THE ASSOCIATION OF GLOBAL CUSTODIANS

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VIA ELECTRONIC MAIL

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Re: Overlap between FATCA Reporting under Chapter 4 and US Payor Reporting under Chapter 61

Dear John and Michael,

This letter expands on a single topic of significant importance to US payors that we have discussed in the past – the duplicative reporting under Chapters 4 and 61.

The Association of Global Custodians (the "Association" or "AGC")[1] has submitted in prior written comments and discussed with you in meetings the need to eliminate the duplicative reporting

[1] The Association is an informal group of 11 member banks that provide securities safekeeping and asset-serving functions to cross-border institutional investors worldwide. Members provide custody-related services to most types of institutional investors, including investment funds, pension

that would arise as a result of satisfying the FATCA reporting requirements with respect to an account maintained by a participating foreign financial institution and the separate Chapter 61 reporting requirements of a US payor servicing the account.

Prop. Reg. section 1.1471-4(d)(2)(iii) recognizes the redundant reporting under FATCA and Chapter 61 as it eliminates FATCA reporting by a participating FFI that satisfies its Chapter 61 reporting obligations as a US payor with respect to a US account reportable under FATCA. This provision is directionally positive; however it should be modified to enable a PFFI to choose to report US accounts under either FATCA or Chapter 61. In addition, a similar choice of reporting regimes should be made available to intergovernmental agreement FIs. Lastly, the Chapter 61 reporting obligations of a US payor that is acting as an agent of an FFI should be considered satisfied in the case the FFI has met its FATCA reporting obligations. The balance of this letter discusses each of these three recommendations.

1. Modification of Section 1.1471-4(d)(2)(iii) to Enable PFFIs to Report US Accounts under either FATCA or Chapter 61

A PFFI should be able to choose to apply the reporting method under either FATCA (e.g., Form 1099-U) or Chapter 61 (Form 1099 series) with respect to US accounts that are reportable under FATCA. Reporting is similar under Chapters 4 and 61, each requiring, among other things, the reporting of US TINs and payments. The primary differences between the two regimes are the reporting of account balances which is only required under FATCA and the reporting of basis information which is only required under Chapter 61. Neither the account balance nor basis information is consistently more useful than the other or as useful as the payments themselves. The account balance is merely an indicator of the potential risk of non-compliance associated with the account and is not an amount that affects a taxpayer's tax liability. Basis information is only applicable to a subset of reportable payments. Therefore, the relatively modest reporting differences between the two regimes do not justify mandating that one reporting method take precedence over the other.

There are more types of US accounts reportable under FATCA than under Chapter 61 because , among other reasons, unlike Chapter 61, FATCA requires looking through non-US entities that are blockers for US accounts holders. Accordingly, the IRS and Treasury should consider requiring that the FATCA rules for identifying reportable accounts always govern, even if the Chapter 61 method of reporting is chosen.

2. IGA FIs Should be Able to Report US Account Holders as an FI in an IGA Country or as a US Payor, but not Both

The elimination of redundant reporting should be extended to a branch or subsidiary that is both an IGA FI and a US payor, e.g., a US corporation that has a branch located in an IGA partner country. According to the so-called Models 1 and 2 IGA templates, FI branches in IGA countries will be

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funds, and insurance companies. Association members are listed on the letterhead above.

IGA FIs. Therefore, such branches that are US payors would apparently need to satisfy any redundant reporting obligations under the IGA rules and Chapter 61.

Mandating different reporting requirements for US payors versus non-US payors located in IGA countries would create an uneven playing field. For example, requiring that a branch of a US corporation located in a Model 1 IGA country report to both the IGA country pursuant to FATCA and to the IRS pursuant to Chapter 61 would place the branch at a competitive disadvantage as compared to an FFI with no US affiliation located in the same IGA country. The latter would only be required to report to the IGA country.

US payors such as controlled foreign corporations are at a competitive disadvantage for current Chapter 61 purposes in that, unlike non-US payors, US payors must bear the cost of satisfying the Chapter 61 reporting requirements. Requiring that a branch of a US corporation in an IGA country report to both the IGA country and the IRS would significantly increase the number of FIs that are similarly disadvantaged, and accordingly would magnify the anti-competitive effect. Given that FATCA will require that all FFIs, rather than just FFIs that are US payors, report their US account holders, there is no longer a need to have reporting obligations that apply only to FFIs that are US payors. The abovementioned disadvantage can now safely be eliminated by imposing reporting obligations on US payor IGA FIs that are no greater than those imposed on other IGA FIs. To achieve parity, all IGA FIs should be able to elect to report US account holders identified under FATCA either as an FI in an IGA country or as a US payor, but not both (e.g., in the case of a Model 1 IGA FI, reporting either to the local government on a form to be announced or directly to the IRS on Forms 1099). Alternatively, all IGA FIs should be required to report US account holders solely according the method specified in the applicable IGA. We believe that an election is superior to only FATCA reporting because an election would enable an FI to choose to apply the reporting mechanism that is preferable to the FI based on the FI's unique circumstances. Regardless of the election, the US objective of requiring information reporting with respect to US accounts holders will be satisfied.

3. Paying Agents that are US Payors Should not Have Reporting Responsibilities Independent of the Principal

The elimination of redundant reporting should also be extended to a US payor agent of an FFI where such FFI satisfies its FATCA obligations. As we have discussed in prior comment letters and meetings with you, a US payor agent of an FFI should not have an independent obligation to report under Chapter 61 provided the FFI has satisfied the FATCA reporting obligations with respect to the US payees that are otherwise reportable under Chapter 61. Reporting under both Chapter 61 and FATCA with respect to a single account holder/payee would unnecessarily confuse taxpayers and add unnecessary cost to reporting entities.

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If you have questions concerning these comments or would like additional information, please do not hesitate to contact the undersigned. Once again, thank you very much for your consideration of the Association's submissions.

Sincerely yours on behalf of the Association,

Mary C. Bennett
Baker & McKenzie LLP
Secretariat and Counsel to the Association

Cc:
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