

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

7 June 2011

Internal Revenue Service
PO Box 7604
Ben Franklin Station
Washington, DC 20044
USA

Dear Sirs,

Comments on *Notice 2011-34*

Standard Life has previously submitted detailed comments on section 501(a) of the Hiring Incentives to Restore Employment Act of 2010 (FATCA) and the initial guidance contained in *Notice 2010-60*. We welcome the additional guidance given in *Notice 2011-34* and the opportunity to comment on questions raised in that Notice and on the implementation of the FATCA provisions within insurance groups.

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 note the comments being submitted by the Association of British Insurers, with which we agree. We have, therefore, not repeated in this letter the comments made by that industry body. Instead, we have highlighted the key issues which we have identified in connection with FATCA. We have again sought to propose practical solutions to those issues for your consideration.

As with our previous representations, our comments are within the context of a clear intent to comply fully with the requirements of FATCA.

Exclusion of pension products

We recognize that the Treasury and IRS have indicated that the scope of retirement plans exempted from FATCA will be widened from the initial, narrow, definition. This is a key issue for us as a large part of our business consists of writing pension business which is regulated in the local jurisdiction and which we believe constitutes at most a very low risk of US tax evasion. We would suggest that a regulation which provides for a product-level exemption for pension plans which meet the possible definitions set out below should cover an appropriate range of retirement plans and could form a

basis for further consultation, perhaps as part of the insurance-specific guidance which we believe you will be issuing in due course.

A very simple definition could be:

Retirement plans and products which are associated with a retirement plan are exempt from the provisions of Chapter 4. A retirement plan means one which is accepted by the competent authority of the State in which the retirement plan is established as generally corresponding to a pension scheme recognised as such for tax purposes by that State.

Alternatively, the regulation could be targeted at the features which retirement plans are likely to have in common (and which deferred compensation products which are not retirement plans would not share):

Excluded retirement plans (including those products written by insurance companies which involve the management of such plans or the assets of such plans) are those which:

- are available only to residents of the country in which they are established,
- are regulated in the country in which they are established,
- are recognized as a means of providing for retirement benefits,
- are subject to limits on contribution levels which attract tax relief in the country in which they are established, and
- include conditions governing the ability to withdraw funds.

Preexisting individual accounts

Notice 2011-34 invites comments on whether insurance companies should perform procedures similar to those outlined for banks, brokerage and similar companies under “Step 3”.

Our insurance products do not share similar features to the private banking and wealth management services the “Step 3” requirements aim to capture. We do not, therefore, consider that the more

stringent investigation which would apply to wealth management operations should be used for insurance products or companies.

Recognition of low-risk nature of UK and Irish insurance products

We have previously commented on the reasons why UK and Irish-based insurance products can be considered low risk for the purposes of FATCA. As well as retirement plans, the other main type of investment product our UK life companies write is subject to an annual tax on the income and gains accrued during the year. This tax is at a rate of 20% and cannot ever be reclaimed by the policyholder. Because this tax is administered by the insurance company, and cannot therefore be avoided by a policyholder, it makes this type of investment product unsuitable for US persons seeking to evade tax. We therefore believe these products are very low risk Supporting this conclusion is the fact that there may also be an additional tax charge (taking the total tax charge to a maximum of 50%) on surrender or maturity of the policy which is subject to a strict reporting regime and audit by UK or Irish tax authorities.

We would welcome recognition of the low-risk nature of insurance products which share the following features and their exclusion from the scope of FATCA.

- The value of the individual's investment insurance policy is reduced by a charge representing tax on the income and/or gains of assets backing the policy.
- The charge is calculated at a non-negligible rate (perhaps 10%).
- The charge is levied on at least an annual basis.
- The charge is administered by the insurance company, and
- The charge cannot be repaid to the individual policyholder by either the insurance company or local tax authority.

Reporting and withholding on US accounts

The legal nature of UK insurance products is that the individual customer receives no income or gains on the underlying assets. Instead, policyholders have a claim against the insurance company, which is based on the income and gains of the asset pool which backs the policy. Furthermore, for underlying funds managed by other asset management groups, the insurance company would have no information on the makeup of the underlying income and gains of the fund. Resolving that would require very significant changes to the flow of existing information between financial institutions which would entail a large cost and significant complexity.

As a consequence, it is hard to see how either the passthru payment concept or indeed the reporting of income and sales proceeds could be applied to US persons.

A possible solution to the reporting issue could be to report the growth or fall in value of the overall policy which will reflect the economic benefit the individual policyholder has received.

Where withholding is required under FATCA, consideration could be given to whether a flat rate of tax could be applied to payments made to the recalcitrant policyholder. Further investigation would be required as to any legal or regulatory restrictions which could prevent this, particularly for existing policyholders where it might not be legally possible to change the existing terms and conditions.

Insurance-specific guidance

To date, no formal guidance on the application of FATCA to insurance companies has been issued by the Treasury or IRS. The nature of insurance contracts is fundamentally different from banking and asset management products and this has significant implications for FATCA implementation. There are important differences in legal relationships, customer information held, regulatory requirements and IT systems between insurance companies and other financial institutions, all of which mean that there are a wide range of insurance-specific issues raised by FATCA. In addition, while banking groups have been subject to tax reporting requirements for many years, the same is not the case for insurance companies.

We would therefore welcome additional guidance and consultation on the application of FATCA to insurance groups, reflecting the representations which insurance groups and representative bodies have made.

We also note the Association of British Insurers' comment about the implication of other significant, insurance-specific regulatory change being implemented by 1 January 2013 and support the request that insurance groups be given a longer period to achieve FATCA compliance.

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 sincerely,

Jonathan McHaffie
Head of UK Tax
Standard Life
Edinburgh, U.K.