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Internal Revenue Service

P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

VIA ELECTRONIC MAIL
www.regulations.gov (IRS-REG-121647-10)

Re: Comments on Proposed Regulations (REG-121647-10) Under Chapter 4 of Subtitle A of the Internal Revenue Code Regarding Unclear Exemption for Certain Savings Accounts – Retirement and Pensions Accounts

Introduction

Insurance Sweden is writing to comment on proposed Treasury regulations (REG-121647-10) (the “Proposed Regulations”) recently issued under Chapter 4 of Subtitle A of the Internal Revenue Code of 1986 (the “Code”).

Insurance Sweden is the industry organisation for insurance companies. About 40 insurance companies are members of Insurance Sweden and together they account for more than 90 per cent of the Swedish insurance market. Insurance Sweden is a member of Insurance Europe (former CEA), which is the European insurance and reinsurance federation.

Insurance Sweden appreciate the efforts that Treasury and the Internal Revenue Service (the “IRS”) made in the Proposed Regulations to address many of the unique issues relating to the application of Chapter 4 to insurers. However, we believe that

there are a number of areas where the regulations under Chapter 4 could better address certain insurance-specific issues. We share the concerns expressed by Insurance Europe in its response to the proposed regulations. But we would like to take the opportunity to respectfully urge Treasury and the IRS to take the following additional, but equally essential comments into account in promulgating the final regulations. The comments are in line with what was discussed at a meeting in Washington on 18th of April with representatives from Insurance Europe (including a representative of the Swedish insurance market) and the US Treasury.

The Current Draft Regulations exempt Certain Savings accounts from the definition of “financial account” and thereby from FATCA reporting obligations. This is the case with so called retirement and pensions accounts where, if the conditions set forth in the paragraph in question ((b)(2)(i)(A) of Section 1.1471-5), FFIs are not obliged to report these accounts.

We welcome this exemption. It is a good approach by the legislator to avoid unnecessary administration for US authorities as well as participating FFIs when it comes to financial products where there is no real risk of tax evasion.

However, for insurance retirement products that fulfill the same goals as the retirements/pension accounts, that are regulated in the same strict way and that fulfill all the conditions set forth in the paragraph mentioned above and where the only real difference is the nature of the product (account or insurance policy), we believe the current wording is unclear as to the possibility to exempt insurance contracts from reporting. We believe that since there is no real difference between the two types of products, the exemption should include such pension insurance contracts as well. The reasons for this are elaborated further below.

The use of insurance contracts for retirement purposes

There are different ways of securing an occupational pension for an employee. In some countries the tradition is to join a retirement plan. In other countries, the most common solution is for the employer to buy an insurance policy. In Sweden and some other countries, the latter is by far the most common pension solution used. The reasons for this are mostly historical and economical. The policies are a cheap, effective and secure way for the employers to fulfill their promise of retirement benefits towards the employees.

Occupational pensions (OPs) could either be based on a collective agreement or an individual agreement between the employer and the employee. Approximately 90 per cent of all employees in Sweden are part of a collective agreement on OPs, which from an international perspective is a very high figure. Approximately 4 million people are entitled to OPs. Collective Agreements are made between representative for large

trade unions and employer's associations. The agreement is binding in all parts for all parties comprised by the agreement. Approx. 80 per cent of all OPs decided by collective agreements are settled by the employer signing a pension insurance policy where the employee is either the policyholder or the irrevocable beneficiary.

These pension insurance policies are

- regulated as policies for the provision of retirement or pension benefits, and
- tax-favored

The employer is allowed to deduct the premium costs already when signing up for the policy. He also pays lower tax on the pension contributions. If it is an individual policy, the individual may deduct a certain amount of premiums paid in his income statement.

- All of the contributions are employer/employee/government contributions and limited by reference to earned income

This is correct as regards occupational policies. Please note that the current wording seems to exclude self-employed and individuals who signs up for such a policy, this will be elaborated further down.

- The assets are "locked in" and untouchable. No lump-sum payments allowed.

This guarantees the underlying retirement purpose of the policies and implies that there is no risk for misuse

- Constitutes no risk of tax evasion

All payments from the policies are paid out with tax withheld (net payments). Information about the payment is reported to tax authorities and the withheld tax is delivered by the insurance companies to tax authorities.

- Limits/penalties apply by law for withdrawals made before reaching a specified retirement age and to annual contributions exceeding the limits

No withdrawals are allowed before the age of retirement. Annual contributions exceeding the limits are not deductible and will be also taxed once payouts are made.

