

# Submission

to the

# Internal Revenue Service

on the

# Foreign Account Tax Compliance Act – IRS Notice 2011-34

7 June 2011

# Submission by the New Zealand Bankers' Association to Internal Revenue Service on the Foreign Account Tax Compliance Act – IRS Notice 2011-34

## Executive Summary

1. The New Zealand Bankers' Association (NZBA) appreciates this opportunity to submit to the Internal Revenue Service (IRS) on Notice 2011-34 "Supplemental Notice to Notice 2010-60 Providing Further Guidance and Requesting Comments on Certain Priority Issues Under Chapter 4 of Subtitle A of the Code" (Notice) and how the Foreign Account Tax Compliance Act of 2009 (FATCA) will be implemented.
2. NZBA seeks an exemption from FATCA obligations for New Zealand banks. If this is not granted, NZBA seeks consideration of alternatives which would meet the policy objectives of FATCA without imposing disproportionate compliance costs.
3. NZBA endorses each of the submissions and communications previously made by the Australian Bankers' Association (ABA) on 10 November 2010, 26 February 2011 and 7 June 2011.
4. NZBA would welcome the opportunity to discuss this submission with the United States Treasury and the IRS if that would be helpful. Please contact Karen Scott-Howman, Regulatory Director, NZBA, on +64 4 802 3351 or [karen.scott-howman@nzba.org.nz](mailto:karen.scott-howman@nzba.org.nz) if you have any questions.

## About NZBA

5. NZBA works on behalf of the New Zealand banking industry in conjunction with its member banks. NZBA develops and promotes policy outcomes which contribute to a safe and successful banking system that benefits New Zealanders and the New Zealand economy.
6. The NZBA membership comprises of the following twelve registered banks in New Zealand are members of NZBA:
  - ANZ National Bank Limited
  - ASB Bank Limited
  - Bank of New Zealand
  - Bank of Tokyo-Mitsubishi, UFJ
  - Citibank, N.A.
  - Hongkong and Shanghai Banking Corporation Limited
  - JPMorgan Chase Bank, N.A.
  - Kiwibank Limited
  - Rabobank New Zealand Limited
  - Southland Building Society

- TSB Bank Limited
- Westpac New Zealand Limited.

## Submission

### Exemption

7. Since FATCA was enacted into law on 18 March 2010, businesses and financial associations the world over have expressed considerable concern about the costs of compliance, conflicts between local laws and FATCA obligations, and the penalties to be imposed in cases of non-compliance. NZBA echoes these concerns.
8. New Zealand is a highly tax compliant and transparent jurisdiction, and existing reporting and information exchange systems are highly effective. The regulatory environment in New Zealand has been previously described to you in the ABA submission dated 26 February, a copy of which is attached for reference.
9. NZBA urges the Secretary of the Treasury to give further consideration to exempting classes of foreign financial institutions, including New Zealand banks, from FATCA obligations where there is a very low risk of tax evasion presented and enforcement is unnecessary to achieve the objectives of FATCA.

### Alternatives

10. If the Secretary decides not to grant an exemption from FATCA obligations for New Zealand banks, NZBA recommends consideration be given to alternatives which would meet the policy objectives of FATCA without imposing disproportionate compliance costs or creating significant conflicts with local jurisdiction privacy, confidentiality and discrimination laws that would be unacceptable to the US if another jurisdiction was seeking to unilaterally impose the same requirements on US organisations.
11. NZBA supports the alternative proposal outlined in the ABA submission of 7 June 2011. In particular, NZBA agrees that the proposals should:
  - more clearly focus on the potentially high risk areas of a foreign financial institution's (FFI) business and phase in compliance accordingly
  - build on existing tax reporting and information exchange systems under domestic law and treaty requirements
  - change the methodology for calculating pass through payments to ensure workability
  - avoid unnecessary identification of large numbers of non-US taxpayers as "recalcitrant"
  - allow banks to comply with FATCA through the use of automated back office systems without the need to rely on manual searches

- mitigate potential conflicts of laws
- ensure FATCA compliance costs are reasonably proportionate with expected revenue yields
- phase in effective dates of FFI agreements.

## Timeframes

12. Without agreement to an exemption or alternative approach, NZBA notes that its members would find it very difficult to reposition themselves for compliance with FATCA within the timeframes specified in the Notice. Full implementation would require significant systems changes at a time when the capacity of banks to deliver is stretched, due to requirements under local law to effect concurrent and significant changes under new financial adviser legislation and anti-money laundering and countering financing of terrorism changes. It is estimated that 24 months would typically be required to design, build and test FATCA systems changes.
13. Thank you in advance for your consideration of this submission.