Position Paper

Insurance Europe response to the OECD's consultation document on standard for automatic exchange of financial account information

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General comments

Insurance Europe welcomes the opportunity to provide comments to the OECD's Working Party No. 10 consultation document on standard for automatic exchange of financial account information.

Insurance Europe in general supports measures aimed at combating tax evasion, which is corrosive to the fairness of a tax system, provided the rules that are introduced to prevent it are targeted and proportionate.

Against this background, Insurance Europe supports the work on automatic exchange of information undertaken by the OECD, and the development of a uniform global standard. Since tax evasion is a global issue, any system of automatic information exchange should also have a global reach.

With this response, Insurance Europe outlines its key concerns on the general principles governing the draft OECD Standard for Automatic Exchange of Financial Account Information (OECD Standard), and comments specifically on the technical aspects of the draft OECD Standard.

We would, of course, be happy to clarify any points raised in these comments and look forward to continuing this dialogue with the OECD, and to further consultations when appropriate.

1. Timing

We recognize that the OECD is under significant time pressure to issue a standard model for automatic exchange of tax information. However, as the introduction of the OECD Standard would represent a significant change for global tax architecture, it is necessary to have a full understanding of the proposed Standard before any of its elements are adopted.

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We would therefore encourage the OECD to publish a guiding document together with the Standard to allow financial institutions to have a full picture of the requirements that the global reporting system would impose on them.

Furthermore, Insurance Europe would like to underline that, in practice, it would be impossible for insurers to implement the OECD Standard according to the G20's timeline. It would take a minimum of 18 months to implement the OECD Standard from the date the final rules and commentary are issued. The time required would be even longer for life insurance companies which are currently not caught by FATCA but might be brought into the scope of the OECD Standard, in case pre-existing contracts are not excluded from its scope. This would be the case for life insurance companies which do not write new business and are able to exclude all existing policies under the FATCA Model IGA. Such companies, which do not have any systems or procedures in place to meet the FATCA requirements, would need a significant amount of time to implement standards coming from the OECD.

Finally, it is worth mentioning that even though the OECD Standard and FATCA have as a common objective to tackle tax avoidance, European insurers would not be able to comply entirely with the OECD Standard reporting obligations as they stand, by relying on their FATCA reporting. For example, FATCA only requires financial institutions to report on US taxpayers and not on general tax residency as is required by the OECD Standard.

<u>2. Consistent outcome with FATCA</u>

Insurance Europe believes that any move towards global automatic exchange of information needs to be assessed against existing reporting obligations.

Following the issuance of the final FATCA Regulations in January 2013, European insurance companies are obligated to implement FATCA reporting requirements. Complying with FATCA was an expensive operation for European insurance companies which were, until then, and unlike banks (i.e. through the European Union Savings Directive), not subject to any cross-border reporting requirement.

In order to keep compliance costs to a minimum, it is critical that the OECD standard be consistent with the outcome of FATCA in each jurisdiction. This does however not mean that the OECD Standard should adopt the exact FATCA wording or procedures; Rather, of vital importance is that the OECD Standard is such that companies do not need to build and operate multiple systems. For this reason the OECD Standard needs to include, in particular:

- A workable exemption for pre-existing cash value insurance and annuity contracts;
- Optional de minimis thresholds as with FATCA;
- Exemptions for low risk entities and products identified by each country, as with FATCA.

<u>Specific comments</u>

<u>1. The scope of a global reporting system</u>

<u>A.) Pre-existing individual accounts</u>

Insurance Europe believes that pre-existing insurance contracts should be excluded from the scope of automatic exchange of information. Their inclusion would give rise to disproportionate administrative costs compared to the low level of risk of tax evasion these policies present. Both the EUSD and the US FATCA have recognised this, since the proposed EUSD excludes all insurance contracts subscribed before 1 July 2014 and the FATCA Model IGA allows insurers to exempt existing polices from its scope, under certain conditions.

Against the above background, we appreciate the OECD's efforts to exempt pre-existing accounts. However, the proposed condition that "*the Reporting Financial Institution is effectively prevented by law from selling such Contract to residents of a Reportable Jurisdiction*" is not applicable in the European Union, on the basis of EU Internal Market rules.

Under the EU consolidated Life Directive[1], European insurers are able to provide insurance services in another Member State under the principle of the "freedom to provide services". As a result, theoretically all European insurance companies are able to sell their products in another EU jurisdiction, after fulfilling required administrative conditions. However, it is worth mentioning that in practice the average ratio of cross-border insurance activity is very low, as a result of a number of barriers such as different languages, or different legal, regulatory and taxation systems. Therefore, in practice, when a European insurance company wishes to expand its activity to other jurisdictions, it generally opts for establishing itself in that jurisdiction according to local legal requirements. Typically this is done by setting up branches and subsidiaries, or by acquiring local companies in other jurisdictions.

