

[TEXT OF THE FATCA COMMENT LETTER SUBMITTED BY  
ACLI]

November 1, 2010

CC:PA:LPD:PR  
Room 5203  
Internal Revenue Service  
PO Box 7604  
Ben Franklin Station  
Washington, DC 20044

John Sweeney, Esq.  
Attorney-Advisor  
Office of Associate Chief Counsel (International)  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

Carl Cooper, Esq.  
Senior Counsel  
Office of Associate Chief Counsel (International)  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

Jesse F. Eggert, Esq.  
Attorney-Advisor  
Office of International Tax  
Department of Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Itai Grinberg, Esq.  
Attorney-Advisor  
Office of International Tax Counsel  
Department of Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Re: *Notice 2010-60*

Dear Gentlemen,

Thank you for meeting with us and our member company representatives to discuss possible application of sections 1471-1474<sup>n1</sup> to life insurance companies and products. We are writing in response to Notice 2010-60<sup>n2</sup> (the “Notice”) and how new chapter 4 (*Internal Revenue Code Sections 1471 ~ 1474*) should apply to life insurance companies, including the request by Treasury and IRS for comments “with respect to the appropriate treatment under chapter 4 of entities that issue cash value insurance contracts, annuity contracts, or similar arrangements, and with respect to the appropriate definition of cash value insurance contracts, annuity contracts and similar arrangements”.<sup>n3</sup>

Our membership is comprised of U.S.-owned and foreign-owned U.S. life insurers and reinsurers whose foreign affiliates issue and reinsure life insurance and annuity contracts overseas in numerous jurisdictions and are particularly interested in working with Treasury and IRS to develop appropriate rules under chapter 4.<sup>n4</sup> We explain more fully below why the nature of life insurance companies and their products do not implicate the potential for tax evasion behind this new reporting (and withholding) regime, and why the distinguishing features of the life insurance companies and the products they issue warrant a substantially different treatment under chapter 4.

## I. Foreign Financial Institution

Sections 1471 -1474 (“chapter 4”), enacted as part of the Hiring Incentives to Restore Employment Act,<sup>n5</sup> require “foreign financial institutions”<sup>n6</sup> (“FFI”) to obtain and report information with respect to any financial account which is held by a U.S. person. Failure to enter into an agreement with the Secretary results in a 30% withholding tax on any U.S. source withholdable payment to the FFI.<sup>n7</sup>

### A. Statute

The statute defines FFIs as entities that A) accept deposits in the ordinary course of their business, B) hold financial assets for the account of others as a substantial portion of its business, or C) engage primarily in the business of investing or trading in securities or financial instruments.

### B. Life Insurance Companies

#### (1) Not FFIs

Life insurers do not A) accept deposits in the ordinary course of their business, B) hold financial assets for the account of others as a substantial portion of its business, or C) engage primarily in the business of investing or trading in securities or financial instruments, but they do so only to deliver on their obligations to their policyholders. The nature of the life insurance business is inherently different from the type of business that the legislation targets; life insurers provide financial protection against an early demise and the risk of outliving assets.

Section 1471(d)(5) defines three categories of financial institutions, and grants the Secretary authority to provide for rules beyond these categories. In its Technical Explanation of chapter 4, the Joint Committee on Taxation “anticipated that the Secretary may prescribe special rules addressing the

circumstances in which certain categories of companies, such as certain insurance companies, are financial institutions, or the circumstances in which certain contracts or policies, for example annuity contracts or cash value life insurance contracts, are financial accounts or United States accounts for these purposes”. n8 Treasury and IRS already exercised their discretion in the Notice by concluding that they “do not view the issuance of insurance or reinsurance contracts without cash value as implicating the concerns of chapter 4”. We support this conclusion and recommend that future guidance expressly provide that life insurance companies that only write these policies are exempt and should not be classified as FFIs.

## (2) If Life Insurance Companies are classified as FFIs

The Notice states that the definition of “financial institution” in *section 1471(d)(5)* is broad enough to encompass certain insurance companies”. n9 Even if the statute on its face may be broad enough to encompass the activities of life insurers and reinsurers, the nature of the life insurance business is not within the purview of the legislation. We request that Treasury and IRS exercise their authority under *section 1471(f)(4)* and exempt life insurance companies from the requirements of chapter 4 as a class of persons that poses a low risk of tax evasion.

