

[TEXT OF THE FATCA COMMENT LETTER SUBMITTED BY
THE CANADIAN LIFE AND HEALTH INSURANCE ASSOCIATION]

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Re: Comments on the Potential Application of Chapter 4 of Subtitle A of the Internal Revenue Code of 1986 to Canadian Life Insurance Companies

Dear Ms. Corwin and Messrs. Shay and Musher:

The Canadian Life and Health Insurance Association (the "CLHIA") welcomes the opportunity to provide comments on the potential application of newly enacted Chapter 4 of Subtitle A of the Internal Revenue Code of 1986¹ to Canadian life insurance companies and their affiliates.

A. Background

The CLHIA is a voluntary association of Canadian life and health insurers, with members accounting for over 99 percent of Canada's life and health insurance business. The industry provides protection to 26 million Canadians (representing over 75 percent of Canada's total population) through a wide variety of individual and group insurance products, including (i) term life, whole life, and universal life insurance, (ii) health, disability, and travel insurance, and (iii) fixed and variable annuities. At the end of 2008, the most recent year for which data are available, CLHIA members administered 13.3 million individual Canadian life insurance policies, as well as group life insurance policies covering 37 million Canadian certificate holders.² Members also administered 3.5 million individual Canadian annuities, as well as group annuities and pension plans covering 4.9 million Canadians.³ CLHIA members hold in excess of C\$ 411 billion of assets backing their obligations to Canadian policyholders, a significant portion of which are United States investment assets.⁴ Many CLHIA members also have affiliates or branches operating in other jurisdictions, including the United States.

The issues raised in this letter are not exhaustive, although the issues are common to all CLHIA members. Individual members of the CLHIA may have additional issues that they would like to raise with Treasury or the Internal Revenue Service.

B. Introduction and Summary of Comments

The CLHIA understands the reasons that Chapter 4 was adopted by the United States and agrees that additional information reporting by certain foreign entities to the Internal Revenue Service is a useful tool to combat tax evasion by United States persons. However, we also believe that the means to accomplish that goal should be reasonable in light of all relevant circumstances and that those means should not create an excessive burden on reporting entities when there is little, if any, corresponding benefit to the Treasury or the Internal Revenue Service. For that reason, as is discussed in more detail below, we urge the Treasury, in considering whether and how to implement Chapter 4 with respect to life insurance companies, to take cognizance of the facts that United States persons do not represent a substantial number of the policyholders of Canadian life insurers and that the policies issued by those insurers are not susceptible to the type of tax abuse that led to the enactment of Chapter 4. Based on those facts, we respectfully urge that Canadian life insurance companies not be subject to the reporting requirements of section 1471.

In the event that you determine to subject Canadian life insurers to those reporting requirements, however, we urge you to limit the application of those requirements in a manner that takes into account the difficulty that Canadian life companies will have in complying with Chapter 4, particularly with respect to their existing policies, and to provide that reporting is not required for specific categories of Canadian policies that have no realistic possibility of being used for tax avoidance purposes. We discuss each of those points, as well as several other issues, in more detail below.

C. Potential Application of Chapter 4 to Canadian Life Insurers

Although life insurance companies are not expressly included in the definitions of "foreign financial institution" or "financial institution" contained in sections 1471(d)(4) and 1471(d)(5), ⁿ⁵ we acknowledge that the legislative history of Chapter 4 includes language stating that the Treasury "may prescribe" rules pursuant to which insurance companies will be treated as foreign financial institutions ("FFIs") for purposes of Chapter 4. ⁿ⁶ Similarly, although life insurance policies and annuities are not expressly included in the definitions of "United States account" and "financial account" contained in sections 1471(d)(1) and 1471(d)(2), ⁿ⁷ we also acknowledge that the Technical Explanation states that the Treasury may prescribe rules pursuant to which "certain [insurance] contracts or policies," such as annuities or cash value life insurance policies, will be treated as United States accounts for purposes of Chapter 4.

We interpret the lack of express designation of life insurance companies as FFIs and of insurance policies and annuities as United States accounts, when combined with the "may prescribe" language of the Technical Explanation, as effectively ceding to the Treasury the decision as to whether, and to what extent, life insurance companies ~ including Canadian life insurance companies ~ should be subject to Chapter 4. In order to determine whether Chapter 4 should be applied to Canadian life insurers in particular, however, it is important that the Treasury understands the unique factors that relate to those companies and why those factors support not subjecting them to the reporting requirements of section 1471.

