NAPF

Securing the future of pensions

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The Internal Revenue Service
1111 Constitutional Avenue, NW
Washington , DC, 20224

Ref: CC:PA:LPD:PR (NOT- 121556-10)

Dear Sir/Madam

Foreign Account Compliance Tax Act (FATCA)

I set out below our response to IRS Notice 2011-34 (published 8 April 2011) regarding FACTA.

Background

The NAPF is the leading voice of workplace pensions in the UK. We speak for 1,200 pension schemes with some 15 million members and assets of around £800 billion. NAPF members also include over 400 businesses providing essential services to the pensions sector.

Key issues for UK Occupational Pension Schemes

The NAPF proposes a total exemption for UK occupational pension schemes from the definition of Foreign Financial Institutions (FFIs) under the current draft FACTA regulations for the reasons given below:

1. UK pension funds are highly regulated by the UK tax authorities – HM Treasury (HMT) and HM Revenue and Customs (HMRC) - with prescribed limits on tax relief given on pension contributions made by participating members and employers. There are similar restrictions on the total amount and timing of benefits (age related) paid out on retirement from the pension scheme. UK occupational pension schemes have to submit regular returns to HMRC and the penalties for breaching the rules can be significant including the ultimate removal of tax exempt status. In our view, it is therefore not a practical option for a US citizen to use a UK pension scheme as a vehicle for tax avoidance and consequently UK pension schemes should be regarded as extremely low risk.
2. Membership of an UK occupational pension scheme is one aspect of a package of benefits provided by a UK employer under the employment contract between an individual employee and the employer. Consequently a US citizen would need to be employed by a UK employer or (by a non-UK employer) as part of a UK or European Union business to participate in an occupational pension scheme and could not enter into such an arrangement as an individual for the purposes of tax avoidance.

3. The existing double tax treaty between the UK and the US provides for the personal tax due to be levied and paid to the tax authorities in the correct jurisdiction. Pension benefits payable from a UK occupational pension scheme are likely to continue to be taxed post retirement depending on an individual's personal tax circumstances. The double tax treaty also includes provisions for the exchange of information between the UK and the US for, amongst other things, facilitating the administration of statutory provisions against avoidance of tax.

The NAPF acknowledges from notice 2011-34 that further guidance on the coverage of occupational pension schemes under the FATCA regulations is still being discussed and drafted. We would reiterate our view that UK occupational pension scheme should be exempt from the definition of FFI's as set out in previous Notice 2010-60 (August 2010) and are available to participate in a teleconference call regarding the pension aspects of FATCA or provide additional written evidence to support our statement.

Yours faithfully

Joanne Segars
Chief Executive