Moreover, if insurance companies are treated as FFIs as a result of issuing cash value insurance contracts or annuity contracts, we recommend that only non-U.S. insurance companies that issue Cash Value Life Insurance Contracts (as defined below) on or after January 1, 2013, be treated as FFIs.

## II. Financial Accounts

### A. Statute

*Section 1471(d)(2)* defines a financial account as 1) any depository account, 2) custodial account, or 3) equity or debt instrument maintained by a financial institution. n10

### B. Life Insurance Products

#### (1) Not-Financial Accounts

Life insurance and annuity contracts are not depository or custodial accounts, nor are they equity or debt instruments. Treasury and IRS state that they “do not view the issuance of insurance or reinsurance contracts without cash value as implicating the concerns of chapter 4”. n11 They cite reinsurance contracts and term life insurance contracts as examples of contracts without cash value that do not implicate the concerns of chapter 4, and provide that they “plan to issue regulations treating entities whose business consists solely of issuing such contracts as non-financial institutions for purposes of chapter 4”. n12 This conceptual demarcation is a reasonable starting point since contracts with little or no cash value do not pose a potential for tax evasion. We offer guidelines for defining and identifying additional life insurance contracts that do not pose a potential for tax evasion.

We believe that other life insurance and annuity contracts that similarly lack a material investment component should be included on the list of contracts without cash value or that have low cash value that are clearly exempt from chapter 4.

- (i) Life insurance and annuity contracts issued before January 1, 2013.

We believe that any life insurance and annuity contract issued before January 1, 2013, the effective date of chapter 4, should be excluded from the definition of financial account.

- (ii) Life insurance or annuity contracts without cash value
  - (a) Reinsurance contracts should not be treated as financial accounts.
  - (b) Term life, return of premium, medical and disability, and other protection insurance policies should not be treated as financial accounts.

We commend Treasury and IRS for recognizing that life insurance contracts pose little or no risk of tax evasion, and request that the regulations make it clear that term life, return of premium life, medical and disability, and other protection insurance contracts and reinsurance contracts are not classified as financial accounts.

- (iii) Low cash value Contracts

We recommend that contracts with low cash values of \$ 50,000 and less be similarly excluded from chapter 4. Such contracts pose little to no risk of tax evasion and should be exempted from chapter 4 in a similar manner to depository accounts. n13 For this purpose, we define

Cash Value Insurance Contract as a life insurance or annuity contract that provides an investment return in excess of premiums and other amounts paid for the contract.

We recommend that the cash value of a contract be the amount that may be received by the policyholder on the anniversary date of the policy, after all applicable surrender charges and fees. Insurance companies often do not determine the cash value of contracts on a month end or even monthly or quarterly basis. Most insurance companies only determine the cash value of insurance contracts on the anniversary date of the contract. Therefore, we request that the date for testing the cash value of an insurance contract only be on the anniversary date of the contract.

Although some insurance companies will want to avail themselves of the \$ 50,000 cash value de minimis rule explained above, other insurance companies may find that rule difficult to rely upon, since the cash value of a policy will change over time. Therefore, we suggest that other de minimis rules also be adopted for life insurance policies that looks to the amount of premium paid each year, or the time during which it takes for cash value to accumulate. Insurance policies with small and level premiums pose little or no risk of tax evasion. Such policies do not provide for much, if any, initial cash value and the cash value builds over a very long period of time, which does not lend itself to being a financial product conducive for tax evasion. n14 Therefore, we urge that a rule be adopted to exempt life insurance policies from chapter 4 if the annual premium is \$ 10,000 or less for every year of the life of the contract.

### Definitions

We recommend that a “Low Cash Value Contract” be defined as

- (1) any Cash Value Insurance Contract that has a net cash surrender value (after deduction for all fees, costs and penalties for early termination) that does not exceed \$ 50,000;
- (2) any Cash Value Insurance Contract with an annual premium payment that does not exceed \$ 10,000; or
- (3) any Cash Value Insurance Contract for which the investment return does not exceed the premiums and other amounts paid for the contract during the first ten years.
- (iv) Government-Regulated Pension Plans or Government Sanctioned Private Retirement Accounts.

We appreciate that Treasury and IRS identify foreign retirement plans as persons that pose a low risk of tax evasion; noting that they intend to issue guidance that payments beneficially owned by foreign retirement plans will be exempted from withholding pursuant *section 1471(f)(4)*. The Notice states that retirement plans that meet the following criteria will be exempted:

- qualifies as a retirement plan under the law of the country in which it is established,
- is sponsored by a foreign employer, and
- does not allow U.S. participants or beneficiaries other than employees that worked for the foreign employer in the country in which such retirement

plan is established during the period in which benefits accrued.

