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26 April 2012

Dear Sirs,

The Foreign Account Tax Compliance Provisions within the Hiring Incentives to Restore Employment Act (HIRE Act)

This submission is restricted to the issues raised by the Foreign Account Tax Compliance Act (in this letter referred to as 'FATCA') specifically in the context of life assurance, pension and annuity business.

The Phoenix Group is one of the larger insurers within the UK insurance industry. It is a member of the Association of British Insurers (ABI). This is the third submission from the Phoenix Group in response to IRS Notices; earlier submissions were dated 9 December 2010 and 23 May 2011. As a reminder, I can confirm that the Phoenix Group is a 'closed book' insurer with 7.6 million policies in force and assets of around £69 billion from its life companies.

The Phoenix Group is grateful for the opportunity to respond to the draft regulations, and would welcome your consideration of the following points.

1. Deemed-Compliant FFI

I would like to invite the Treasury Department and IRS to consider expanding the categories of deemed-compliant FFIs to certain specific insurance companies, or, to exclude such insurance companies from the definition of FFI, on the basis that the tax avoidance risk is negligible.

Such insurance companies are those that meet all the following criteria:

- Those which are closed to new account holders at, say, 18 March 2012;
- Those which have not solicited account holders outside their country of residence; and
- Those which do not and have never provided services to the global investment community.

With such insurance companies the tax avoidance risk for the IRS is negligible because a policyholder would have become a US citizen in nearly all cases some time after the insurance contract was set up, and, insurance contracts are, by their nature, long term arrangements with benefits subject at least in part to some form of local taxation.

It is quite likely that other institutions that fall within the latest definition of FFI and which are closed to new accounts also represent negligible tax avoidance risks so I recommend that 'closed book' institutions are reconsidered generally.

2. Retirement Plans.

The latest draft regulations include requirements for certain retirement plans to be certified with deemed compliant status. Retirement plans approved under the law of the United Kingdom allow unlimited contributions but those contributions over £50,000 attract a very significant tax charge, and, the resultant benefits are, generally, taxed as earned income. Consequently retirement plans present no risk of tax evasion.

Operating a requirement to have contributions limited by reference to earned income will be very onus for the industry. I would recommend therefore, that the exception criteria for retirement and pension accounts is amended from the \$50,000 annual contribution limit to the contributions limit prescribed under local tax law, and the reference to earned income thereby removed. This would remove from scope many of the retirement plans in the accumulation phase as I believe the IRS initially intended.

3. Cash Value Insurance Contracts.

When considering cash value insurance contracts it would significantly ease the burden on insurers if that value could be determined at any point within one year of the reporting deadline. The reason behind this request is that typically an insurer values all its policies at set points in a calendar year which may not align to those required under the regulations. Significant changes to insurers' systems would be required in order to change the valuation basis to that currently required by the regulations.

4. Financial Account.

I would like to invite the Treasury Department and IRS to consider expanding the exclusions for 'Financial Account' to include annuity contracts that are in payment, or indeed, such insurance contracts that do not have a cash value. As well as having the benefit of removing from the FATCA reporting requirements accounts that will not hold a value, this proposal also takes into account that fact that such annuity contracts are either subject to local taxation, or, are paid free

of tax under a 'Double Taxation' agreement with the US and so are known to the IRS. The contracts once in payment cannot be cashed in or terminated (other than at death).

Where the annuity contract is not in payment then my recommendation is that these are treated in the same way as retirement plans.

5. Non-Retirement Savings Account

I would also like to invite the Treasury Department and IRS to consider removing the need to restrict contributions for 'non-retirement savings accounts' to earned income. This is specifically with reference to those accounts that are detailed in the draft regulations for exclusion purposes given they are tax favoured accounts within the jurisdiction in which the account is maintained, with other limits being locally imposed in relation to contributions and withdrawals.

Within the draft regulations, it is acknowledged that it is not helpful to include such accounts in the reporting requirements and an amendment to the exclusion criteria of this nature would be beneficial for the IRS and UK insurance industry alike. An individual does not need to be earning in order to contribute to such accounts, but would still be caught unnecessarily by the draft regulations where other limits are locally imposed. Reference to these local limits would afford FFIs with a useful relaxation with no prejudice to tax receipts.

6. Reporting of Policyholder Income

Under the draft regulations FATCA requires that UK FFIs report dividend, interest and other income for each policyholder who is identified as a US person for each tax year. The majority of policy administration systems in the UK do not record this data by policyholder due to the structure of the products or the design of the systems; such income is inherent within the value of the product. I would therefore like to invite the IRS to reconsider this requirement given that system changes would be extremely complex and costly for an unquantified IRS benefit.

A policy valuation is generally established each year and if this were provided to the IRS would result in an accurate statement of the account balance.

I would be grateful if the IRS and Treasury Department could consider the points detailed above with a view to excluding those contracts that have unintentionally been caught by the draft regulations, and to improving the validity of the scope of the final FATCA reports.

Yours faithfully



Clare Mountford
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The Phoenix Group