

Insurance Europe comments on the draft FATCA reporting schema

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Insurance Europe welcomes the opportunity to comment on the Foreign Account Tax Compliance Act (FATCA) draft reporting schema issued by the OECD on 20 November.

This paper set forth both (1) general comments on the FATCA reporting schema and (2) comments on data elements included in the draft FATCA reporting schema.

As a preliminary remark, we would like to comment on the necessity of establishing mandatory reporting schema by the insurance sector for the FATCA purposes. Insurance Europe believes that insurance companies rather than invest in a new system to report on limited number of US person should be also allowed to extract manually from their systems FATCA required data and transfer them in whatever format is sought by their national tax authorities. Therefore, the final decision on how the FATCA required data needs to be transferred by insurance companies to national tax authorities should be made at national level.

However it should be noted that there will be significant cost with extracting this data. In order to lower financial and administrative burden of the insurance sector, we believe that insurance companies should not be required to provide data which are not available in their systems or are very difficult to reach. Any detailed cost estimation work, would require some form of message implementation guideline such as a breakdown of what data is expected to be placed into each element of the schema.

Establishing the mandatory FATCA reporting schema will be expensive for insurance companies as they are currently not subject to any cross-border reporting requirements i.e. Treaty Relief and Compliance Enhancement (TRACE), the European Union Savings Directive (EUSD) and Qualified Intermediary (QI). While TRACE may be beneficial to banks and funds, the same cannot be said, with certainty, for the insurance industry. Insurance products generally do not receive any favoured treatment under a double tax treaty. In this respect, the European insurance industry has not been involved in the TRACE project, considering that the TRACE has been designed as an optional system. Next, it is also important to note that the TRACE project has been developed along the lines of existing reporting systems, e.g. the EUSD and QI. Insurance companies are currently not subject to either of these reporting requirements. Therefore, establishing the mandatory FATCA



reporting schema will be expensive for insurance companies as it is unlikely that our current systems and processes for reporting our policyholder's tax data would be in line with TRACE, EUSD and QI.

Furthermore, a mandatory system would be especially disproportionate for financial institutions with a very few or nil returns, which we expect will include many European insurance companies.

General comments on the draft FATCA reporting schema:

- Insurance Europe sees benefit in using an XML standard for FATCA reporting purposes. Bearing in mind that we expect the OECD to ultimately create a mechanism for the global exchange of information it is important to ensure that the FATCA required information is transferred via widely accepted schema so the information may be easily shared between governments.
- Insurance Europe welcomes the structure of draft FATCA reporting schema which consists of three separate modules: (1) common data elements for FATCA and TRACE (2) FATCA specific elements (3) TRACE specific elements. Having regard that the TRACE project is not relevant for the insurance industry, Insurance Europe believes that insurance companies should be obliged only to populate FATCA and common-elements fields and be allowed to ignore TRACE specific data.
- Insurance Europe is concerned by the timeline by which the TRACE solution for FATCA reporting purposes is pushed. Developing systems in order to comply with imposed FATCA reporting requirements at this time, is particularly problematic for insurance companies where much of the policy remains uncertain. Furthermore, we are less prepared for any required system changes, since as explained above, we have not been part of the TRACE project and given that we are currently not subject to any cross-border reporting requirements.
- Unlike in the banking industry, insurers do not generally directly interact with new customers. Instead, insurers rely on third-party insurance brokers and agents, including banks. Although, the FATCA draft regulations and model intergovernmental agreement (Model IGA) impose account identification procedures on insurance companies as Foreign Financial Institutions (FFIs), this will not automatically result in adoption of such procedures by non-FFIs third parties, such as brokers and agents upon which insurance companies must rely. Therefore, appropriate amendments to local law may be required to modify the requirements of third-party insurance brokers and agents to collect and transmit customer information required for FATCA purposes.
- Finally, Insurance Europe would like to emphasize that the ability of the insurance sector to provide effective feedback on the draft FATCA reporting schema has been impaired by our continuing incomplete understanding of the "big picture" regarding FATCA requirements. Without implemented bilateral Model intergovernmental agreements, and without final regulations, we simply cannot assess FATCA required information included in the draft FATCA reporting schema.

Comments on data elements included in the draft FATCA reporting schema:

Message Header

- (*Reporting period*) Insurance Europe welcomes confirmation that non-calendar year reporting is possible and this is reflected in the schema.

Reporting Financial Institution (identifying information)

- (*Reporting on foreign branches*) Insurance Europe believes that foreign branches will need their own tax identification number (TIN). Multiple records with the same TIN number (attributed to a mother company) may cause confusion, especially when branches are located in both IGA and non-IGA countries.

Reporting on individual/entity account holder (identifying information)



- *(Date of birth)* Insurance Europe welcomes confirmation that the field date of birth is optional.
- *(Name and address)* Financial institutions should be also allowed to provide data on the “name” and the “address” of account holder in the free format. There might be cases where it is not possible to provide all elements of the structured address i.e. city or structured name i.e. first name. This is of particular concern for insurers where the long term nature of products means that addresses are rarely stored in a structured form.

Account information (identifying information)

- *(Account number)* The identification of the account number is not clear in the schema. In case reporting on the account number is not mandatory, we believe that it should be optional.
- *(Providing pooled information)* If this schema is to be enforced on FI’s then it would mean that aggregation of accounts would become possible. However, we would only feel comfortable doing this if we have the tax identification number (TIN) which is a unique identifier attributed to a single accountholder. This is because it is not uncommon for people with similar or the same name to be living in the same city (the mandatory field for address). According to the FATCA draft legislation and Model IGA, TIN of accountholder will not be required until 2017. Therefore until 2017 this should not be a mandatory field.
- *(Account closure)* It is not clear how to determine closing date of an account in the schema.
- *(Account balance)* Further clarification is required on how to determine and report on the account balance in the schema.

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