We recommend that these criteria be revised to include plans organized under a different country than the one in which the U.S. participant is working, as long as the U.S. participant is not working in the U.S. Such an expansion would reflect the typical practice of multinational corporations with respect to their employee benefits.

We also request that the exemption for retirement plans be expanded to include government sponsored retirement plans. Examples of such accounts may include Canadian Registered Retirement Savings Plans (RRSPs), Chilean Administradora de Fondos de Pensiones (AFPs) and Mexican Administradoras de Fondos para el Retiro (AFOREs).

For similar reasons private retirement accounts established in accordance with government rules for accounts dedicated to retirement should be exempt. This should include accounts that are similar to individual retirement accounts (IRAs) in the US. The characteristics of such accounts should be those for which income earned for performance of services may be contributed to an account, the primary purpose of which is to provide retirement savings for the individual. In order to ensure that this exemption only excludes accounts for which there may be a low risk of tax evasion, such accounts could be limited to those that would not allow a U.S. person to participate, other than those employed or working outside of the U.S.

(v) Group insurance contracts

Group contracts pose a low risk of tax evasion for the same reasons that retirement plans pose a low risk of tax evasion. Group contracts are generally paid for with income earned from performance of services by employees and can be limited to those policies offered through employers and that do not allow U.S. participants to participate if they work in the U.S.

(vi) Any other contract which the Secretary determines presents a low risk of tax evasion.

(2) Life insurance or annuity contracts with cash value

Treasury and IRS indicate that cash value life insurance and annuity contracts that have an investment component may present the risk of U.S. tax evasion that chapter 4 is designed to prevent. According to the Notice, these contracts combine insurance protection with an investment component which may present the potential for tax evasion chapter 4 is designed to prevent. If insurance companies are treated as FFIs as a result of issuing cash value insurance contract, <sup>n15</sup> we recommend that only cash value insurance contracts that are issued after January 1, 2013 and that are not excluded in items II. B. (1) (i) through (vi) be treated as “financial accounts” within the meaning of *section 1471(d)(2)*.

### III. Reporting ~ Life Insurance Products

The Notice sets forth a detailed set of rules in Section III for FFIs that have entered into agreements with the Secretary pursuant to *section 1471(b)* (“chapter 4 agreement”). The Notice appropriately distinguishes between existing and future accounts for identification purposes. We appreciate Treasury and IRS’s sensitivity to the need for such a distinction and will elaborate further below why different approaches to identifying U.S. accounts is of particular importance to the life insurance industry. We also commend Treasury and IRS for being sensitive to local account and documentation standards, and generally relying on the established account opening and documentation procedures at foreign financial institutions. As noted above, we look forward to working with Treasury and IRS to define and assess the circumstances under which life insurance, endowment and annuity contracts may pose a tax evasion risk. For the types of life insurance, annuity and similar contracts that may be identified as posing a tax evasion risk, we propose the following identification and reporting procedures by the life insurers that issue them.

#### A. Pre-existing Accounts ~ Identification

##### (i) Procedures in Notice

The Notice provides that a foreign financial institution may treat accounts as non-U.S. accounts if the account value of a depository account in the year prior to the chapter 4 agreement is below the \$ 50,000 threshold amount (“threshold amount”) as set forth in *section 1471(d)(1)(B)*. As requested above, this \$ 50,000 threshold should also apply to life insurance and annuity contracts, as well as a de minimis \$ 10,000 of annual premium exemption and contracts for which the cash value will not exceed payments for the contract during the first ten years. Next, the Notice requires that the foreign financial institution identify as U.S. accounts those already documented as U.S. persons for other U.S. tax purposes from the accounts above the threshold amount. Third, from the accounts remaining in the mix after this second step, the Notice requires an FFI to electronically search its database, in a third step, for the following indicia of potential U.S. status:

- (i) identification of any account holder as a U.S. resident or U.S. citizen;
- (ii) a U.S. address associated with an account holder of the account (whether a residence address or a correspondence address);
- (iii) a U.S. place of birth for an account holder of the account;
- (iv) an “in care of” address, a “hold mail” address, or a P.O. address that is the sole address on file with respect to the account holder;

(v) a power of attorney or signatory authority granted to a person with a U.S. address; or

(vi) standing instructions to transfer funds to an account maintained in the U.S., or directions received from a U.S. address. n16

If any accounts are identified as containing indicia of potential U.S. status, the foreign financial institution will be required to inquire further and obtain documentation (i.e., Form W-9 or Form W-8BEN) to establish whether the account is a U.S. or non-U.S. account. The Notice clarifies that a “participating FFI will be entitled to rely on the documentation received from account holders unless it knows or has reason to know that the information contained in such documentation is unreliable or incorrect”. n17 We find the indicia of U.S. status to be a reasonable approach to identifying potential U.S. taxpayers.

