

Mr John Sweeney
Attorney-Advisor
Office of Associate Chief Counsel (International).
Internal Revenue Service
1111 Constitution Avenue NW
Washington, DC 20224

Dear Mr Sweeney

Support for follow up submission from the British Bankers' Association to Notice 2011-34

I am writing on behalf of the United Kingdom's Building Societies Association to offer support to the recent follow-up submission to Notice 2011-34 made by the British Bankers' Association. Although we serve different constituencies, on many matters we are agreed. FATCA is one.

The Building Societies Association represents mutual lenders and deposit takers in the UK including all 48 UK building societies. Mutual lenders and deposit takers have total assets of over £365 billion (\$600 billion) and, together with their subsidiaries, hold residential mortgages of almost £235 billion (\$387 billion), 19% of the total outstanding in the UK.

UK building societies are mutual organisations, owned by their members, similar to but not the same as, thrifts; membership is achieved by becoming a mortgage or a savings customer (or both). Building societies and other financial mutuals currently fall within the definition of foreign financial institution.

Discussion

Our comments are high level and limited to the effect of the Foreign Account Tax Compliance Act on the mutual sector in the United Kingdom. We do not cover any of the detail, firstly as some does not relate to mutuals, and secondly it has already been covered well by the various British Bankers' Association submissions.

Like the BBA, we welcome the confirmation provided in Notice 2011-53 that US Treasury and the IRS are working with foreign governments to understand the specific administrative and legal challenges that must be addressed.

- Passthru payment

We agree with the BBA that the current withholding and passthru payment requirements are not capable of being implemented in practice.

We understand why the Treasury and IRS wish to discourage the use of participating foreign financial institutions as "blockers" through which non-participating FFIs could indirectly invest in US assets, but disagree with the approach taken in the notice with regard to the determination of passthru payment percentages. This appears to place a large administrative burden on compliant

FFIs, when it perhaps should be more appropriately borne by the non-compliant account holders and FFIs.

A multilateral solution, based on a targeted approach, seems to us to be sensible and fair.

While we have not carried out the detailed research the BBA has, our members share its concerns about the impact of the FATCA passthru payment requirements on securities settlements and interbank payment systems. Like the BBA, we believe there are serious questions as to whether the current concept of passthru payments can be implemented in a proportionate or workable way.

This is of particular importance to the mutual sector. Generally speaking, the majority of building societies operate straightforward savings and mortgage accounts. Few operate current (checking) accounts. A minimum of 75% of their lending must be in residential mortgages. Building society law forbids them to take risk positions in commodities, currencies or derivatives. As a general rule, they are not in the business of offering to their members complex structured transactions such as inheritance tax planning or involve themselves in opaque remuneration practices.

Building societies are incorporated and governed by the Building Societies Act 1986 (as amended in 1997) which requires societies to have as their main business the making of residential mortgage loans funded by the savings of members (customers), and describes how they are to be regulated in order to ensure that members' money is safe. Their business models are therefore simple and their members local. The impact of even a suitably modified passthru payment system would result in only a costly and disruptive compliance burden to the sector; more importantly, it would not meet the US government's goal of ensuring that its citizens and taxpayers pay their fair share of tax.

Most building societies open accounts only for UK resident individuals or trusts. As a consequence, there will be few US nationals/ taxpayers among their account holders.

The average account balance is low (£12,106 for the top 16 societies; £8,872 for the 23 in the second tier and; £11,320 the 13 in the third tier).¹ Most societies have a maximum limit on balances (usually £1 million per member, although most accounts have limits around £50,000). The vast majority of account holders already fall below the current "de minimis" limit set out in notice 2010-60.

- Threshold

Although it has no impact on our sector for the reasons above, we do agree with the BBA that "private banking" and other retail accounts should be distinguished on a risk-based approach. The BBA has made a strong case for moving the threshold for identifying private banking accounts to \$1,000,000. It has pointed out that a similar rationale has been used to identify a private banking account under the US Patriot Act 2001. We too believe that the treatment for US and non-US institutions should be aligned.

- Excepting financial institutions

Some entities have already been recognised in earlier notices as presenting a low risk of evasion of US taxation: non-US governments; international organisations; non-US central banks; and retirement plans. These are outside the scope of FATCA.

We believe that UK building societies and other mutuals present a similar low risk of evasion for the reasons set out earlier. To comply would be a massive, expensive and disproportionate exercise for the very low number of US nationals/ taxpayers who have accounts, of any description let alone of significant amounts. The cost of being able to certify that there are no US persons, let alone US

¹ The sterling values respectively translate to approximately: \$19,921; \$14,599 and \$18,628. None has average balances above £23,000 (\$37,848) and only two have balances over £20,000 (\$32,911). Source: Building Societies Database 2010: Insight into the shape of UK Building Societies, KPMG, Leeds, UK. (Since the report's statistics were compiled, three building societies have been merged into three of the largest four societies.)

taxpayers, holding accounts, or to identify the very few who do hold balances, is out of all proportion to the cost of adapting and interrogating the societies' systems to make the reports required.

Any such charges will have to be passed on to the member in terms of lower savings and higher mortgage rates. It seems unfair that UK customers should suffer the not inconsiderable costs of compliance with US tax legislation where the risk of tax evasion is so very low.

We would ask that UK mutuals be granted exclusion from the due diligence, registration and filing requirements in the same way as other entities identified as being of low risk of tax evasion.

Thank you for your consideration.

Yours sincerely



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