

**To:** LG “Chip” Harter  
Deputy Assistant Secretary

Douglas L. Poms  
International Tax Counsel

Office of the International Tax Counsel  
Department of the Treasury  
1500 Pennsylvania Avenue, NW, Room 3058  
Washington, DC 20220

**Date:** 17 July 2018

**Subject:** Passive Foreign Investment Company (PFIC) rules - Call for guidance on insurance exemption

Dear Mr Harter, Dear Mr Poms,

On behalf of the Global Federation of Insurance Associations (GFIA), we are writing to recommend that the US Treasury publish guidance by year-end to assist insurers and their investors in complying with the Passive Foreign Investment Company (PFIC) insurance exemption, as amended by the 2017 US tax reform law.

Guidance in 2018 is essential, since PFIC classification for the year is irreversible, and companies need the guidance to determine whether they will be able to maintain their non-PFIC status by meeting the qualifying insurance corporation (QIC) test. US shareholders will be significantly impacted by PFIC characterisation. Guidance is critical as early as possible to provide affected companies sufficient time to make structural and capital related decisions, if necessary, which may affect their QIC status.

The QIC definition is based on an insurance company’s results as reflected in that company’s annual financial statements. Unfortunately, without further guidance, a non-US parented insurance group may not be able to determine if it is characterised as a PFIC for the current year, and its US shareholders would be the ones subject to US tax consequences, such as higher tax obligations and payment of estimated tax and penalties. It is important that non-US parented insurance groups be able to determine their QIC exemption status so as to advise their shareholders of a possible PFIC classification. In order to make this assessment, insurance groups need clarification of the rules for qualifying as a QIC.

Guidance on the following topics would be most helpful:

- (i) clarifying that a US insurance company is a QIC;
- (ii) providing methods for electing an exemption tied to a facts and circumstances test; and
- (iii) providing guidance on the scope of the alternative facts and circumstances test as provided in the new law.



GLOBAL FEDERATION OF INSURANCE ASSOCIATIONS

Clarity on these issues is important to the US insurance market since investor capital deployed in various types of insurance entities is increasingly important. All such insurance risk bearing entities are regulated under insurance regulatory laws in their domiciliary jurisdictions.

Please let us know if GFIA can elaborate on any of these points further either in writing or through a specific meeting.

Kind regards,

Peggy McFarland  
Chair of the GFIA Taxation Working Group

### **About GFIA**

Through its 42 member associations, the Global Federation of Insurance Associations (GFIA) represents the interests of insurers and reinsurers in 61 countries. These companies account for around 87% of total insurance premiums worldwide. GFIA is incorporated in Switzerland and its secretariat is based in Brussels.