The Notice imposes additional burdensome requirements in subsequent years; pre-existing accounts are to be reviewed again within 2 and 5 years after the chapter 4 agreement. Within 2 years after the chapter 4 agreement, all pre-existing accounts that were identified as non-U.S. accounts with amounts exceeding \$ 1 million before the chapter 4 agreement will be subject to new accounts procedures to see if they should still be treated as non-U.S. accounts. Within 5 years after the chapter 4 agreement, all pre-existing accounts that were identified as non-US accounts will be subject to procedures set forth for new accounts unless the foreign financial institution “has collected, reviewed, and maintained documentary evidence sufficient to establish the U.S. or non-U.S. status of such accounts, and such U.S. or non-U.S. status is reflected in electronically searchable information maintained by the FFI and associated with the account”. n18

## (II) Pre-existing Life Insurance and Annuity Contracts Should be Exempted

We believe that all life insurance and annuity contracts existing prior to the chapter 4 agreement should be exempted from the identification procedures suggested in the Notice. As noted above life insurance and annuity contracts pose a very low, if any, risk of tax evasion. The nature of the products and the relationship with the client is unique and distinguishable from the type of relationship the statute contemplates. The relationship a life insurance company has with its clients is long in duration, with infrequent interactions after the commencement of the business relationship. The protection products sold are not investments but protection for investments in case of death or disability; the motivating factor behind the relationship is to purchase protection in the form of guarantees, not income growth and investment.

Life insurance is a highly regulated industry and local laws place restriction on the sale ~ tax evaders do not typically seek life insurance and annuity contracts as investment vehicles. Because of the longer duration of the business relationship records are often old and not in electronic form. As a general rule it can be established that the older the contract is the less information is available to the company. If data is stored electronically, it is usually on old systems that are maintained solely to service the

contracts. When information is electronically stored, there is a significant discrepancy between what is gathered for the insurance business and what is captured in electronic systems. For example, some underwriting information may only be available on paper, as they are only required for the establishment of the policy, but not for the ongoing and regular servicing of the contract. These reasons and the low risk of tax evasion present combined support for a blanket exemption for all contracts existing prior to the chapter 4 agreement.

Even in cases where the policyholder may have access to cash value that is liquid and that may not be subject to taxation in the jurisdiction where located, the chances that any significant pre-existing life insurance and annuity contracts are the type of financial account chapter 4 is designed to prevent are low.

Life insurance, annuity and similar contracts are also unique, since they are contracts. These are not bank, brokerage or financial accounts for which terms may be able to be changed, for which funds may be frozen or the account closed. An insurance company is obligated to follow the terms within the four corners of the contract that it has agreed to with its policyholder. Insurance contracts cannot be changed once issued, and cannot even be changed for new policies without the consent of the local regulator. In many jurisdictions if the insurance company does not make payments to policyholders as required by the contracts and local regulatory rules to which the insurance company is subject, then the insurance company would be in violation of its contractual and regulatory obligations. Such breaches could cause an insurance company to be sanctioned and even prohibited from the future sale of insurance. Therefore, insurance companies do not have a practical way to comply with the rules that could require the closing of a recalcitrant account or requiring new information from an existing policyholder to comply with the new requirements of chapter 4. Therefore, insurance companies will have to go through a process of reviewing contract language to be in compliance with chapter 4. In many jurisdictions it takes a year or two to develop new contract language and have that language approved by the regulator, before it can be incorporated into newly-issued policies. Accordingly, we request that insurance contracts issued before January 1, 2013 not be subject to chapter 4.

- Privacy Issues

*Section 1471(b)(1)(F)* anticipates that foreign law might prevent the disclosure of personal information with respect to a U.S. account. This section also requires the FFI obtain a waiver from the U.S. person, and failing the procurement of a waiver, close the account. As a highly-regulated industry, life insurers may be faced with regulatory penalties, especially with respect to pre-existing accounts if they are compelled to terminate existing policies that fail to provide the required data or waiver.

