



Pension Investment
Association of Canada

Association canadienne des
gestionnaires de caisses de retraite

January 30, 2012

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Room 5203

Internal Revenue Service

PO Box 7604

Ben Franklin Station

Washington, DC 20044 U.S.A.

Email: Notice.Comments@irs.counsel.treas.gov

Dear Sir/Madam:

Foreign Account Tax Compliance Act (FATCA)

This submission is made by the Pension Investment Association of Canada ("PIAC") to express our concerns with respect to the impact of IRS Notice 2010-60 as amended by Notice 2011-34.

PIAC has been the national voice for Canadian pension funds since 1977. Senior investment professionals employed by PIAC's member funds are responsible for the oversight and management of over \$1 trillion in assets on behalf of millions of Canadians. PIAC's mission is to promote sound investment practices and good governance for the benefit of pension plan sponsors and beneficiaries.

PIAC is concerned about the potential privacy issues and increased administrative costs that will face Canadian pension plans as a result of the FATCA proposals. These issues will result in some Canadian pension plans restructuring or reconsidering their investment in US securities and other entities.

It is proposed that there be a new tax information reporting and withholding system for payments made from the US to certain foreign (including Canadian) financial institutions (FFI). Canadian registered pension plans would be treated as FFIs and thus will have to comply with the provisions. The FATCA reporting requirements would require the pension plans to report to the US government on plan members who are US citizens. Failure to comply with the reporting requirements could result in any US investments made by or through a Canadian pension plan being subjected to a 30% withholding on all such US investments.

Meeting such requirements would be costly and difficult for Canadian pension plans given how often employees are transferred across our borders. It also raises questions about whether in seeking to meet these requirements, plans may be violating applicable

Canadian privacy and fiduciary obligations. Pension plans may not know whether a plan member is a US citizen. If the definition extends to spouses and/or other beneficiaries, this would be even more problematic.

If a plan's assets do become subject to FATCA's 30% withholding, it is not clear who bears the cost of such withholding. The withholding appears to apply to all US investments of the FFI, not just those that can be attributed to a plan member, which may result in the costs being carried by all plan members.

We look forward to your guidance regarding the "foreign retirement plans" that pose a low risk of tax evasion and thus having an exemption from withholding under FATCA. However, we are not convinced that the proposed definition of a foreign retirement plan under Notice 2010-60 is going to address the issue appropriately as it does not make clear what law is being referred to or whether the Canadian pension plans of a US based company's Canadian operations would be seen as a Canadian pension plan. Similarly, will multi-employer plans, or those sponsored by unions qualify?

Finally, the requirement that any US citizen participants in the foreign retirement plan be employed by the foreign employer in the country to which the plan relates may be too narrow given that US citizens may continue to be covered under a Canadian plan for a period of time while working outside Canada.

PIAC calls on the IRS to make all registered Canadian pension plans exempt from treatment as FFIs. If this is not possible, then FATCA should be amended to define "foreign retirement plan" in a manner that covers all Canadian pension plans.

Given the Canadian tax regime under which Canadian pension plans operate, we would argue they pose "a low risk of tax evasion", and thus qualify as the type of foreign retirement plans you are planning to exclude. Canadian pension plans are highly regulated by Canadian tax authorities with prescribed limits on amounts that may be contributed by members and/or employers, along with restrictions on the amount and timing of benefits that may be paid from such arrangements. The restrictions on the payment of benefits are well below the limits applicable to US based tax-assisted savings arrangements.

Please do not hesitate to contact us if you wish to discuss any aspect of this letter in further detail.

Yours sincerely,



Julie Cays
Chair