As an initial matter, we note that Canadian life insurers do not have significant numbers of United States policyholders. ⁿ⁸ Not only are Canadian life insurance companies prohibited under applicable United States insurance licensing rules from marketing their policies in the United States, but most companies' internal underwriting and marketing guidelines prohibit policy sales to any nonresident of Canada, both because of anti-money laundering and anti-terrorism rules and concerns and because the Canadian residence of potential policyholders is an important factor that insurers take into account in determining how to administer their policies. ⁿ⁹ Canadian insurers who prohibit such sales generally do so by requiring policy applicants to fill out application materials that show a Canadian address and other relevant information (including a Canadian Social Insurance Number ⁿ¹⁰) and to provide proof of identity. See Section 3 of Exhibit A, which is a typical Canadian insurance application, and Section 4 of Exhibit B, which is a typical Canadian annuity application. Where such an address or identification is not provided, those insurers will not sell a policy to the applicant.

Moreover, there is a distinct Canadian tax disadvantage to an insurer as a consequence of selling policies under which the insured risk is outside of Canada, ⁿ¹¹ as Canadian tax rules make any associated insurance reserves nondeductible for Canadian income tax purposes. ⁿ¹² Thus, there would be a significant timing mismatch between the taxability of the premiums received on any such policy and the deductibility of policy proceeds paid to the beneficiary or annuitant. The inability of a Canadian life insurance company to sell policies insuring non-residents on a profitable basis as a result of this tax treatment provides a strong economic disincentive to such sales.

While we acknowledge that some policyholders of Canadian life insurers may be Canadian-resident United States citizens or United States residents who either initially acquired their policies while residing in Canada and then moved to the United States or (where permitted by an insurer) acquired their policy for the benefit of an insured who was a Canadian resident, we believe that the foregoing factors result in United States persons being a very small percentage of Canadian life insurers' total number of policyholders.

In addition, not only have we and our members seen no evidence that United States persons are utilizing Canadian life insurance policies or annuities in order to avoid United States taxation, but we think that any such usage is extremely unlikely. Under Canadian tax law, owners of Canadian annuities and life insurance policies are taxed in a manner that is not preferable to, and in some cases that is much less favorable than, the way equivalent policies are taxed in the United States. In the case of most Canadian life insurance policies, for example, the "inside build-up" in the policy is (as is the case under United States tax law) not subject to current taxation. ⁿ¹³ However, any cash value in such a policy that is accessed through a surrender of the policy will be subject to Canadian taxation if and when the cash value is received. ⁿ¹⁴ Further, in the case of a Canadian "registered" annuity, ⁿ¹⁵ although the inside build-up is also (as in the United States) not subject to current taxation, every dollar of proceeds obtained as the result of the surrender, maturity, or payout of the annuity is taxed by Canada. ⁿ¹⁶ Finally, in the case of a Canadian "non-registered" annuity, virtually all inside build-up is (unlike the United States) subject to current taxation in Canada, and any inside build-up that is not taxed at that time is still subject to taxation upon surrender, maturity, or payout of the annuity. ⁿ¹⁷ Accordingly, the amounts taxed in Canada with respect to all life insurance policies and annuities owned by a Canadian resident, and the timing of that taxation, are in no case more favorable to policyholders than would occur in the United States with respect to comparable policies, and in a significant number of cases the treatment is much less favorable.

Moreover, the rates of individual taxation in Canada would make the use of Canadian life insurance policies and annuities by a United States person even less attractive from a tax-avoidance perspective. Under Canadian tax law, the highest marginal rates of taxation apply to a lower level of income than occurs under United States tax law, and those rates generally are as high, if not higher, than rates in the United States. Combined federal and provincial rates for nine of the ten Canadian provinces range from 43.3 to 48.25 percent, for example, and the combined rate for the tenth province is still 39 percent. Given these rates and the pattern of taxation of insurance policies and annuities described above, we think it is clear that no economically rational United States person who was resident in Canada would ever acquire a Canadian life policy or annuity in order to avoid or minimize his or her total level of taxation.

Further, in cases in which a Canadian life policy or annuity is owned by a United States resident (under one of the limited circumstances described above), we do not believe that such ownership would result in tax avoidance. All amounts taxable under such a policy under the Canadian tax rules described above are subject to a Canadian withholding tax when paid to the policyholder. In addition, under the United States-Canada income tax treaty and information exchange agreements between the United States and Canada, we understand that the CRA already reports all such amounts to the Internal Revenue Service. That information reporting means that there is little or no likelihood that a United States-resident policyholder of a Canadian life insurer would escape United States taxation of any inside build-up on a policy that was distributed to or received by the policyholder.