We believe that it would very unlikely that insurers would obtain waivers from affected policyholders to permit disclosure of their information. Many policyholders simply would not respond due to the nature of the request and inherent infrequency of communication with insureds in the life insurance business. After the commencement of the insurer-insured relationship, contact with policyholders tends to be centered more on events than cycles. Many policyholders plan for premium payments to be made automatically or pay through an agent. Thus it is highly likely that contact with the life insurance policyholder after that initial contact does not occur and the next point of contact is instead

with the beneficiary when the death benefit is paid (or in the case of an annuity when the policyholder annuitizes or takes withdrawals). Even when policies are paid periodically, there is minimal contact with the policyholder beyond the premium payment process. The non-cyclical nature of the communication makes efforts at communication a rather fruitless endeavor. For example, one of our members reports an 8% response to mailings to policyholders in Spain after numerous attempts.

Life insurers will have significant legal exposure concerning pre-existing accounts that may have to be closed due to the unavailability of a waiver. <sup>n19</sup> Unilaterally canceling existing policies likely would lead to breach of contract issues. The policies did not contemplate meeting U.S. tax reporting requirements.

The most severe of consequences to the life insurer may lie in the insurance and public law responses to the closing of pre-existing contracts. For example we understand that in certain jurisdictions, such as Canada, unilateral termination where there is no contractual right would be a breach of contract and possibly statute; life insurers could face regulatory sanctions from insurance regulators in addition to civil suits from policyholders. We are reviewing the laws in certain jurisdictions, where our members most actively conduct business, and request the opportunity to elaborate more in future submissions on this point.

#### (a) Acquisition of Pre-existing Contracts by an FFI

A transition or grandfather rule is also needed for life insurance, annuity and similar contracts acquired through an acquisition of such contracts from a life insurance company that does not meet the requirements of *section 1471(b)* (is a non-participating FFI) or the acquisition of a life insurance company that does not meet the requirements of *section 1471(b)* (is a non-participating FFI). In such a situation we suggest that existing contracts not be subject to chapter 4, and that life insurance and annuity contracts issued after the acquisition of a life insurance company be subject to an electronic search through the first full year of ownership of the life insurance company, and thereafter be subject to the rules for new accounts. As explained above, life insurance and annuity contracts that were not required to comply with chapter 4 previously should not become subject to the chapter 4 rules. Therefore, acquired contracts should be viewed in the same manner as pre-existing contracts.

#### (b) Grandfathered Obligations

The Notice states “Section 501(d)(2) of the Act provides that chapter 4 shall not require any amount to be deducted or withheld from any payment under any obligation outstanding on March 18, 2012, or from the gross proceeds from any disposition of such an obligation. Thus, any payment made pursuant to any obligation outstanding on March 18, 2012 (or any gross proceeds from the disposition of such an obligation) will not be subject to withholding under chapter 4.” We believe that life insurance and annuity contracts issued prior to January 1, 2013 should not be treated as financial accounts for purposes of *section 1471* or at least those existing on or prior to March 18, 2012. While the Notice indicates a legal agreement that produces withholdable payments does not include brokerage, custodial and similar agreements to hold financial assets for the account of others, life insurance and

annuity contracts are distinguishable from the banking and other arrangements originally targeted by chapter 4 and more akin to the obligations that prompted the exclusion in *section 501(d)(2)*.

## B. Financial Accounts held by Entities

We request that existing insurance and annuity contracts held by entities be excluded from chapter 4, for the same reasons explained above for existing contracts held by an individual. Preexisting life insurance and annuity contracts pose less risk than other financial accounts to which additional deposits may be made. Therefore, there is less risk associated with insurance and annuity contracts as compared with other types of pre-existing financial accounts.

If existing life insurance and annuity contracts are subject to chapter 4, the Notice then requires an FFI to electronically review the name of entities with accounts at the FFI to determine if an entity's name or other information clearly indicates that the entity is an FFI. We request that more specific criteria be provided to determine what information would clearly indicate that the entity is an FFI. For example, the term "bank" or "financial institution" may be the type of terms in an entity name that would clearly indicate that an entity is an FFI. Would a word search in every language for similar terms be required? The term "insurance company" may not provide a clear indication that an entity is an FFI, since many insurance companies do not issue the types of contracts that may be treated as financial accounts for purposes of chapter 4.

