

[TEXT OF THE FATCA COMMENT LETTER SUBMITTED BY  
UNIVERSITIES SUPERANNUATION SCHEME]

CC:PA:LPD:PR (NOT-121556-10)  
Room 5203  
Internal Revenue Service  
PO Box 7604  
Ben Franklin Station  
Washington, DC, 20044  
USA

Date: 6 June 2011

cc Steven A Musher, 111 Constitution Avenue, Room 4619, Washington, DC 20224, USA

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

Dear Sir/Madam

**The Foreign Account Tax Compliance Act within the Hiring Incentives to Restore Employment Act (HIRE Act); comments concerning *Notice 2011-34***

Universities Superannuation Scheme (USS) is a multi-employer sponsored scheme, and is the principal pension scheme for academic and senior academics in UK universities, as well as other higher education and research institutions. We hold assets of over \$ 50 billion, with US investments amounting to approximately \$ 9.5 billion (as at end April 2011).

Further to our representation of 12 January 2011 (attached as annex A), and the issue of *Notice 2011-34*, we welcome the opportunity to submit our comments and suggestions. We also appreciate the dialogue with Mr S Musher in London on the 24 May 2011, which was very insightful, and provided helpful clarification.

The proposed requirements are administratively burdensome and costly

The requirements of *Notice 2010-60 and 2011-34* present very serious compliance and operational issues for us, and we express our concern at these. The reporting requirements of *Section 1471*, detailed in *Notice 201-60* Section IV A, which relate to US tax law is data that we do not currently hold that information on any of our 277,000 members. We would also not be able to identify US account holders from our current records. To be able to identify any US members and get the relevant information, we would need to write to all of our members (or beneficiaries). This administrative exercise would incur significant cost, without the guarantee of responses. If we do not receive responses, we would be required to withhold payments as per *Notice 2011-34*.

However, the rules of the pension scheme, and UK law, do not allow us to do so. We are also restricted in the information we can store and disclose, governed by UK case law and the Data Protection Act 1998, and would not be able to disclose any information without the members' express consent.

The restrictions placed by *Notice 2011-60 and 2011-34* would disadvantage any US members of the Scheme, and may deter other academics from joining USS. This could negatively affect the free exchange of academics with the US, affecting the intellectual dynamism and advancement of this sector. As currently drafted, we would fail to meet the criteria of excluded foreign retirement plans, due to the scheme being sponsored by multiple academic institutions and also due to the several exchange programs and other academic programs, which require our members to work and live outside the United Kingdom.

USS operates in a highly regulated environment and poses a very low risk to the IRS

We wholly support the IRS's efforts to tackle US tax evasion. However, we believe that the above constraints and impact are disproportionate to the very low risk of US tax evasion that USS membership poses. As an occupational UK Registered Pension Scheme (RPS), we operate within a very highly regulated environment governed by both HM Revenue & Customs ("HMRC") and The Pensions Regulator ("TPR"). We are required to provide periodic reports to both HMRC and TPR at least annually and sometimes quarterly. HMRC may require three separate returns or reports whether to account for the scheme's tax obligations or to identify any unusual events. TPR also require an annual return to enable them to monitor the operation of our scheme to ensure that our members' funds are adequately protected.

Both HMRC and TPR may follow-up these returns and reports with inspections to confirm that we have been meeting our requirements. They would impose severe penalties if any issues were identified, which could (if the failure was serious enough) result in the scheme losing its registration.

In addition, as our members' benefits are based on their salaries at the time they retire, we are also required to pay an annual insurance levy to the UK Pension Protection Fund. This is a UK Government-backed body which guarantees members' pensions if their pension scheme with insufficient funds to meet its obligations.

Given the considerable regulatory oversight within the UK that a RPS has to submit to, it would be highly unlikely that such an entity would be set-up for the purposes of tax avoidance.

Whilst contributions to a RPS are subject to tax relief, whether they come from the member or the member's employer, there is a threshold. Beyond this level, a tax charge is imposed which effectively negates any benefit of tax relief that a member may have gained on the additional contribution. If the proportion of the fund, which is paid outside the rules, exceeds certain thresholds as a proportion of the value of the fund, HMRC may remove the RPS's registration.

These tax charges would apply if a member were to transfer their fund overseas to a scheme that did not meet very strict conditions laid down by HMRC. HMRC have to approve any overseas scheme seeking

to receive transfers from the UK, and can withdraw this approval if the overseas scheme does not meet its obligations to HMRC.

In addition, there are very strict limitations on the form of benefits that the member may receive when they retire. The aim of these restrictions is to ensure that the member has an income for life in retirement, which in itself is taxed. Any payment that the member receives that contravenes these very strict rules is subject to very penal rates of taxation, which can be up to 70% of the payment made. We are sure that you agree that this is a very strong incentive to remain within the rules and to receive a taxed income in retirement.

As highlighted above and in our earlier letter of 12 January 2011, the risk of any individual using a RPS for the purposes of avoiding US tax is very low. If any individual were seeking to avoid US tax, they would be seeking to use a far more flexible and less regulated vehicle for the purpose.

#### Conclusion

On the basis that USS, as a RPS, poses a very low risk of being used for evasion of US taxes, and the disproportionate administrative burden compliance would require, we trust that you agree that it would be appropriate for a RPS to be included within the regulations defining institutions that will be excluded from the definition of an FFI.

We again appreciate this opportunity to express our views and look forward to engaging with the IRS and the Treasury to determine the criteria to exempt, a RPS from being subject to the FATCA provisions. Please direct all comments or questions related to this submission to David S Webster, Chief Financial Officer, telephone +44 151 227 4711, email david.webster@uss.co.uk.

Yours faithfully

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