On this basis, the above condition would not apply to the EU, and European insurance companies would be the only companies worldwide having to report on all pre-existing accounts. We believe that this would result in a significant competitive disadvantage for the European insurance sector and could potentially increase the cost of insurance business in Europe.

Therefore, we urge the OECD to modify the abovementioned condition to allow European insurers to exclude all pre-existing accounts from the scope of the OECD Standard. We believe this could be achieved by treating the EU as a single jurisdiction for the purpose of reporting on pre-existing policies.

In the absence of total exclusion, we recommend that the OECD Model, as it is recognised by FATCA, exclude pre-existing cash value insurance and annuity contracts with a cash value of $250,000 and less from required due diligence procedures. Furthermore, for pre-existing accounts with a cash value of more than $250,000, insurance companies should be obligated to only perform an electronic search on indicia which are in their data base i.e. address held on file. Manual searches of existing records would substantially impact the cost of review of a pre-existing account. In particular, for insurance companies with a client base that is almost entirely local, these costs would be disproportionately high.

B.) Pension products

Insurance Europe believes that pension plans and tax favoured retirement products (2nd and 3rd pillar) should be exempt from automatic information exchange because of the low or non-existent risk of tax evasion associated with such products.

We appreciate the OECD'S attempt to exempt retirement and pension plans, but believe that the conditions in the OECD Standard are too strict. Consequently, most European plans would be subject to automatic exchange of information, as they are not able to meet all required conditions.

In order to resolve this problem, we believe that, rather than specify detailed rules that almost certainly would not encompass the hundreds, if not thousands, of low-tax risk, government-registered retirement and savings plans that have been established pursuant to local social-welfare legislation, the OECD Standard should instead refer to the local jurisdictions in which those plans are established such as is foreseen in Annex II of bilateral FATCA Model IGAs,.

Accordingly, we recommend that accounts recognised under national legislation as established for retirement purposes, provided withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to any other withdrawals, should be excluded. This should include all retirement and pension products recognized under national legislation and exempted under Annex II of any FATCA IGA.

C.) Thresholds

Insurance Europe advocates that insurance companies should be provided with the option of using thresholds of $50,000 for each new contract.

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[11] Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance

De minimis thresholds are a way of ensuring that the scope of the reporting standard is appropriately targeted to where the risk of tax evasion is greatest. Accounts with a value of $50,000 or less do not present any realistic opportunity to be used to evade taxes. For insurance policies it is even more unlikely, as the holder is likely to incur significant surrender charges if he or she attempted to realise that cash value in any short period following the issuance of the contract.

A threshold would significantly reduce the cost of implementation of reporting systems in particular for small insurers. Furthermore, it would limit the amount of information the national governments would collect and process, thus reducing the cost of the OECD Standard for governments.

The US FATCA has recognised this and accordingly included a $50,000 exemption for cash-value life insurance contracts. Any difference with FATCA in this regard would result in financial institutions having to duplicate reporting systems, thus significantly increasing compliance costs.

D.) Insurance policies in scope

Insurance Europe believes that the OECD Standard should make clear which accounts are in the scope of reporting obligations. In the definition of "financial account", the use of "includes" might cause uncertainty about the scope of the OECD Standard. Specifically, it should be noted that the use of "includes" in the Model IGA has caused interpretation and scope issues, as "includes" can also refer to anything that could technically be considered a financial account even though there is no tax evasion risk (e.g. term insurance and insurance for property, casualty and health). To avoid confusion and to ensure the OECD Standard is appropriately targeted, the Standard should state, as per FATCA regulations, in its Section VIII part C paragraph 1C that *"The term financial account means….any Cash Value Insurance Contract and any Annuity Contract…".*

2. Due diligence procedures

A.) Pre-existing accounts

(Reliance on residence)

Under the draft OECD Standard, it is possible to determine whether an individual account holder is a reportable person by relying on a *"current address"* based on *"the most recent documentary evidence collected with respect to the account".*

The term *"current address"* should be clarified. Insurance Europe believes that the term *"current address"* should refer to the *"address held on file"* of a policyholder.

Furthermore, in Insurance Europe's view, the term *"most recent documentary evidence"* should be changed to *"available documentary evidence"*. In an insurance context, the documentary evidence collected with respect to the account means relevant documentation collected pursuant to Anti-Money Laundering and "Know Your Customer" (AML/KYC) procedures. However, some pre-existing insurance accounts are not subject to the AML/KYC procedures, because they have been established before the introduction of the AML/KYC legislation. Therefore, insurance companies should be obligated to check the policy-holder's current address only, based on available documentary evidence collected with respect to the account.

