approved Minimum Retirement Fund (“AMRF”) as an alternative to taking out a pension annuity. These arrangements are managed by Qualifying Fund Managers who may or may not be insurance companies (Standard Life is a qualified QFM). Fund growth is subject to tax on an imputed (not actual) growth of 3%. These arrangements are entirely in connection with pension arrangements and should be within the scope of retirement plans.

1.1.4. Products with no investment return

P11 of the Notice states that *“Treasury and the IRS do not view the issuance of insurance or reinsurance contracts without cash value as implicating the concerns of Chapter 4. [. . .] Accordingly, Treasury and the IRS plan to issue regulations treating entities whose business consists solely of issuing such contracts as non-financial institutions for purposes of Chapter 4.”*

We welcome this intention as it reflects accurately that insurance companies issue contracts which have no investment component. The Notice suggests, however, that only companies whose business consists *solely* of such contracts will benefit. UK insurance companies often issue the entire range of insurance products from a single company as this has capital and overall governance advantages.

We suggest that this could appropriately be reflected by excluding contracts without cash value from the definition of “financial account”. We believe that would have the same practical effect for companies which write only such contracts as treating them as non-financial institutions but would also include equivalent contracts written alongside other contracts which do have cash value and could be subject to reporting under Chapter 4.

1.1.5. Other investment products ~ non-tax advantaged

1.1.5.1. Investment products subject to non-refundable taxation

The other insurance products offered by Standard Life which offer an investment element do not share the tax advantages of the pension products described above. For such UK products (and similar

products in Ireland contracted before 1st January 2001) the taxable income and gains relating to them are subject to an annual 20% tax charge at the level of the company. The tax liability is passed on to the customer via a reduction in the value of their policy.

Because the underlying assets held are beneficially owned by the life insurance company, the obligation to pay that “policyholder tax” to the UK (or Irish) tax authorities is part of the normal corporate tax regime and therefore subject to annual review by both the tax authorities and external auditors. Customers’ policy values are reduced by passing on a charge representing the company’s tax liability on those assets although there is not a 1-for-1 linkage between the company’s tax liability and the amount charged to customers because the company’s tax liability is calculated on the whole of its taxable income, gains and profits, not just those arising from these types of policies.

Because of the tax paid at source, and borne by customers, on these insurance products, we believe they are unsuitable for US persons seeking to evade US tax and therefore present a very low risk of giving rise to such evasion. We therefore suggest that these products are exempted from the provisions of Chapter 4 and that the following could be used as a basis for further consultation on an appropriate definition of the policies in question:

Policies with the following features are treated as “locally taxed” and therefore exempt from the provisions of Chapter 4:

- Policies under which the life assurance company is subject to taxation on the investment return on assets backing the insurance policy and where
- a charge in respect of that tax reduces the value of the customer’s insurance policy and
- that charge cannot be recovered from the tax authorities in the country in which the policy is established, although credit may be given against the final taxation liability in that country on the proceeds of the policy.
- For the avoidance of doubt, the total of the charges levied against the individual customers’ policies does not have to equal the amount of tax paid to relevant taxation authorities.

1.1.5.2. Investment products subject to taxation on exit

For German insurance products whilst the funds are not subject to tax the proceeds are subject to tax at 25% although this is reduced where the product has been held for at least 12 years or the policyholder has reached age 60 (in each case where the policyholder is German tax resident).

In Ireland, insurance products (non-pension) which have been sold on or after 1 January 2001 are subject to an Exit Tax on the policy gain when proceeds are taken from the policy (except death and critical illness). The policy gain is excess of the proceeds received over the premiums paid. The Exit Tax is the basic rate of tax plus 6%. There is also a deemed Exit tax applied annually from the eighth anniversary of the policy. The Exit Tax applies where the policyholder is Irish resident at the time the proceeds are taken (or the deemed Exit Tax is calculated).

Given the restrictions on who we can sell the policies to and the form and levels of tax applied to the policies we believe the Irish and German branch non-pension products are unsuitable for US persons seeking to evade US tax and therefore present a very low risk of giving rise to such evasion.

2. Treatment of specific entities

Comments are requested (p20 of the Notice) on the treatment under *section 1471* of insurance companies and other foreign entities. We have provided comments on issues relating specifically to insurance companies above. As well as this, we comment below on our asset management operations and “Platform business”.

