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GFIA Response to OECD Consultation Document on Standard for Automatic Exchange of Financial Account Information

Introduction

Tax evasion is a serious problem for jurisdictions around the world and the Global Federation of Insurance Associations (GFIA) is supportive of the OECD and Governments working collaboratively to combat it. However, any global standard for Automatic Exchange of Information (AEOI) that is introduced to combat tax evasion must be risk-based, workable, targeted, proportionate, and should not place an unnecessary burden on financial institutions or compliant individuals. While we support the OECD's objective of reducing tax evasion globally, we have a number of concerns with the proposed global standard for AEOI as outlined below.

Timing

The G20's timetable for implementing global automatic exchange of tax information is overly ambitious and unrealistic given the sheer magnitude of this project. To implement the OECD global model, companies will require significant lead time, at least 18 months from the date the final rules and commentary are issued. Without the commentary, it is not clear how terms and requirements should be implemented or the effect they will have on the global financial services market. Accordingly, we recommend that the standard and commentary be developed in tandem, targeted for the end of 2014, to allow adequate time for industry consultation and input. Resources are already stretched to meet FATCA requirements, let alone the broad OECD initiative.

Risk-based Approach

It is important that the OECD model take a risk-based approach. This will minimize compliance costs and ensure that any compliance costs, which will ultimately be borne by consumers and shareholders, can be justified and represent a worthwhile expenditure of limited economic resources. The OECD's approach should recognize that insurance products present a very low risk of tax evasion for many reasons (the long term nature of these products, surrender and mortality charges, and the fact that they are subject to local tax regimes which require tax reporting and/or withholding). In addition, the long term nature of insurance products and limited customer contact make any requirements to renew documentation more challenging, costly and unlikely to be successful.

Consistency

It is critical that the global model is consistent with the outcome of FATCA in each jurisdiction. Otherwise, companies will need to build and operate multiple systems which will substantially increase compliance costs. For this reason the CRS needs to provide:

- A workable exemption for pre-existing cash value insurance and annuity contracts
- Optional deminimis thresholds as with FATCA
- Exemptions for low risk entities and products identified by each country, as with FATCA
- Ability to use the due diligence procedures set forth in the US Treasury Regulations.

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Exemption for Pre-Existing Individual Insurance and Annuity Contracts

The OECD's consultation document (in CRS Annex Section III A) recognizes the low risk of tax evasion posed by pre-existing insurance in its provision of an exemption for pre-existing cash value insurance and annuity contracts. The OECD model follows the FATCA approach and requires that the FI is "effectively prevented by law from selling such Contract to residents of a Reportable Jurisdiction". While this approach is effective in a number of jurisdictions, it will not work for EU-based insurers under a global model.

European insurers are able to provide insurance in another Member State under the principle of the "freedom to provide services"[1]. As a result, theoretically all European insurers are able to sell their products in another EU jurisdiction, after fulfilling required administrative conditions. However, in practice, cross-border insurance activity in the EU is very low, as a result of language barriers or different legal, regulatory and taxation systems. Therefore, if a European insurer wants to expand its activity to other jurisdictions, it is typically done by setting up branches/ or acquiring local companies. Due to the difficulty of meeting the "effectively prevents" requirement in the EU, we are concerned that European insurance companies would be the only companies worldwide having to report on all pre-existing accounts, which would result in an unlevel playing field and could increase the cost of insurance in Europe. Therefore, we urge the OECD to modify the "effectively prevents" requirement by treating the EU as a single jurisdiction for the purpose of reporting on pre-existing insurance policies.

We are also concerned that the "effectively prevents" requirement may not be met in all other jurisdictions around the world. From a risk-based perspective, we do not see the need to include existing insurance policies in scope as long as the legal framework of the reporting jurisdiction obliges insurance companies to report or withhold tax. Accordingly, and for consistency with FATCA, a $250,000 exemption should also be provided for all pre-existing cash value life insurance and annuity contracts. Differences with FATCA in this regard will result in FIs having to duplicate system builds which will significantly increase compliance costs. Any concerns that thresholds may create additional burdens for some FIs, for example, due to account aggregation requirements, can be resolved by making the application of this threshold optional.

Deminimis Threshold for New Insurance and Annuity Contracts

In addition, from a risk-based perspective, and for consistency with FATCA, we recommend an optional deminimis threshold for any new individual cash value insurance and annuity contracts such that a new individual account is not required to be reviewed, identified, or reported unless the account balance exceeds $50,000. Exemptions for small life insurance and annuity policies are particularly important in the third world, where insurers are providing micro-insurance and, as a result, the vast majority of their policies would be below $50,000. In addition, such an exemption is important for companies that sell only small low risk life insurance policies, such as funeral insurance.

Treatment of Life Insurance Beneficiaries as Accountholders

According to the definition of "Account Holder", upon the maturity of a Cash Value Insurance Contract or Annuity Contract, each person entitled to receive a payment under the contract is treated as an Account Holder. This rule is unique to life insurance company products. It does not apply to any other types of financial accounts. It should also be noted that the beneficiary receiving a death benefit of an insurance contract is not the customer of the insurance company but a third party to the contract, and, as such, there is little risk of tax evasion. In addition, the death benefit will be necessarily transferred to a bank account which will be in the scope of the automatic exchange of information.