For all of the foregoing reasons, in the event that the Treasury decides to issue regulations treating life insurance companies as FFIIs, we urge you to exclude Canadian life insurance companies from the most significant impact of such treatment under the authority of section 1471(b)(2)(B), which permits the Treasury to treat members of a class of institutions as satisfying the reporting and other requirements of section 1471(b) if it concludes that the application of section 1471 to such class is not necessary to carry out the purposes of that section. Canada is not a tax haven, and neither the operations of, nor the insurance products offered by, Canadian life insurers lend themselves to the tax avoidance that Chapter 4 was intended to address.

D. Reasonable Limits on the Application of Chapter 4

In the event that you determine to treat life insurance companies as FFIIs, but not to exclude Canadian life insurers from the reporting requirements under section 1471(b), we urge you to provide Canadian insurers with the greatest possible relief from the strict application of those rules. We make that request because we believe that it would be extremely diffi-

cult, if not impossible, for Canadian life insurance companies to comply with the reporting rules if they applied without limitation to both existing and new policies.

As you know, sections 1471(b) and (c) require an FFI to provide extensive information about each United States account held by a United States person. Determining the identity of an FFI's "United States account owners" will require the FFI to demand citizenship and residency information from all of its account owners. Once such persons are identified, it will have to determine and report a variety of information relating to each such person and his or her account, including the name, address, and TIN of each such person.

In the event that an FFI cannot obtain (or is not permitted by local law to provide) the requisite information, it either must close the account of the "recalcitrant account owner" or withhold (at a 30 percent rate) any "passthru payments" attributable to that account. As we understand the provisions of Chapter 4, if the FFI takes neither of those actions, its only recourse is to accept a withholding tax on any withholdable payments made to it to the extent that such payments are allocable to the accounts held by the recalcitrant account owners. See sections 1471(b)(1)(D) and 1471(b)(3).

For a variety of reasons, we do not believe that Canadian life insurers will be able to comply fully with the requirements of sections 1471(b) and (c), particularly with regard to their existing policies. First, insurers currently do not have information that would enable them to determine whether their policyholders are United States citizens. In addition, while they may know the physical residence of a policyholder at the time a policy is issued, that address may not necessarily evidence the "tax residency" of the policyholder at that time, ⁿ¹⁸ and a policyholder's physical residence and/or tax residence may change without notice to the insurer. For example, in cases in which policyholders have paid-up life insurance policies or pre-paid annuities still in the accumulation phase, or where the only ongoing contacts between the insurer and a policyholder are the collection of premiums or the payment of benefits through electronic fund transfers (which is increasingly the case), the insurer may have no current information about the physical residence of the policyholder. Moreover, although the physical residence of a policyholder at any time may be evidence of the tax residency of that policyholder, it clearly would not be determinative.

Accordingly, assuming that life insurance companies are treated by regulations as FFIs and that life policies and annuities are considered "financial accounts" for Chapter 4 purposes, it appears that, in order to confirm whether any particular policyholder of a Canadian life insurer is a "United States account owner," the company would have to make inquiries of its entire policyholder base. This means that the Canadian life insurance industry would have to try to obtain citizenship, residency, and other information from its 26 million policyholders (of whom only a very small number are United States persons), when those holders have no legal or contractual obligation to supply that information. The industry's extensive experience in dealing with its policyholders strongly suggests that a very large percentage of those policyholders (perhaps as many as 50 percent or more) would not provide such information, either because they would simply throw away or otherwise ignore the request, they would believe that it does not apply to them as citizens or residents of Canada, they would resent being asked to provide information merely because the United States requires it, or otherwise.

Moreover, pursuant to Canadian privacy laws, the Canadian life insurers would not be able to provide to the Internal Revenue Service any information actually obtained from the insurers' policyholders or contained in the insurers' files unless the policyholders provided their specific consent to such disclosure.

