

[TEXT OF THE FATCA COMMENT LETTER SUBMITTED BY
INVERCO]

INVERCO REPLY TO NOTICE AND REQUEST FOR COMMENTS REGARDING IMPLEMENTATION OF INFORMATION REPORTING AND WITHHOLDING UNDER CHAPTER 4 OF THE INTERNAL REVENUE CODE (IRS NOTICE 2010-60)

1. ~ INTRODUCTION

INVERCO (Spanish Association of Collective Investment Schemes and Pension Funds) represents more than six thousands collective investment schemes and more than 1.300 pension funds, with assets under management over EUR 310 billion.

INVERCO thanks IRS notice and request for comments and appreciates the opportunity given to all market participants in order to make their comments and express their points of view on implementation of information reporting and withholding under chapter 4 of the Internal Revenue Code (in particular, exemption of certain foreign retirement plans, as they pose a low risk of tax evasion)

As a general comment, INVERCO considers that *all foreign retirement plans should be exempted, irrespective of the sponsor, providing that they are subject to restrictions (such as strict requirements on disposal, maximum limits on contributions and supervision) that prevent tax evasion.*

2. ~ COMMENTS

In page 15 of Notice 2010-60, it is stated that, "Although a retirement plan may qualify as a financial institution under section 1471(d)(5), Treasury and the IRS intend to issue guidance providing that certain foreign retirement plans pose a low risk of tax evasion for chapter 4 purposes, and therefore payments beneficially owned by such retirement plans will be exempt from withholding under section 1471(a).

Treasury and the IRS anticipate that a foreign retirement plan will be identified as posing a low risk of tax evasion only if the retirement plan:

- (i) qualifies as a retirement plan under the law of the country in which it is established,
- (ii) is sponsored by a foreign employer, and
- (iii) does not allow U.S. 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.

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. In addition, comments are requested as to whether other categories of foreign employee benefit or deferred compensation plans should be subject to the same treatment as foreign retirement plans for chapter 4 purposes.”

This proposal of exemption is only referred to Pension Plans sponsored by employers (occupational or second pillar schemes). However, there are Pension Plans sponsored by other entities that comply with the same regulation in the foreign country and should be exempted.

In Spain, there are the following kinds of Pension Plans, depending on constituents:

- Employment system’s Pension Plans: those of which the sponsor is any Entity, Society or Firm, and whose participants are its employees (occupational or second pillar schemes).
- Associate system’s Pension Plans: those of which the sponsor is an Association, Syndicate or Labour Union, being the participant its associates or members.
- Individual system’s Pension Schemes: those of which the sponsor is one or several financial Entities, opened to any participant (individual or third pillar schemes).

Irrespective of the constituents, all of them are subject to restrictions (strict requirements on disposal, maximum limits on contributions and supervision) that make tax evasion very difficult and improbable:

A. REQUIREMENTS ON DISPOSAL

Pension Plans are constituted as a long term saving instruments. Therefore, in Spain, contingencies that would cause a right to obtain benefits are only the followings:

- Retirement.
- Permanent disability: Total, Absolute and Severe Disability.
- Death affecting participant or beneficiary: Widowhood, Orphanage and Pensions in favour of other heirs or

other designated people.

- Severe or high dependence affecting participant

Vested rights can be received by the participant only in two special liquidity cases: serious illness and unemployment.

B. MAXIMUM LIMITS ON CONTRIBUTIONS

Persons eligible to make contributions is restricted. Fundamentally, only participants in their own favour, sponsors of Employment system's Pension Scheme, in favour of their employees, and certain relatives or guardians, in favour of disabled people, can make contributions to Pension Plans

General Regime establishes that annual contributions to Pension Plans made by a participant and by promoters in favour of this participant may under no circumstances exceed, altogether, 10.000 ?? or, if participant is older than 50. 12.500 ??.

Special Regime applicable to disabled people establishes the following limits:

- Individually, annual contributions to Pension Plans made by the disabled participant can be up to 24.250??. Additionally, annual contributions to Pension Plans made by each family participant in favour of a disabled person must be, at a maximum, 10.000??.
- Jointly, annual contributions made in favour of a disabled person, including his/her own annual contributions, may under no circumstances exceed 24.250 ??.

C. SUPERVISION

Compliance of maximum contributions limits and documental justification of contingencies must be controlled or send to, basically, Pension Funds' Management Companies and Depositaries n1 .

Additionally, Pension Funds, their Management Companies

and their Depositories are submitted to the supervision and inspection of the Spanish authority called “Direccion General de Seguros y Planes de Pensiones” (DGSFP), which belongs to Spanish Ministry of Finance and Taxes, both at their beginning (previous authorisation from the DGSFP is needed) and during the development of their activities (they have to send their quarter and annual reports and can be inspected on-site by the DGSFP).

It would be very strange that persons with tax evasion interests make contributions to Pension Plans, irrespective of their sponsors, because those persons will not have free disposal, their annual contributions are limited to a very low amount and there are supervision rules. These restrictions are those that should be taken into account in order to consider retirement plans as posing a low risk of tax evasion. However, sponsors of Pension Plans should not be relevant in this respect.

Madrid, 25 October 2010

FOOTNOTES:

n1

Pension Plans integrate their contributions plus other resources into Pension Funds, that are managed by Pension Funds’ Management Companies. The custody and deposit of transferable securities and other securities integrated in the Pension Fund are entrusted to Pension Funds’ Depositories.