GFIA response to OECD Discussion Paper re Automatic Exchange of Information

Introduction

Tax evasion is a serious problem for jurisdictions around the world and the Global Federation of Insurance Associations (GFIA) is supportive of Governments working collaboratively to combat it. However, any Automatic Exchange of Information (AEOI) systems that are 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.

GFIA strongly believes that, in developing an AEOI system, a global standardised solution is needed. With this in mind, we are supportive of the OECD leading this initiative. At present, there is much uncertainty with countries and regions acting unilaterally. There is a possibility that there will be multiplicity of reporting across jurisdictions which would be disproportionate and create an unnecessary burden on financial institutions and on their customers and shareholders who will ultimately bear the burden of increased compliance costs.

A global AEOI system should adopt a risk-based approach to preventing tax evasion. Furthermore, any moves to adopt a global AEOI need to be looked at in light of the many other regulatory challenges the insurance industry is currently facing globally. All of these changes come at a cost. A global AEOI has the potential to place substantial initial and ongoing costs on the insurance industry. We therefore encourage the OECD and Governments to consider the impact of a global AEOI system on insurers in light of their role in supporting the global economy and recovery.

Most exchange of financial information systems in existence around the world have been designed with banks in mind, with insurance as an afterthought. This letter therefore focusses on the main concerns and key recommendations of the insurance industry in developing a global standard. We would be more than happy to provide you with any further information to support our recommendations.

Scope

Insurance

Insurance products safeguard individuals, organisations and/or their property against the risk of loss, damage, theft, accident, sickness, outliving savings or death. Given this, only a very limited number of insurance products on the market provide any type of savings element and therefore have a potential for tax evasion risk. Furthermore, insurance products with savings elements are generally ineffective for tax evasion due to surrender and mortality charges. General insurance companies (which provide property and casualty insurance) do not create “financial accounts” (as defined by FATCA). They do not accept deposits and do not engage primarily in the business of investing, reinvesting, or trading in securities for their policyholders. Nor do life companies offering policies without cash value, such as accident and health insurance or term life policies that pay out a fixed agreed upon sum only on death.

Therefore any global AEOI system needs to carefully define the scope of insurance products caught. It needs to be explicit that only those insurance products that have a savings element and can be exchanged for a cash sum are within the scope of AEOI. This will make it clear from the outset that general insurance products and traditional protection products without savings elements are out of scope regardless of the value or frequency of the premiums paid.

Furthermore, given the nature of reinsurance agreements and the purpose of AEOI, we see no reason why reinsurance contracts should give rise to any documentation and reporting requirements. Accordingly, consistent with FATCA, we urge you to specifically exclude all reinsurance contracts.

In addition, from a risk-based perspective, it would be appropriate to provide thresholds. The amount of the thresholds should be consistent across all jurisdictions and, to address any possible concerns over compliance burdens, the application of thresholds should be optional at the discretion of individual financial institutions.

Pensions

Many governments have introduced highly regulated tax incentivised retirement plans, to encourage saving for retirement. These plans generally include significant restrictions on how and when benefits can be taken, making them unattractive as a vehicle for tax evasion.

We recommend the OECD follow the US IGA approach of excluding pensions and retirement savings from automatic exchange of information – both in the accumulation and payout phase. We would suggest that, in a global model standard, reference is made to both “government approved pension and retirement plans" and "tax favored retirement products" to ensure that all the products described in Annex 2 of the various IGAs signed to date (including 2nd and 3rd pillar occupational and private pensions) are exempt.

Pre-existing accounts

Under a risk-based approach, pre-existing insurance accounts, which are subject to local taxation and/or reporting, should be excluded from AEOI given the low risk of tax evasion. Both the EUSD and the model 1 FATCA agreement provide either an effective grandfathering rule or, in the case of the US model IGA (Annex I II A. 3), insurers are able to exempt almost all pre-existing policies from review and reporting.

Furthermore, despite insurers' best efforts; there are substantial legal and practical barriers that will prevent insurers from obtaining and transmitting the data required. These are related to the following key features of insurance policies:

- Life insurance policies are ***contracts*** – both the insurance company and the person insured are bound by the terms and conditions agreed at the time the policy was taken out and these cannot be changed unilaterally like bank accounts.
- Insurance products are designed to be held for the ***long-term***. There are often penalties (in the form of a tax, surrender charge or reduced yield) for surrendering the policy early. Also, in most jurisdictions, insurers are not allowed to change or cancel the contract without the policyholder's consent.

In order to make a determination of a policyholder's tax residence status, insurers would be required to ask for additional information from policyholders. This would be very burdensome and impractical because, in contrast with other financial service industries, life insurers typically have limited client interaction following the initiation of a policy as a result of the long-term nature of the products. For example, once a life insurance or annuity contract has been signed, until a claim or request for payment is received, which could be 60+ years later, the only interaction with the customer may be in the form of electronic payments (of premiums or benefits). Accordingly, contact information in the insurers' files may not be current, requiring additional efforts to obtain accurate contact information. Experience has shown that trying to obtain supplemental information from existing customers typically results in a very low response rate. This is complicated further given the contractual nature of insurance products – the insurer cannot unilaterally change or cancel a contact to compel a policyholder to assist the insurer in complying with any new reporting requirements.

Furthermore, given the age of some policies, which may be 50 or 60 years old, it may be extremely difficult to do effective electronic searches due to older IT systems on which many legacy products are administered, with significant limitations given the legacy computer language and hardware on which the systems are maintained.

Conclusion

GFIA is supportive of Governments working collaboratively to combat tax evasion. However, we strongly believe that, in developing an AEOI system, a global standardised solution is needed that is risk-based, and should therefore reflect the fact that insurance, by its very nature, presents a low risk of tax evasion.

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The Global Federation of Insurance Associations (GFIA) was established on 9 October 2012. Its 32 member associations represent insurers that account for around 88% of total insurance premiums worldwide.

GFIA is a non-profit association established to represent national and regional insurance associations that serve the general interests of life, health, general insurance and reinsurance companies and to make representations to national governments, international regulators and others on their behalf. The federation:

- *represents member association's interests to, among others, international regulatory groups, standard-setters and governments to increase the industry's effectiveness;*
- *contributes to an international dialogue on issues of common interest by formalising contact, cooperation and dialogue among national and regional insurance associations;*
- *co-operates with other international organisations, particularly those representing the insurance industry;*
- *shares non-commercially sensitive information and research; and*
- *provides information on positions taken by the federation.*

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