The Notice requests comments about the level of evidence that should be sufficient to establish that a non-financial foreign entity ("NFFE") is engaged in an active trade or business. Such information could include (1) the balance sheet or financial statement of the company, (2) copies of invoices of the NFFE that evidence the conduct of the sale or purchase of goods or services, or (3) documentation that a representative of the FFI (such as the life insurance agent) has visited and seen the business.

## C. New Accounts ~ Identification

### (i) Procedures in Notice

For new accounts the Notice provides that an FFI may treat depository accounts held by individuals as non-U.S. accounts if the account value in the year prior to the chapter 4 agreement is below the \$ 50,000 threshold amount ("threshold amount") set forth in *section 1471(d)(1)(B)*. As requested above, this \$ 50,000 threshold should also apply to life insurance and annuity contracts, as well as a threshold \$ 10,000 of annual premium exemption. Next the Notice requires that the FFI identify as U.S. accounts those already documented as U.S. persons for other U.S. tax purposes from the accounts above the threshold amount. In step three the Notice requires the FFI "obtain and examine from individuals that are beneficial owners of new individual accounts documentary evidence establishing U.S. or non-U.S. status of individual account holders".<sup>n20</sup> For the remaining accounts, the foreign financial institution is required to "examine all other information collected in connection with the new individual financial account . . . to identify indicia of potential U.S. status" and treat accounts with indicia of potential U.S. status as potential U.S. accounts and obtain Forms W-9 or W-8BEN, or treat the account holder as a recalcitrant account holder.

## (ii) New Life Insurance and Annuity Contracts

We appreciate that Treasury and IRS indicate they will permit an FFI to rely on the documentation received from account holders unless it knows or has reason to know that the information contained in such documentation is unreliable or incorrect. Such an approach for is practical and acknowledges business realities and does not place life insurers with U.S. business affiliations at a competitive disadvantage. Although we believe life insurance, endowment and annuity contracts pose a very low, if any, risk of tax evasion, we understand the requirement to identify U.S. persons in accordance with the procedures set forth in the Notice for new accounts. We do wish however to bring certain possible impediments as to the industry's ability to fully comply to your attention.

- Privacy Issues

*Section 1471(b)(F)* anticipates that foreign law might prevent the disclosure of personal information with respect to a U.S. account. The section requires the FFI to obtain a waiver from the U.S. person, and failing the procurement of a waiver, close the account. Life insurers may be faced with legal and administrative issues and require additional time to comply with respect to new accounts.

As noted above waivers from privacy laws may be obtained during the underwriting process, but only if terms and conditions of the contracts are amended. Regulatory approvals typically will be required for such modifications and the process may require up to two years. Internally, new application forms will need to be prepared and approved to gather additional data required by chapter 4. Also, systems will need to be updated or purchased to allow for the proper collection, storage, and reporting of information pursuant to chapter 4. Finally, we would be remiss if we did not observe that the compliance costs associated with these reporting requirements increase the cost of doing business for companies with U.S. business affiliations. We would appreciate any considerations Treasury and IRS might give to helping life insurers conserve resources by extending the effective date for compliance.

## IV. Treatment of Certain Other Classes of Entities ~ Controlled Foreign Corporations (CFCs)

Treasury and IRS state that “deeming CFCs to be compliant under *section 1471(b)(2)* would potentially result in disparate treatment of account holders of FFIs, depending on whether they held accounts with FFIs that are CFCs or other FFIs”.<sup>n21</sup> We appreciate that Treasury and IRS plan to coordinate reporting obligations of CFCs of life insurance companies with any additional obligations they may have to report under chapter 4. We have previously discussed our proposal for sensible modifications to the reporting requirements for CFCs of U.S. life insurers.<sup>n22</sup> Subsequently, chapter 4 was enacted with potentially new additional requirements for life insurance companies. In light of chapter 4's enactment, and the indication in the Notice that CFCs will not be treated as deemed compliant pursuant to *section 1471(b)(2)*, we recommend that CFCs of U.S. life insurers be treated as having complied with all their reporting obligations under the Code if they fulfill the requirements of chapter 4 as proposed for foreign life insurers in this submission.