Although Chapter 4 contemplates that FFIs will have the "stick" of threatening account owners who fail to provide the requisite information or agree to a waiver of their privacy rights with closures of their accounts or withholding on "passthru" payments, neither of those threats could be exercised by Canadian life insurers under Canadian law. In this respect, Canadian insurance regulatory counsel have advised us that, due to the contractual nature of insurance and annuity policies under Canadian law, it would not be permissible for Canadian insurers either to terminate those policies unilaterally or to withhold any portion of payments due under the policies because of refusals by the policyholders to grant privacy waivers or of failures to provide information required by United States rules or regulations. ⁿ¹⁹ As a consequence, Canadian life insurers who have "recalcitrant account holders" either would be unable to avoid withholding on all withholdable payments made to them (inasmuch as they would not be able to comply with section 1471(b)(1)) or they would have to reach agreement with the Internal Revenue Service under section 1471(b)(3) to accept withholding on all withholdable

payments made to them to the extent that such payments were "allocable to accounts held by recalcitrant account holders." n20

Putting aside for the moment how a life insurance company would determine how much of the interest payment on a United States bond, for example, would be "allocable" to the owner of a whole life contract issued by an insurer (or any similar issues created by the statutory "allocation" regime reflected in section 1471(b)(3)), it is clear that any insurer that had a significant number of recalcitrant policyholders would incur a substantial amount of additional taxes as a result of Chapter 4. Under Canadian law, those taxes could not be passed through to the specific policyholders who gave rise to them, and the insurer and/or its policyholders in general therefore would incur significant additional costs as a result of holding United States investments. Absent relief from the provisions of Chapter 4, those costs would reduce the net yield to Canadian insurers from United States investments and thereby would make such investments substantially less attractive to those insurers. Under such circumstances, Canadian insurers almost certainly would seek alternative investments outside the United States that would provide a higher net yield.

Canadian life insurers would experience even more difficulties with respect to group policies. Under those policies, the insurers have a relationship with the employer or other sponsor of the group contract, not with the individual group members. Thus, the insurer may have no information about the residency of the group members. Not only would the insurers have less ability to access the required information or to obtain privacy waiver consents, but it is unclear under Chapter 4 what effect a recalcitrant individual member would have with respect to the group contract - *i.e.*, would the "recalcitrance" affect the entire contract, how would section 1471(b)(3) be applied in that case, etc.

Finally, even if our members somehow could identify all of the United States persons who own existing policies (and those policies were considered to be "United States accounts" for purposes of section 1471), our members believe that it would be very difficult to provide the account information required by that provision with respect to such policies, even assuming that the policyholders waived their privacy rights. The insurers' files do not contain some of the required information for these existing policies under section 1471(c), n21 and the insurers generally do not have data recovery systems in place that would permit relevant information that does exist for these policies to be retrieved easily.

In light of these issues, if the Treasury determines to require Canadian insurance companies to comply with section 1471(b), we urge that the relevant regulations provide that the scope of that provision is limited with respect to those companies. Our principal suggestion in this regard is that any such regulations impose reporting obligations on Canadian life insurers only with respect to insurance or annuity policies issued after a date that is sufficiently far in the future that the insurers can (i) implement application or other procedures that will allow the insurers to collect citizenship, tax residency, and other relevant information and (ii) obtain authorization to provide the relevant information to the Internal Revenue Service.

Even if that is done, however, Canadian insurers may have difficulty in some cases in supplying the information required by section 1471 to the Internal Revenue Service. Canadian privacy law counsel have advised us that, if an applicant for an insurance policy does not agree to provide information to an insurer that is not directly relevant to the issuance of the applied-for policy, or refuses to consent to the disclosure of any information relating to the policyholder or his or her policy to a person or entity other than a Canadian governmental agency, the insurer may not, under Canadian privacy laws, refuse to issue the policy for either of those reasons. Although our members do not anticipate that a significant number of future policy applicants will refuse to provide citizenship or tax residency information if asked or, to the extent that they are United States persons, refuse to consent to the disclosure to the United States of the information required by section 1471, if any such refusals occur, our members may not be able to comply fully with the requirements of Chapter 4, depending on the ultimate interpretation of the privacy legislation. We are still analyzing these issues, but we hope to work with the Treasury in finding solutions that will permit our members to comply with the requirements of Chapter 4 in a manner that is consistent with Canadian law.

In addition to making any regulations applicable only to policies issued in the future, we urge that the scope of any required disclosure be limited to policies that have a reasonable possibility of being used for tax avoidance purposes. Accordingly, any regulations treating insurance policies and annuities as "United States accounts" should exclude all insurance policies that have no cash value, that do not permit payments in excess of the policyholder's adjusted cost basis, or that

allow for a return of premiums, but not a payment of investment return. Policies in this category include health, disability, travel, property, and term life insurance, among others. None of such policies permits a policyholder to terminate or surrender a policy and obtain any inside build-up or income or gain attributable to the policy.

