

16 August 2012

Room 5205
Internal Revenue Service
PO Box 7604
Ben Franklin Station
Washington D.C. 20044
United States of America

Comments on the Proposed FATCA Regulations – REG 2164710

Dear Sirs,

The British Chamber of Commerce in Hong Kong, Financial Services Interest Group (“BCCHK FIG”) is pleased to provide comments on the proposed FATCA Regulations – REG 12164710 issued on 8 February 2012 (“Proposed Regulations”).

Background

The British Chamber of Commerce in Hong Kong (“BCCHK”) is a dynamic force that represents the business interests of its members both in Hong Kong, Mainland China and the Asia Pacific Region. The Chamber represents a broad spectrum of British, Hong Kong, Chinese and international companies, most of whom share significant commercial interests here. There are over 500 corporate members of the BCCHK, including 66 companies in the financial services sector, together they employ over 10% of the working population of Hong Kong. The aims of the BCCHK’s are:

- To promote members' interests with government and business bodies in Hong Kong, Mainland China and Britain.
- Thereby to be a recognised, authoritative voice for international business in Hong Kong.

The aim of the Financial Services Interest Group (“FIG”) is to represent and to promote the collective interests of the Chamber in the Financial Services Sector, so as to keep Hong Kong at the forefront of this Sector in Asia Pacific. The group’s issues-based approach will allow identified issues that are received from the membership to drive any specific focus of the group. Our members welcome the opportunity to respond to the request by the U.S. Internal Revenue Service (“IRS”) and the U.S. Treasury (“Treasury”) for comments on these proposed regulations. Our members support the purpose of the legislation to combat evasion of US taxes. We offer the following comments and suggestions to assist the IRS and Treasury in establishing a regime that meets the goal of the legislation, while at the same time is a workable and economical framework for financial institutions and is consistent with the local legal and regulatory regimes imposed on such institutions.

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FATCA Challenges in Hong Kong

The implementation of FATCA represents specific challenges for financial institutions in Hong Kong for the following reasons:

- The Hong Kong dollar has been pegged to the US dollar since 1983. Consequently, Hong Kong investors are very familiar with, and invest a significant portion of their assets in funds containing US dollar investments:
 - Approximately 40% of retail funds contain US linked securities (based on a sample of retail funds reviewed), and
 - 46% of Mandatory Provident Funds (pension) have US investments.

These investments will be subject to withholding should the underlying funds not become FATCA compliant. Alternatively, it could lead them to divest from US markets.

- Hong Kong is a major financial centre in Asia and the gateway to other Asian countries for many global financial institutions. Financial institutions in Hong Kong are increasingly aware of the FATCA requirements and moving, at different speeds, towards compliance. However, there is a much lower level of awareness in other countries in the region with somewhat less developed financial services industries. Given the short time period for implementation, it is conceivable that a significant number of financial institutions in the rest of Asia will not be FATCA compliant, at least within the transition period. Dealing with these non-participating FFI will represent a challenge for financial institutions in Hong Kong.

Retirement Funds

Hong Kong has two regulated retirement plan systems which currently operate alongside each other. Mandatory Provident Funds (“MPFs”) are the most widespread, with Occupational Retirement Scheme Ordinance (“ORSO”) plans also in existence. The Proposed Regulations, as currently drafted, would not exempt MPFs or ORSO plans from FATCA as they do not meet all of the required criteria.

We draw your attention to the joint submission dated 30 April 2012 from the Hong Kong Federation of Insurers, the Hong Kong Investment Funds Association and the Hong Kong Trustee Association which sets out in detail the background to these retirement plans and criteria for exemption which MPFs and ORSO plans do not appear to meet. We do not intend to go through each of the specific arguments noted in this letter but consider it sets out the challenges for the retirement fund industry in Hong Kong which we feel should be addressed.

A basic, government regulated, retirement plan benefits employees, by providing a low cost and simple means to save for retirement, and employers by allowing them to provide basic benefits to their staff in a cost effective manner. If MPFs and ORSO plans had to follow the Proposed Regulations then we would expect there to be an increased cost of compliance for these retirement funds which would impact on the returns for policyholders and/or the cost of providing

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the benefits by employers. Given the current defined contribution nature of most of the schemes the majority of the burden would likely fall on employees.

We believe that the Proposed Regulations should be amended to allow MPFs and ORSO plans, as government regulated retirement plans, to be exempt from FATCA or to be deemed compliant Foreign Financial Institutions (“FFI”). We believe that the potential gains from forcing MPFs and ORSO plans to follow FATCA are not matched by the costs, in particular:

- The low risk of MPFs or ORSO plans being used for tax avoidance by US persons due to their nature and the amounts typically invested; and
- The potentially high cost of implementation and ongoing compliance which will most likely be borne by employees in Hong Kong, the vast majority of whom are not connected to the US in any way.

Costs of compliance

One of the main criticisms of the Proposed Regulations which has been noted from our discussions with members, industry associations and industry participants as well as the submissions to you from other Hong Kong industry associations is the cost of compliance. The cost of implementing and subsequently complying with FATCA on an ongoing basis affects the largest financial institutions but also the large number of smaller or medium sized financial institutions (“FIs”) which have set up in Hong Kong because of its strength as a financial services and capital markets hub for Asia. Increasing compliance costs for these smaller or medium sized financial institutions will make them less profitable and competitive. Ultimately this will have a negative impact on Hong Kong and on our members. We would therefore request that the Proposed Regulations are reconsidered in particular to identify areas where the implementation and ongoing compliance with FATCA could be achieved in a more cost effective manner. Examples would include:

- Exempt Hong Kong’s retirement funds from the Proposed Regulations (see above).
- Leverage more on existing procedures, such as know your customer procedures performed at the account opening stage. The letter from the Hong Kong Association of Banks of 20 April 2012 outlines some of the areas where the Proposed Regulations differ from existing know your customer procedures.
- Consider loosening the criteria which effectively captures a large number of the small and medium sized financial services companies in Hong Kong within FATCA (e.g. criteria for deemed compliant FFI status).

Disclosure of account information

We note that many respondents from Hong Kong have raised concerns about whether sharing of account information to governments outside Hong Kong is allowed under Hong Kong’s current legal framework and personal data protection regime. We would support an inter-governmental

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approach to address this problem, although we recognise that Hong Kong does not currently have a tax treaty or information exchange agreement with the US and consequently the format adopted by other countries may need to be amended for Hong Kong. We would request that the IRS provides some guidance as to conditions necessary for inter-government agreements on sharing information required by FATCA.

Yours sincerely

Nicholas Sallnow-Smith
Chairman

Cc: Andrew Weir – Vice Chairman (Financial Services)
Richard Winter – Chairman Financial Services Interest Group
Don Kanak – Prudential Corporation Asia
Geoff Riddell – Zurich Financial Services Limited

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