2.1 Investment management business

We believe that there is a strong case for treating widely-held regulated collective investment vehicles as low risk vehicles under the Chapter 4 rules. The basis for this treatment is set out below:

- Access to widely-held regulated collective investment schemes is heavily intermediated in the UK and in Europe. Investments will commonly be made through the use of platform services and nominee accounts. As a result limited customer data is held at the fund level and the fund will be dependent on a network of unconnected third parties to preserve its participating FFI status.
- The alternative to information exchange ~ withholding on pass through payments ~ is not feasible for widely held regulated funds. We believe that the volume and rate of turnover of investors in such funds renders it impossible to operate a system of withholding that can be accurately applied only to recalcitrant investors. We believe that compliant investors will necessarily suffer as a result and that this will act as a disincentive to investing in funds with US exposure.

- Given the relatively generic nature of such funds and the inability of investors to exercise control over the investments of the funds, we consider that there is very limited risk that these funds would be utilised for tax evasion purposes.
- We believe there is no distinction in substance between these funds and the listed vehicles, such as exchange traded funds, that we understand to be excluded from Chapter 4 under Internal Revenue Code (“IRC”) section 1471(d)(2)(c).

As a means of providing further assurance that such funds would not be used for the evasion of US taxes we consider that any reduced compliance burden under Chapter 4 could be conditional upon restricting investors into the fund to specified low risk classes.

Given the variety of forms and location of such funds we believe that a single catch-all definition could result in inappropriate cases being treated as low risk entities under Chapter 4 or genuine low risk funds being denied such treatment. We believe a better approach would be for Treasury and the IRS to issue an amendable white list of acceptable forms of fund vehicle.

We note the comments made at page 61 of *Notice 2010-60* that Treasury and IRS are considering the use of existing information exchange agreements as part of the means to achieving the objectives of Chapter 4. We believe that a prescribed list of acceptable types of fund maintained will better enable Treasury and IRS to take into account information exchange arrangements and other controls such as local anti-money laundering requirements in assessing the risks attached to each fund vehicle.

2.2 Platform business

Standard Life operates a mutual funds platform business which allows customers and their advisers to view their holdings across different products holistically. There are three types of product offered on this platform and our comments focus on the nature of the products rather than the entity itself:

Individual Savings Accounts

These are covered in our comments at 1.1.3 above.

Personal portfolio

The investment platform allows customers to invest in a wide range of assets out with any tax advantaged product. The individual customers are the beneficial owners of the assets and this respect are treated for tax purposes as holding the assets directly. We therefore believe that the provisions of Chapter 4 should apply to these assets and that no additional definitions are needed to achieve this.

However, our comments below about preexisting accounts apply equally to this business as the customer information required is not held for preexisting customers.

Insurance products

Insurance products are also available via the platform. Our earlier comments relating to those products apply equally to policies held on the platform and reinforce our view that determining the treatment of different types of product is preferable to an entity-by-entity treatment as UK companies will provide or facilitate a range of products with different treatments.

3. Points of practical application

The Notice also asks for comments on a range of practical issues around implementation of the provisions of Chapter 4.

Page 40 of the Notice asks for comments *“regarding the above approaches, and regarding other potential approaches that may provide adequate information in a manner that will be administrate by participating FFIs without being subject to manipulation by U.S. account holders. Comments on possible currency translation conventions are requested.”* Page 50 also asks for comments *“as to how to minimize burdens on participating FFIs with respect to such reporting*

3.1 Frequency of valuing accounts

We note the comments at page 49 that Treasury and IRS are considering requiring a participating FFI to report the highest value of an account as determined for the purpose that requires the most frequent determination of value by the participating FFI.

The frequency at which our customer accounts are valued varies between our different streams of business and, in some cases, between customers investing in the same product. In many cases the determining factor will be the contractual basis that the business agrees with each client for the calculation of fees. However, for some of our life insurance products, individual policy valuations are carried out only when requested by policyholders or upon final surrender. We believe this can be reflected by adopting the proposal described in more detail at 3.3.2 below that, for insurance contracts not otherwise exempted from the provisions of Chapter 4, reporting is required only when payment is made to the policyholder. Because that is the only point at which the customer receives any benefit from the insurance contract, we do not believe that such a reporting regime would be able to be manipulated by US persons.