Further, we respectfully request that reporting not be required with respect to group insurance policies (including group annuities). Given the group nature of those policies, they are not susceptible to use for tax-avoidance purposes and, as noted above, would present an entirely separate set of problems under Chapter 4 as a consequence of the lack of relationship between the insurer and the individual group members and other issues.

Finally, we urge that reporting not be required with respect to registered annuities that are issued by Canadian life insurance companies. Registered annuities are savings vehicles authorized by Canadian law that are used primarily by middle-income Canadian residents to save for retirement and similar purposes. RRSPs and RRIFs are similar in intent and application to IRAs in the United States. They function as private pension vehicles (indeed, they are treated as pensions for purposes of the United States-Canada income tax treaty), and they have modest annual contribution limits and other imbedded restrictions that make them quite ill suited for tax-evasion purposes. All RRSPs and RRIFs are registered with Canadian tax authorities, and tax disclosure is made to the CRA every time a premium is paid by a policyholder or a payment is made to the holder. TFSA's function in a similar manner, although it would be more accurate to describe TFSA's as savings vehicles, rather than retirement plans. As in the case of RRSPs and RRIFs, TFSA's are registered with Canadian tax authorities, have very modest annual contribution limits and other restrictions, are targeted at middle-income Canadian residents, and present no realistic risk of tax evasion.

E. Aggregation of Corporate Groups

Some of the members of the CLHIA are part of a combined group of Canadian corporations, and other members have life insurance affiliates that are located in jurisdictions other than Canada. Although certain provisions of Chapter 4 appear to contemplate the potential aggregation of FFI affiliates for some purposes, we do not believe that aggregation should be required in one important respect. Specifically, aggregation should not preclude different members of an "expanded affiliated group" (as defined in section 1471(e)(2)) from entering into their own agreements with the Internal Revenue Service under section 1471(b)(1), whether or not other members of the group have entered into such agreements. Members of the CLHIA have scores of affiliates located in non-Canadian jurisdictions. Some of these affiliates may have no or only very few United States persons as policyholders or may be able to provide the information required by section 1471 more easily than other members of the group. Other affiliates initially may be unable to provide the required information and may have to accept the imposition of a withholding tax under the statute. Under such circumstances, life insurance company FFIs that are able to comply with section 1471 should be able to enter into agreements with the Internal Revenue Service even if their affiliates may not be in a position to do so.

F. Treatment of Non-Canadian Life Insurers

Although the bulk of this submission has addressed the particular issues relevant to Canadian life insurance companies, we believe that many of the compliance issues discussed in Section D above apply equally to non-Canadian insurers, including non-Canadian affiliates of our members. In this regard, we believe that most insurers would have difficulty obtaining the information required by sections 1471(b) and (c) and being permitted to provide that information to the Internal Revenue Service. Likewise, given the contractual nature of policies, we believe that most jurisdictions would not permit policy terminations or withholding to occur as a result of policyholders failing to provide that information.

We also believe that very few insurance policies and annuities lend themselves to the types of tax avoidance that resulted in the enactment of Chapter 4. Insurance and annuity policies are regulated contracts that generally cannot be sold to cover risks located outside of the insurer's country of operation; insurers have underwriting, accounting, and capital restrictions that limit the types and sizes of policies they can provide; and most insurance policies and annuities have associated expense and mortality charges that make them ill suited to tax avoidance.

In addition, the Treasury should consider the possible adverse effect on United States issuers of investment assets as a result of an over-broad application of Chapter 4. As was highlighted above in regard to Canadian insurers, in the event

that non-Canadian insurers do not get relief from the most onerous parts of Chapter 4 and are forced to incur additional United States taxes as a consequence of being unable to comply fully with section 1471, they will almost certainly reconsider the benefits of investing in United States assets.

For all of these reasons, we also urge the Treasury to limit the application of Chapter 4 to non-Canadian insurers to the greatest extent possible, balancing the benefits sought to be obtained under Chapter 4 against the potential costs to the foreign insurance industry (and, ultimately, the United States capital markets) from an over-expansive application of the requirements of Chapter 4.

