



April 26, 2010

Via Federal Rulemaking Portal:

www.regulations.gov

Internal Revenue Service

CC:PA:LPD:PR (REG-146097-09)

Room 5203

Internal Revenue Service

PO Box 7604, Ben Franklin Station

Washington, DC 20044

RE: Announcement 2010-22

The Association of Bermuda Insurers and Reinsurers (ABIR) is a trade association representing 23 substantial insurers and reinsurers that have significant underwriting operations in Bermuda. ABIR is pleased to respond to the Internal Revenue Service's request for "comments on future guidance and other issues concerning the interpretation and implementation of new tax code provisions under the Hiring Incentives to Restore Employment Act of 2010 that seek to improve tax compliance for foreign accounts and cross-border transactions," under measures included from the Foreign Account Tax Compliance Act ("FATCA").

I am writing to request that the forthcoming guidance include confirmation that the FATCA provisions will not ordinarily apply to property and casualty companies writing insurance or reinsurance in the ordinary course of their business. The statutory language does not implicate any insurance companies; rather, the operative rules apply only to "foreign financial institutions."¹ The need for clarification arises because the explanation prepared by the staff of the Joint Committee on Taxation indicates that it may be appropriate for the Secretary to apply the FATCA reporting and withholding requirements to "certain insurance companies."

Importantly, the relevant legislative history specifically identifies the nature of the insurance arrangements that the drafters anticipated would be addressed by the Secretary's regulatory authority:

¹New Internal Revenue Code Section 1471(d)(5) defines a foreign financial institution as "any entity that accepts deposits in the ordinary course of a banking or similar business, as a substantial portion of its business, holds financial assets for the account of others, or is engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities (as defined by Section 475(c)(2)) without regard to the last sentence thereof), interests in partnerships, commodities (as defined by Section 475(e)(2)), or any interest (including a futures or forward contract or option) in such securities, partnership interests, or commodities."

“It is anticipated that the Secretary may prescribe special rules addressing the circumstances in which certain categories of companies, such as certain insurance companies, are financial institutions, or the circumstances in which certain contracts or policies, for example *annuity contracts or cash value life insurance contracts*, are financial accounts or United States accounts.” (*Technical Explanation of the Revenue Provisions Contained in Senate Amendment 3310, The “Hiring Incentives to Restore Employment Act, under Consideration by the Senate,”* prepared by the Staff of Joint Committee on Taxation, February 23, 2010 (JCX-4-10), at page 44.)

The language cited above should be contrasted to the very similar language included in an earlier technical explanation that simply referred to “certain contracts or policies,” without specifying “annuity contracts or cash value life insurance contracts.” (*Technical Explanation of H.R. 4213, The “Tax Extenders Act of 2009” as Introduced in the House of Representatives on December 7, 2009,* prepared by the Staff of Joint Committee on Taxation, December 8, 2009 (JCX-60-09) at pages 132-133). The specified insurance contracts are of a type that may allow policyholders to direct the underlying investments, and thus are akin to “financial accounts” that are subject to the new compliance rules. The typical property-casualty contract does not include this feature, and the inclusion of an “ordinary course of business” rule for such insurance companies would implement the clarification in the legislative history by allowing the Internal Revenue Service to exclude typical property-casualty insurers, while reserving the ability to require reporting of entities that present tax compliance issues of the type that FATCA is intended to address.

Thank you for your consideration of this important matter. If anyone in your office would like additional information or has questions about the attached documents, please do not hesitate to contact me.

Sincerely,



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