For non-insurance products, we believe that the detailed rules should offer some degree of flexibility with regards to the frequency for ascertaining accounts values but that this should be subject to a minimum standard (for example, determination of values on at least a quarterly basis). This would enable reporting systems to pick up valuations on a uniform basis rather than being required to look at the scope of data available for each account.

Chapter 4 will introduce significant systems and administrative costs for our business. We anticipate that this might be able to be reduced to the extent that the reporting systems can collate data on a consistent basis across the business rather than on a customer by customer basis. We believe that requiring a minimum frequency of reportable valuations, such as quarterly, is likely to limit the risk of reportable balances being manipulated by investors.

3.2 Possible unintended scope of Chapter 4

Because the scope of “US person” for the purpose of Chapter 4 is very wide, customers could inadvertently become “US persons” without Standard Life knowing. One obvious example of this is where a customer went to live in the US for long enough to become US resident for tax purposes but without relinquishing a UK correspondence address. In such cases, Standard Life would have no knowledge that the customer had become, albeit temporarily, a “US person” but could still be in technical breach of the Chapter 4 requirements. We do not believe this kind of scenario is one which Chapter 4 is seeking to cover but are concerned that Standard Life would be unable to be sure it was complying with the US legislation. It would therefore be helpful if the guidelines could cater for this type of technical breach which does not contravene the spirit of Chapter 4.

3.3 Withholdable payments

The Notice asks on p55: for comments *“as to methods that a participating FFI could use to determine whether payments it makes are attributable to withholdable payments, including any associated information reporting that may be necessary, and which take into account the administrative burden imposed by any such approach.”*

3.3.1. Investment management (mutual funds)

We do not believe that the accurate attribution of withholdable payments is feasible other than in the case of those investment vehicles or asset pools which have a small number of investors and for which redemptions are subject to a notice period.

Accurate attribution of withholdable payments will require us to identify relevant payments, attribute them to the recalcitrant investors in the fund and factor in the effect both on the unit price quoted to each recalcitrant investor and the unit price quoted to all other investors. This must be done each time the funds are priced, a process that is carried out daily for the majority of funds. Failure to meet these requirements will result in parties other than the recalcitrant investor bearing the cost of withholding.

The issues inherent in accurately attributing withholding to pass-through payments in regularly priced funds with large numbers of investors were detailed in the representations submitted by the European Fund and Asset Management Association (“EFAMA”) on 7 July 2010. We do not see how these practical issues can be resolved.

Where there are a large number of investors in a fund or units in the fund are traded on a daily basis we believe that a withholding regime will only be viable where it is applied to all payments and redemptions from the fund to recalcitrant investors. Additionally, any such regime could only be applied to investors from the date at which they are confirmed as being recalcitrant.

We would note that such an approach may itself only be legally viable for those funds that are wholly invested in US securities as it requires all amounts to the recalcitrant investor to be withheld upon. Where US securities comprise only part of the fund's portfolio there would be no basis for withholding amounts in respect of the non-US invested element of the fund.

3.3.2. Life insurance policies

The legal structure of UK, Irish and German insurance-based products means that the life company is the beneficial owner of the assets which back the value of a customer's policy. This has implications for the application of Chapter 4 because there are no "withholdable payments" which are attributable to individual customers (this means that the issues discussed at 3.3.1 above in relation to mutual funds are also relevant to insurance contracts). Instead, income and gains on assets accrue to the pool of assets of the life company and are included as an element in the valuation of a customer's policy. The extent to which there is a direct link between specific assets of the life company and the customer's policy value depends on the type of policy.

Unit linked policies have the closest correlation of underlying assets and policy value as customers invest in specific pools of assets. Even in this case, however, the holdings in the assets in question are pooled with those of other policyholders. That in turn means that there are no amounts attributable to individual customers which could be reported or from which withholding taxes could be applied to individual customers.