Limitation of annual contributions to 50 000 USD

The condition set forth in iii) in paragraph (b)(2)(i)(A)(2) of section 1.1471-5, restricts the annual contributions to 50 000 USD or less per year. We believe that this limitation may cause some serious problems in certain legitimate situations. We know for example that UK legislation permits annual contributions up to 50 000 GBP. The threshold may also make contributions impossible in a situation where the employer is obliged to set aside more than he has done before.

In the case of OP insurance contracts, sometimes the employer is forced to pay one time premiums in order to catch up with the benefit levels set forth in the pension agreement and to make sure that the employee is guaranteed the level of retirement benefits he is entitled to by the agreement.

This is typically the case when an employee late in his career gets a job with a big increase in salary. If according to the pension agreement the employee is guaranteed a defined benefit (for example 60 per cent of the employee's final salary) the employer must, in order to secure that the employee gets the retirement benefits he is entitled to, pay a onetime premium to "catch-up" and achieve the right level of retirement benefit.

The employer is allowed to deduct the one time premium calculated according to the agreement since he has not put aside enough contributions before. This does not mean that he can deduct more than if he had set aside the right amount from the beginning. On the contrary, the tax legislation makes sure that overall the benefits for the employee evenly apportioned on his entire working life and the deduction possibilities are not exceeding the legislative levels in question. In order not to make this situation disqualify a pension insurance product from being exempt from reporting we suggest that the wording would be altered in order to accommodate for these quite common situations.

Self-employed individuals and individual top—up pensions insurance policies

The current draft wording of the exemption for Certain Savings Accounts- Retirement and pension Accounts could be interpreted as excluding self-employed pension solutions and individual solutions. This since the draft regulations demand that the contributions must be made from “government, employer or employee”. Given that the pensions insurance contracts fulfils all the other conditions laid down in the paragraph, we believe that also these categories should be treated the same way and exempt from reporting.

Conclusion

We see no real reason for treating financial products which serve the same purpose and who are regulated in similar (strict) ways, differently in FATCA. The format should not be decisive or the nature of the provider (bank or insurance) but rather the contents of the product. By including pension insurance contracts in the reporting exemption together with Retirement and Pension Accounts, there will be no difference as regards FATCA provisions, which in itself is a simplification.

The concerns we have are of great importance to us and employers and by exempting the abovementioned products unnecessary administrative burden associated with FATCA could be alleviated. We believe that for increased clarity, the draft regulations could benefit from being slightly revised and we have taken the liberty to draft a proposal which takes into consideration the comments above. We are convinced that the clarifications proposed could be done without jeopardizing the goals of FATCA or the need for relevant information to the IRS.

Should you have any questions on these matters or others we are happy to assist you in any way we can.

Proposal for a revised paragraph (b)(2)(i)(A) of section 1.1471-5

*(1) The account **or insurance contract** is held by a retirement or pension fund that meets the requirements of paragraph (f)(2)(ii) of this section **or an insurance company.***

*(2) The account **or insurance contract** is subject to government regulation as a personal retirement account **or personal retirement insurance** or is registered or regulated as an account/**insurance** for the provision of retirement or pension benefits under the laws of the country in which the FFI that maintains the account is established or in which it operates, and meets the following requirements--*


*(i) The account **or insurance contract** is tax-favored with regard to the jurisdiction in which the account is maintained;*

*(ii) All of the contributions to the account are employer, government, or **individual** contributions that are limited **by amount** or by reference to earned income under the law of the jurisdiction in which the account is maintained; and*

*(iii) Annual contributions (other than transfers from other accounts described in this paragraph (b)(2)(i)(A) or plans described in paragraph (f)(2)(ii) of this section or §1.1471-6(f)) are limited **under the laws of the country in which the FFI that maintains the account is established or in which it operates, or to \$ 50,000 or less**, and limits or penalties apply by law of the jurisdiction in which the account is maintained to withdrawals made before reaching a specified retirement age and to annual contributions exceeding **the limits under the laws of the country in which the FFI that maintains the account is established or \$50,000** (other than transfers from other accounts described in this paragraph (b)(2)(i)(A) or plans described in paragraph (f)(2)(ii) of this section or §1.1471-6(f)).*

Best regards

Insurance Sweden



Johan Lundström
Head of Legal Affairs



Christian Sandell
Senior Legal Advisor