Given that the life insurance industry has made requests for reasonable and updated guidance with respect to such CFC reporting since the rules were adopted, but no guidance has been provided, and recognizing that the tax reporting of the foreign life insurance industry has admittedly not been a focus or priority of Treasury and IRS, as the life insurance industry has been recognized as being lower risk than other financial institutions, we request that it be clarified that the current 1099 reporting rules not apply to life insurance companies prior to the January 1, 2013 effective date for chapter 4 reporting.

## VI. Withholdable Payments

We recommend excluding premiums from 30% withholding to the extent such premiums are subject to the *section 4371* excise tax. The definition of withholdable payments as defined in *section 1473(1)(A)(i)* includes “any payment of . . . premiums”. We request that regulations be issued to clarify that insurance premiums paid with respect to a contract that is subject to the *section 4371* excise tax be exempted from chapter 4. Premiums are also included within the list of items of income subject to 30% withholding tax pursuant to *section 1441(b)*. The regulations to *section 1441*, however, clarify that insurance premiums paid with respect to a contract that is subject to the *section 4371* excise tax are not subject to withholding. See *Treasury Regulation section 1.1441-2(a)(7)*. There is no reason to change the way in which insurance premiums are recognized as being different from the type of premiums referred to when premiums are included within the list of income that is generally subject to 30% withholding tax.

We thank you for your consideration of this request and look forward to the opportunity to meet with you to discuss the issues that we have presented in this letter. If you have questions or need for additional information, please contact us.

Sincerely yours,

Walter C. Welsh  
Executive Vice President,  
Taxes & Retirement Security  
ACLI  
Washington, DC

Mandana Parsazad  
Senior Counsel  
Taxes & Retirement Security  
ACLI  
Washington, DC

cc:

Mr. Steven Shay  
Mr. Steven Musher  
Ms. Josephine Firehock

Mr. Steven Jensen

**FOOTNOTES:**

n1

Unless otherwise noted, all references are to sections of the Internal Revenue Code of 1986.

n2

2010-37 I.R.B.

n3

Id., at 11-12.

n4

The American Council of Life Insurers represents more than 300 legal reserve life insurer and fraternal benefit society member companies operating in the United States and virtually all internationally. These member companies represent over 90% of the assets and premiums of the U.S. life insurance and annuity industry.

n5

Hiring Incentives to Restore Employment Act of 2010, P.L. 111-147 (the “HIRE”) Act).

n6

Sections 1471(d)(5), 1471(a) and (b).

n7

Withholdable payments are defined in *section 1473(1)* as “any payment of interest (including original issue discount), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodic gains, profits, and income, if such payment is from sources with in the United States, and . . . any gross proceeds from the sale or other disposition of any property of a type which can produce interest or dividends from sources within the United States”.

n8

Technical Explanation of the Revenue Provisions Contained in Senate Amendment 3310, the “Hiring Incentives to Restore Employment Act”. JCX-4-10, February 23, 2010. p. 44. Similarly, the Notice states the statute grants the Secretary regulatory authority to exclude or include insurance companies and certain products sold by insurance companies within the definitions of “financial institution” and “financial account.” *Supra*, Note 2 at 11.

n9

Id.

n10

Section 1461(d)(2).

n11

*Supra*, Note 2.

n12

Id.

n13

Section 1471(d)(1)(B).

n14

We have attached sample illustrations we discussed with you. Our member company’s analysis shows that a 35 year-old male would pay about \$ 10,000 for a \$ 500,000 whole life policy. After 30 years when the insured is 65, the cash value would be about \$ 270,000 ~ compared to the \$ 300,000 the insured has paid into the policy. Another study, in a country where a higher interest rate is applied to the contract, the amount of money in the policy would be approximately \$ 192,500 after 20 years ~ contrasted with the \$ 200,000 the insured has paid into the policy. After 30 years the amount of money in the policy would be approximately \$ 329,000 ~ compared with the \$ 300,000 paid into the policy by the 30 year. An average annual investment return after 30 years is not a high value investment vehicle.

n15

As defined in II. B. (1) (iii) above.

n16

Supra, Note 2 at 27.

n17

Id. at 28.

n18

Id. at 29.

n19

One of our member companies has confirmed that, at a minimum, consent from policyholders is required before personal account information required by chapter 4 may be transmitted by an FFI. Whether consent or waiver may be deemed invalid in some jurisdictions for public policy reasons regardless of actual waivers by policyholders is under study.

n20

Supra, Note 2 at 31.

n21

Id. at 19-20.

n22

see, ACLI letter to IRS dated November 18, 2009.