We therefore propose the following as a possible solution for those insurance contracts to which Chapter 4 applies. The point at which an individual realizes any value from an insurance contract with cash value is when a withdrawal from the policy is made and a payment is made to the individual. Insurance companies have existing processes to deal with such withdrawals and there are established reporting requirements to customers and (local) tax authorities. Those processes could be used to generate a return to the Internal Revenue Service of the amounts paid to customers who are US persons. Further discussions would clearly be needed to agree the information required but we believe this approach would best reflect the legal nature of insurance products in the UK, Germany and Ireland.

In practice, it is virtually impossible to see how withholding taxes could be applied to US-source income connected with insurance contracts as there are no "withholdable payments" of US-source income made to policyholders. This means that, where we have customers who would be categorized as "recalcitrant account holders", the only option we would have is to refuse payment to those customers until and unless they provide the necessary information to allow us to report their investment return to the US. This is likely to present a number of legal and regulatory challenges which will need to be

considered and which could involve seeking regulatory and customer approval for significant changes to contract terms.

3.4 Preexisting individual accounts

As currently drafted, we would be required to categorize all existing customers into US persons and non-US persons within five years. In doing so, we would be required to “obtain and examine [. . .] documentary evidence establishing U.S. or non-U.S. status of individual account holders” (Step 3 of section III B.2.b. of the Notice (p31)).

Standard Life has recent experience of a significant information-gathering exercise affecting a large proportion of customers. That was in connection with a change in legal structure which meant that a significant subset of customers would receive, at no expense, shares in the new company. However, despite pursuing a wide range of approaches to contacting customers, a number have, to this day, not responded to communications which would have provided them with a financial benefit. We therefore expect that a proportion of non-US customers will not respond to requests for documentary evidence of their taxation status and would only be able to request that evidence; we have no power to compel the provision of the information. Because the request will be in connection with a US tax issue, the rate of non-response is in practice likely to be even higher because many customers will know or believe that they have no US investments and therefore take no action,

In addition, we believe that applying the Chapter 4 information and documentation requirements to preexisting accounts would be unworkable in practice. Our current customer policies and investments have been built up over several decades and as well as policies where customer data is not held electronically at all, other data is held on legacy systems which are not designed for the kind of data interrogation which would be necessary.

We therefore suggest that, for insurance, wealth and investment management companies, the application of the Chapter 4 provisions is limited to new accounts opened from 1 January 2013.

3.5 Currency translation issues

There are a number of possible approaches which could be taken to producing a dollar equivalent of local currency amounts. We believe that the most important principle is that the method chosen should be simple to operate. The actual US tax liability on any income or gains will be determined by reference to US legislation rather than based on the Chapter 4 amounts reported to the IRS. We would therefore suggest that FFIs could be provided with a number of possible methods to use, giving some flexibility to reflect the FFI’s different underlying systems and data. Possible methods could include

- an average monthly exchange rate (for the month in which the reportable payment arose or for the preceding month)

- the average annual exchange rate for the year in which the reportable payment arose
- the closing exchange rate for the month in which the reportable payment arose (or for the previous month)
- the spot rate on the day on which the reportable payment arose.

3.6 Impact of local legal restrictions

Page 50 of the Notice requests comments “*on specific situations in which foreign laws may prevent the reporting of the information described above are also requested, along with inscriptions of the steps that would be required of a participating FFI (and account holders of U.S. accounts maintained by the FFI) in order to overcome or waive any such restriction.*”

There could be data protection restrictions on our ability to provide customer-specific information to US government bodies. This would need to be investigated further on a country-by-country basis but could legally prevent reporting under Chapter 4.

3.7 Long-term recalcitrant accounts

Treasury and the IRS request comments on what measures should be taken to address long-term recalcitrant accounts, including whether, and in what circumstances, Treasury and the IRS should consider terminating FFI Agreements due to the number of recalcitrant account holders remaining after a reasonable period of time. (p50)

Our expectation is that for accounts opened from 1 January 2013, we would not accept applications which did not provide the information necessary to comply with the reporting requirements of Chapter 4 and would therefore not expect to have any new customers who had to be treated as recalcitrant. We have suggested in 3.4 above that pre-existing customers should be excluded from Chapter 4 for practical reasons; to do otherwise would mean that a significant number of customers would be likely to be treated as recalcitrant. We recognise, however, that there could be circumstances in which a customer fails to respond and has to be treated as recalcitrant.

