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Mr. J. Zehnder
Managing Director
European Federation
Of Building Societies
28, Rue Jacques de Lalaing
1040 Brussels

Subject: FATCA

Dear Mr. Zehnder,

Thank you for your email of last December on the US Foreign Account Tax Compliance Act (FATCA).

In your message, you express concern about FATCA and explain the reasons why, in your opinion, the "Bausparkassen" should be treated as "deemed compliant" for the purposes of FATCA. You ask the European Commission to support your cause in the ongoing EU dialogue with the US Treasury.

In response, I would first like to inform you that, as a result of that ongoing dialogue, the US and five EU Member States (DE, ES, FR, IT and UK) recently issued a joint statement in which they committed themselves to exploring whether it would be possible to implement FATCA and prevent tax evasion by utilising the bilateral tax treaties in place between EU Member States and the US (see the attached document). Under this approach, financial institutions would be allowed to comply with their FATCA obligations by reporting the necessary information to the tax authority of the Member State where they are established which would, in turn, provide this information to the US Internal Revenue Service (IRS). The US would, for its part, commit to reciprocal information exchange with the EU Member States concerned.

Although the joint statement was issued by only 5 Member States, the proposed government-to-government approach is open to all Member States and third countries that are interested in applying it. The Commission will work to ensure that all Member States that wish to do so are given the opportunity to adopt this approach through bilateral agreements with the US and that the agreements are coordinated.

The benefits for financial intermediaries of the government-to-government approach outlined in the joint statement would include the fact that i) EU financial institutions in participating EU Member States would not have to enter into a direct legal agreement with the US tax authorities,

ii) they would not have to terminate the accounts of recalcitrant account holders, iii) they would not have to apply the "pass-thru" rule on as broad a basis and iv) no 30% US withholding would be applied on payments to such financial institutions.

You will be particularly interested to note that the joint statement refers to the possibility of identifying, in the agreement between the interested country and the US, specific categories of financial institutions established in that country that would be treated as deemed compliant or presenting a low risk of tax evasion.

I would, therefore, recommend that your members contact the tax authorities of the countries where they are established to see whether the relevant tax authorities intend to adopt the bilateral agreement approach and, if so, whether any of your members could be included in the list of deemed compliant entities to be attached to the agreement with the US.

I would like also to draw your attention to the proposed regulations on the implementation of FATCA that were issued by the US Treasury/IRS on 8 February 2012. The draft regulations incorporate the guidance provided in previous FATCA Notices (2010-60, 2011-34 and 2011-53) and, in response to comments and further consideration, revise and refine the rules discussed therein. Moreover, they provide guidance on topics that were not addressed in previous FATCA Notices.

One important topic covered by these proposed regulations is the categories of foreign financial institutions which the Treasury/IRS intend to treat as deemed compliant. In this respect, the proposed regulations expand the categories already identified in previous FATCA Notices with a view to focusing the application of FATCA on financial institutions that provide services to the global investment community and reducing burdens on truly local entities which pose a low risk of US tax evasion. Moreover, the proposed regulations refine the definition of financial accounts to focus on traditional bank and brokerage accounts and interest in investment vehicles and exclude some savings accounts that meet certain conditions.

Therefore, I recommend that you carefully examine these proposed regulations to see whether and to what extent the "Bausparkassen" meet the requirements indicated therein to be treated as deemed compliant or whether their accounts are excluded from the application of FATCA.

I hope that this information will prove useful.

We remain at your disposal for further clarification and information you may need.

Yours sincerely,


Bert Zuijndorp
Head of Unit