

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

January 20, 2011

Notice.Comment@irscounsel.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:

**Exclusion of Foreign Retirement Plans**

Universities Superannuation Scheme (USS) is one of the largest private sector pension schemes in the UK, with assets at 31 March 2010 of over \$ 46 billion and investments in the US of approximately \$ 6 billion. It was established in 1974 as the principal pension scheme for academic and senior administrative staff in UK universities and other higher education and research institutions.

The scheme is a multi employer sponsored scheme (comprising approximately 400 employers), so that each of the member universities and similar institutions are scheme sponsors, and are jointly responsible for meeting the pension obligations to all scheme members. There are approximately 277,000 scheme members, and contributions to fund the scheme are collected from each of the scheme sponsors and also from the active individual members (i.e. members currently employed by a scheme sponsor). The contributions required are set by the USS trustee to ensure the scheme's obligations can be paid; currently the sponsors are required to contribute approximately 16% of their payroll costs.

We understand the intent of the Foreign Account Tax Compliance Act, and we welcome the advice given by the Internal Revenue Service that it intends to exclude those entities and accounts that pose a low risk of being used for tax evasion from having to comply with the full reporting and other requirements of the Act. We support the IRS's intention therefore to exclude foreign retirement plans from the provisions, on the basis that they currently pose a low risk. We also support the submission already made by the European Federation for Retirement Provision, which was made on behalf of the various national associations of Pension Funds (USS being a member of the UK association).

We believe USS poses an extremely low risk of being used for tax evasion (see below) and that the additional costs and administration required to comply with the full disclosure and tax withholding provisions would be disproportionate, compared to the minimal amounts of US tax that could be at stake. Very few of our members are US citizens, but to comply we would need to collect data and evi-

dence of nationality from each of our 277,000 members, being information that we do not currently hold. The data protection legislation in the UK would also make it difficult for us to disclose information to the IRS, and we are not entitled to withhold US tax from the pensions we pay to our members.

We consider that the draft guidance covering which types of foreign retirement plans might qualify to be excluded from the provisions is too narrow to permit most legitimate foreign retirement plans to operate effectively. It would be particularly oppressive to the work of USS members, given that the scheme operates in the academic sphere, where secondments to foreign universities ensure that a free exchange of ideas and developments takes place, being an essential part of a healthy education sector.

If the current draft definition of a foreign retirement plan remained unchanged, this could compel USS to exclude US citizens from joining or remaining in the scheme, or for USS to prevent its UK and other members taking secondments to work in the US or other countries. This would reduce the dynamism of the sector generally and particularly impact US universities and their staff, by tending to separate them from the rest of the academic world.

We do however recognise that ‘retirement plans’ come in a multitude of forms, some of which may not be as low risk as USS, and we accept that any exclusion must be formulated to ensure that only low risk entities are excluded. The main reason we believe USS is low risk is because the benefits it pays and the contributions it collects are tightly regulated either by UK tax legislation for Registered Pension Schemes or by its own trust deed and rules. These already work to prevent individuals transferring money into the scheme with the intention to conceal funds from the US authorities; total contributions are limited by reference to an individual’s salary and any benefits may only be accessed in limited ways (being dependent on certain life events, such as reaching retirement age or on the death of the member, and being based on rigid formulae of entitlements, rather than a right to receive the cash value of their pension account).

Further, we consider that the current regulatory regime in the UK is sufficient to ensure that all UK Registered Pension Schemes remain low risk, because the regulations are drafted so as to prevent tax evasion. The UK has a double tax agreement with the US, which implicitly recognises the similarity of intent of general tax legislation in both countries, including that related to retirement plans.

We suggest that this approach could be extended to most jurisdictions, and that two possible definitions of a foreign retirement plan for exclusion from the provisions might therefore be;

- 1. Where there is a tax treaty between the US and the country of residence of any foreign retirement plan and where that plan is a Pension Scheme or Retirement Plan as defined under the treaty, it shall be exempt from the provisions of FATCA, until and unless the IRS determined that the benefit and contribution limits operated by the foreign retirement plan were not sufficiently restrictive, so that the plan posed**

more than a low risk of being used for evading US tax.

or

2. Retirement plans that are authorised or registered by the Tax or other Authorities in their country of residence shall be exempt from the provisions of FATCA, provided that the conditions for that authorisation or registration include rules for benefit payments and /or contributions that are judged by the IRS to ensure that only pension schemes that pose a low risk of being used for tax evasion could be authorised or registered.

We appreciate the opportunity to express our views on *Notice 2010-60*. Any questions concerning this submission may be addressed to Colin Hunter, Chief Financial Officer; telephone +44 151 227 4711; colin.hunter@uss.co.uk.

Thank you very much for your consideration.

Yours faithfully

Colin Hunter  
Chief Financial Officer