We do not believe that it would be appropriate to penalise an entire commercial group for the behaviour of individual uncooperative customers where the FFI has made reasonable attempts to obtain the necessary information. Terminating an FFI agreement would have serious adverse implications for the company concerned and could jeopardise its ability to continue to operate its business. It would also have adverse implications for other customers who have provided all the information and documentation necessary under Chapter 4.

Where there are long-term recalcitrant account holders and it is not legally possible to close their account, the obligations on the FFI to operate a penal withholding tax regime on payments to that cus-

tomers should be more than sufficient to deal with any possible loss of revenue to the IRS or Treasury. We do not believe any further measures are required to deal with long-term recalcitrant account holders of an FFI which has taken proportionate measures to obtain information from the customers in question.

3.8 Restrictions on sales to US persons

On pp58-59 of the Notice, comment are requested on the following areas:

- (1) specific information about the applicable laws and regulations that may result in an investment vehicle's determination to prohibit sales of its interests to U.S. persons;
- (2) the categories of investment vehicles that may be covered by such laws and regulations;
- (3) examples of the distribution or similar agreements that prohibit sales of interests to U.S. persons;
- (4) information regarding the legally binding nature of such prohibitions and the penalties applicable to a violation of such prohibitions
- (5) the extent to which the AML/KYC laws used to enforce such a prohibition would apply in identifying U.S. persons (as defined for U.S. tax purposes) that may invest in such vehicles, directly or through ownership in one or more other entities;
- (6) the extent to which purchases of interests by non-participating FFIs would be treated as unsuitable investments and the extent to which and mechanisms by which non-participating FFIs could be prohibited from purchasing such interests; and
- (7) approaches that would allow Treasury and the IRS to verify or otherwise ensure compliance with such prohibitions.

3.9 Life insurance companies

European insurance companies receive specific regulatory permissions to sell within defined geographical areas. Our European insurance companies do not have regulatory permissions to sell within

the United States. A register of these permissions is made available by the UK regulator, the Financial Services Authority. Our main UK life insurance company's details can be seen at <https://www.fsa.gov.uk/register/firmPassports.do?sid=159082>; this confirms that the company is not permitted to sell insurance products within the United States and this information could be verified by the Treasury or IRS. This therefore significantly limits the extent to which our life insurance companies could have "US persons" as customers, with US citizens living outside the US as the most likely, but very small, population of possible "US person" customers. This restriction covers all products sold by the life companies, including pension products.

Non-compliance with these restrictions would lead to sanctions being imposed by the applicable regulator which would be regarded as a serious matter for the company concerned. The action taken by the regulator would depend on the facts of the case.

Our existing KYC/AML procedures would identify applications from individuals who are US-residents. They would have to be expanded to capture the other definitions included in the concept of "US person" but would then be part of our well-established account opening procedures. We would expect to regard failure to provide information on the "US person" status of a potential customer as the same any other failure to provide information required to open an account or take out a policy or investment with us and reject the application until the information were provided. This reflects our longstanding commitment to comply with all applicable legislation and regulation.

3.10 Investment management

The Luxembourg SICAV which we manage and distribute currently excludes US investors from investing in any of its sub-funds. The exclusion is detailed in the published prospectus for the fund:

"As the Company is not registered under the United States Securities Act of 1933, as amended, nor has the Company been registered under the United States Investment Company Act of 1940, as amended, its Shares may not be offered or sold, directly or indirectly, in the United States of America or its territories or possessions or areas subject to its jurisdiction, or to citizens or residents thereof (hereinafter referred to as "US Persons").

Accordingly, the Company may require any subscriber to provide it with any information that it may consider necessary for the purpose of deciding whether or not he is, or will be, a Prohibited Person or a US Person."

Our KYC information for the fund is routinely reviewed to identify any indicators that would suggest that an investor is US-based. Any indicators that are identified are followed up in order to confirm the position of the investor.

Whilst similar exclusions are not applied to other areas of our business we are, in all cases, required to comply with the requirements of the UK's anti-money laundering ("AML") regime.

The UK AML regime will require detailed checks to be made to confirm the beneficial ownership of investments. These checks will be undertaken by the organisation with the direct relationship with the end investor and in the case of our widely-held collective investment vehicles are therefore principally carried out by unconnected intermediary organisations.