[1] Under the EU consolidated Life Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance.

Since no final determination can be made until the time of death as to the beneficiaries who have been designated, this rule effectively requires Life Insurers to conduct fresh due diligence on beneficiaries at the time of the insured's death. This requirement involves significant concerns and compliance burdens for life insurers. The presumption rule which allows a reporting FI to presume that an individual beneficiary (other than the owner) of a Cash Value Insurance Contract receiving a death benefit is not a Reportable Person and to treat such a Financial Account as other than a Reportable Account unless the FFI has actual knowledge or reason to know that the beneficiary is a Reportable Person) is helpful. However:

- This presumption rule only applies to individuals; and
- Only applies for Cash Value Insurance Contracts (i.e. excludes annuities)

This rule should also be extended for benefits payable upon maturity/death under an annuity contract. If, for some reason, the OECD is not able to provide relief for all annuities, then at a minimum, there should be an exemption for beneficiaries entitled to payments of less than a specified amount (for example $1 million).

In addition, until the payout-phase of any life-insurance or annuity contract, reportable persons should be limited to the "owner"/customer. (The definition of "Account Holder" also includes "any person entitled to access the Cash Value or change the beneficiary of the contract"; however, insurers generally do not have information on these persons in their files and would therefore have difficulty reporting on these persons.)

Exemption for Retirement and Pension Products

As drafted, the exemption for retirement and pension products does not include all such products that are exempt under FATCA. The OECD model should clearly indicate that, in addition to all government registered products (both in the accumulation and decumulation phase), any pension (2nd pillar and all 3rd pillar private pensions) should be excluded, provided withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to any other withdrawals. In addition, any retirement or pension products which are recognized under national legislation and exempted under Annex II of any IGA should also be exempt under the OECD model.

Place of Birth

The place of birth is new data which the consultation document indicates may be required by some jurisdictions. In general, place of birth is not required data for AML purposes for insurance products in most jurisdictions. Accordingly, place of birth will not generally be available for pre-existing accounts. For new accounts, the required self-certification requests the TIN and the date of birth, not the place of birth. Collecting place of birth data should not be required as this information is sensitive and has human rights implications. In addition, place of birth is not an indicator of tax residency (with the exception of the U.S.) and as such should not be required. Including place of birth (even optionally) could run the risk of a large number of false positives.

Due Diligence on Pre-existing Individual Accounts

As noted above, from a risk-based perspective, and as recognized by the OECD, all pre-existing insurance should be exempted. However, since insurance companies may also have banking and fund operations, we are also generally concerned about the following aspects of due diligence for pre-existing individual accounts:

- *Lower Value Accounts:* "Current" address must be specified as the "last known" address.

- *High Value Accounts:* The "Exception if Databases Contain Sufficient Information" is unworkable since it requires that the FI's electronically searchable information include "the Account Holder's residence status" and this information is not generally collected. The other indices are sufficient to determine the Account Holder's residence.

Ability to Rely on Third Parties

The commentary indicates that the model "does not provide an explicit rule regarding the use of third parties to carry out the due diligence obligations of Financial Institutions. Thus, it does not prohibit the use of third parties but also does not try to develop a single rule applicable to all countries." This is inconsistent with FATCA which specifically recognizes the role of third parties. Given the very significant role that third parties, including insurance agents, play in interfacing with clients and conducting AML requirements, it is important that the model provides the ability to rely to third parties.

Appropriate Reporting Period Should Include Policy Anniversary Date

The commentary needs to make it clear that, for insurance and annuity products, policy anniversary date is an "Appropriate reporting period", consistent with the treatment for FATCA purposes.

Ability to Use "Residence Address Test" for New Individual Insurance and Annuity Contracts

In jurisdictions where insurance contracts are only sold to residents (for example Japan), life insurers should be able to use the "residence address test" based on the current address for new individual cash value insurance and annuity contracts. This will reduce compliance costs and is consistent with a risk-based approach. In this case, the only reason that policyholders could be non-residents for tax purposes is if they move and this will be identified on a "change in circumstances" due to a change of address.

Ability to Use the Due Diligence Procedures in the US Treasury Regulations

Financial institutions should be able to use the due diligence procedures (ie. the "indicia" approach") set forth in US Treasury FATCA Regulations since a number of institutions around the world have already incurred significant systems development costs and these new systems are substantially complete. FIs should not be required to build and operate two separate systems as this will substantially increase compliance costs.

Exemption for Accounts Held by Non-Profit Organizations

Consistent with a risk-based approach, there should be an exemption for non-profits as there is under FATCA.

Conclusion

GFIA is supportive of the OECD and Governments working collaboratively to combat tax evasion. However, we strongly believe that there should be a single global standardized solution that is risk-based. As noted above, a number of modifications are required to the OECD proposal to reflect the fact that insurance, by its very nature, presents a low risk of tax evasion.

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About the GFIA

Through its 35 member associations, the Global Federation of Insurance Associations (GFIA) represents the interests of insurers and reinsurers in 56 countries. These companies account for around 87% of total insurance premiums worldwide. The GFIA is incorporated in Switzerland and its secretariat is based in Brussels.