(Review of high-value accounts)

The draft OECD Standard foresees that if an electronic database of a financial institution captures all the information described in Section II subparagraph C(3) (Exception if Databases Contain Sufficient Information), then a further manual verification is not required.

The information included in Section II subparagraph C(3) is unworkable for the insurance sector as this information is generally not collected. As a result, a paper search would have to be performed on the great majority of pre-existing accounts. The data held on existing policies is limited (i.e. often only name and

address), as existing life policies and annuities were designed prior to any system on automatic exchange of information.

Against this background, in order to make a determination of a policyholder's residence status, insurers would be required to ask for additional information from policyholders. This would be very burdensome and impractical, because in contrast with other financial service industries, life insurers typically have limited client interaction following the initiation of a policy, as a result of the long-term nature of the products offered. Experience has shown that trying to obtain supplemental information from existing customers typically generates a very low level of response.

We therefore suggest that regarding pre-existing accounts with a cash value more than $250,000, in case they are not totally excluded from the scope, insurance companies should be obligated to perform only an electronic search on indicia which are in their data base, i.e. address. In case such searches indicate any foreign indicia, they simply should be reported (via local tax jurisdictions) to foreign tax authorities, which can then use this information to follow up directly with the policyholder if he/she is a tax resident in a foreign jurisdiction.

B.) No third party reliance provision

European insurance companies frequently work with financial intermediaries and agents. When business is referred through financial intermediaries, the insurance company receives a certificate which verifies that the individual's identity has been proven. Copies of the evidence collected by the intermediaries are generally not passed on to an insurance company. For this reason it is very important for European insurance companies to be able to rely on third party documentation also in the context of the OECD Standard.

In this respect, it is worth mentioning that some companies represented by Insurance Europe's members provide both banking and insurance services. It is often the banking side that will refer business to the insurance part of the business. In such cases, the banking part would have already done verification checks on the individual concerned.

This has also been recognised in the FATCA regulations, which enable financial institutions to rely on a third party service provider to fulfil the obligations imposed on them.

Therefore, we would welcome recognition on part of the OECD, that insurance companies should be able to rely on third party documentation in order to fulfil reporting obligations imposed by the OECD reporting system.

3. Required reportable information

Pre-existing accounts

With respect to existing policies, the draft OECD Standard requires financial institutions to report on the place of birth of the policyholder, if required under domestic law. This information is however not available for pre-existing accounts, as it is not relevant for establishing residency. Furthermore, collecting such information could result in a sizeable number of false positives, and should therefore be disregarded as a requirement.

Furthermore, the place of birth is not required for new policies as the required self-certification obliges financial institutions to report the TIN and date of birth, and not place of birth.

Finally, it is also worth mentioning that the information on place of birth is not collected for the AML/KYC purposes.

Therefore, Insurance Europe does not believe that the place of birth should be required.

4. Other

A.) Treatment of life insurance beneficiaries as accountholders.

Given the long-term nature of insurance products, and the fact that the income is not as accessible as for example with a bank account, Insurance Europe believes that reporting should only be made at the moment when a payment is made to a policyholder, and consequently when a taxable event occurs. It is worth mentioning that the pay-out stage is the only point at which the customer receives any benefit from the insurance contract.

The presumption rule included in the draft OECD Standard, which allows a reporting foreign financial institution (FFI) based on its actual knowledge to presume that an individual beneficiary (other than the owner) of a Cash Value Insurance Contract receiving a death benefit is not a Reportable Person, respects the above characteristic of the insurance sector.

However, we believe that the presumption rule is too narrow in scope, and should be extended to:

- entities;
- annuities; and
- benefits payable upon maturity of contract (i.e. not only in the event of death).

B.) Appropriate reporting period should include Policy Anniversary Date

Insurance Europe believes that the guiding document accompanying the draft OECD Standard should make it clear that, for insurance and annuity products, the policy anniversary date is an "Appropriate reporting period", as is the case under FATCA.

C.) Exemption for accounts held by non-profit organizations:

Consistent with the treatment of information for FATCA purposes, the OECD Standard should provide an explicit exemption for non-profit organisations, as they are not financial institutions which could be used for tax evasion purposes.

Insurance Europe is the European insurance and reinsurance federation. Through its 34 member bodies — the national insurance associations — Insurance Europe represents all types of insurance and reinsurance undertakings, eg pan-European companies, monoliners, mutuals and SMEs. Insurance Europe, which is based in Brussels, represents undertakings that account for around 95% of total European premium income. Insurance makes a major contribution to Europe's economic growth and development. European insurers generate premium income of more than €1 100bn, employ almost one million people and invest almost €8 400bn in the economy.

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