

[TEXT OF THE FATCA COMMENT LETTER SUBMITTED BY
VERITAS PENSION INSURANCE COMPANY LTD.]

April 12, 2011

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

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

Re: *Notice 2010-60* & FATCA Rulemaking re. Exemption for Pension Companies

Dear Sirs or Madams:

Veritas Pension Insurance Company Ltd. (“Veritas”) is a Finnish pension insurance company. We manage the pensions on behalf of approximately 19,300 employers and their 68,400 employees (of whom 26,200 are presently receiving pensions). The pension benefits are funded out of assets that employers contribute to us, which are then pooled and managed in a prudent manner. Our assets under management are approximately \$ 2.1 billion.

We are writing concerning the upcoming FATCA rulemaking. Specifically, we wish to share our thoughts about the mechanics of how to identify non-U.S. pension plans that should be exempt from FATCA.

Some commentators (e.g., USS, in its January 12, 2011 letter) have suggested that FATCA exemption for non-U.S. pension plans could be determined on the basis of whether the foreign financial institution is an exempt Pension Scheme or Retirement Plan under the terms of its country-of-domicile’s tax treaty with the United States. For the reasons explained below, we oppose this being the sole method of defining exempt pension plans, and we strongly encourage you to consider defining the exemption using other alternatives that have also been presented.

The main problem with relying on tax treaty status as the sole determinant of FATCA exemption is that some tax treaties can exempt retirement plans in an inconsistent and illogical manner. For example, the U.S. treaty with Finland only grants exemptions to those retirement plans that are organized as “mutual” entities. Only some, but not all, Finnish pension providers are “mutual”; others (including Veritas) are “corporate,” and thus not entitled to the tax treaty’s exemptions on tax withholding. Thus, if tax-treaty exemption were the sole determination factor for FATCA exemption, only a subset of pension plans would be able to obtain an exemption.

The second option, which was also suggested in the USS letter, is a better alternative, as it would define exempt retirement plans by whether they are recognized as (and regulated as) retirement plans in their home jurisdiction. This is, in our view, as more rational test, as it avoids reliance on problematic tax-treaty provisions. Given the high stakes involved with safeguarding pension assets, most countries with pension plans have chosen to provide a meaningful level of regulatory oversight to their retirement plans. Thus, being subject to such a regulatory framework (plus perhaps a broadly-distributed base of beneficiaries) is a logical test of whether a foreign financial institution should be exempt from FATCA. And, it avoids the problem of relying on tax treaties to define pension plans.

A third option would be for the FATCA regulations to define pension plans in a way that does not reference tax treaties or non-U.S. regulatory schemes. (This is the option chosen in the initial FATCA notice of proposed rulemaking, although it is apparent from the many comments that the definition was unworkably narrow.) If this system is used, our request is that it be broad enough to cover the Finnish pension plan system, where pension insurance companies and corporate pension plans manage around 60% of statutory pension assets in pooled funds on behalf of employers and their employees. The backbone of the Finnish pension system is statutory insurance.

Respectfully yours,

Staffan Sevón
Chief Investment Officer

Ilona Karppinen
Portfolio Manager

cc:

Commissioner Douglas H. Shulman,
Internal Revenue Service

John Sweeny,
Office of Associate Chief Counsel (International),
Internal Revenue Service