G. Conclusion

As was noted above, the concerns expressed in this letter are not intended to be exhaustive. We are still analyzing Chapter 4 and considering the potential application of its provisions to our members. However, we are mindful that the Treasury has indicated that it intends to issue initial guidance on Chapter 4 as soon as feasible, and we therefore believe it is important to submit now our preliminary views about the possible significant adverse impact that Chapter 4 could have on the operations and business of Canadian life insurers.

We also believe that it would be very useful, both from the standpoint of our members and from the standpoint of the Treasury and the Internal Revenue Service, to meet with you to discuss in more detail the concerns raised in this letter. To that end, we request a meeting at your convenience to amplify our views and to answer any questions you may have regarding the matters addressed herein.

Finally, in the event that the Treasury determines to treat all life insurance companies as FFIs and concludes that it would be useful to have a standard agreement under section 1471 that would apply to such companies (which we recommend and which we urge would take into account the issues raised above), we would be pleased to provide our views on the terms of any such agreement and to work with you on the design of that agreement.

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Please contact our counsel, Michael Miles, Sutherland Asbill & Brennan, 202/383-0204, if you would like to discuss in more detail any of the issues raised by this letter or in order to schedule the meeting referred to above.

Yours sincerely,

Steven W. Easson, FCIA, FSA, CFA
Vice President, Capital, Pensions
and Taxation

FOOTNOTES:

n1

Chapter 4 comprises new sections 1471-1474 of the Internal Revenue Code of 1986 (the "Code"). All section references in this letter are to the Code.

n2

Individuals may be protected under both individual and group policies and may be covered under more than one group policy (for example, under both employer plans as well as separate mortgage and/or credit card coverage).

n3

For purposes of this letter, we generally refer to annuity contracts as "policies" or "annuities," to insurance policies as "policies," and to the owners of both annuities and insurance policies as "policyholders."

n4

We estimate that United States investment assets of our members are in excess of C\$ 30 billion.

n5

Life insurance companies do not accept deposits in the ordinary course of a banking or similar business, hold financial assets for the account of others, or engage primarily in the business of investing, reinvesting, or trading in securities or similar financial instruments. See section 1471(d)(5).

n6

The relevant language appears in the Technical Explanation Of The Revenue Provisions Contained In Senate Amendment 3310, "The "Hiring Incentives To Restore Employment Act," Under Consideration By The Senate, JCX-4-10, Jt. Comm. on Tax. Staff, Feb. 23, 2010 (the "Technical Explanation").

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Insurance policies and annuities are not depository accounts, custodial accounts, or equity or debt instruments in FFIs. See section 1471(d)(2).

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The most notable exception to this rule is for the small number of Canadian insurers who maintain United States branches, which do sell policies to United States persons. In the case of such branch operations, however, the branches are already subject to United States tax reporting requirements. These comments do not further discuss such branches or the policies they sell.

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Even where a sale to a nonresident is permitted by a Canadian insurer, no policy will be issued unless the insured risk (which, in the case of an annuity, is the annuitant) is a resident of Canada and information is provided to the insurer demonstrating that residency.

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Canadian Social Insurance Numbers are analogous to United States social security numbers.

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In the case of all "registered" annuities (as defined below), the annuitant must be the same as the policyholder. Under most "non-registered" annuities, the policyholder is the annuitant, although it is not required. In the case of life insurance, although the insured person is not necessarily the policyholder, in the majority of cases they are the same person.

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Given the restrictions that exist with respect to marketing policies outside of Canada and to insuring non-Canadian risks, such non-Canadian reserves are unusual, but can exist under certain limited circumstances.

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Unlike the United States, however, Canada does tax the inside build-up on life policies if advance premiums on the policy exceed certain limits that are designed to preclude the use of such policies as income-deferral mechanisms, rather than for life protection purposes. This treatment is clearly less advantageous to a policyholder who is a United States person than would occur if the policyholder had purchased a life insurance policy in the United States.

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Insurers provide tax disclosure to both policyholders and the Canada Revenue Agency (the "CRA").

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"Registered" annuities include Registered Retirement Savings Plans ("RRSPs"), Registered Retirement Income Funds ("RRIFs"), and Tax-Free Savings Accounts ("TFSA").

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The only exception to this rule relates to TFSA, which have an annual contribution limit of only C\$ 5,000. Withdrawals from TFSA are not subject to Canadian tax, but, as is the case with all other registered annuities, those withdrawals still are reported to the CRA.

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Again, all taxable amounts are reported to the CRA.

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In general, absent evidence to the contrary, Canadian life insurers treat a policyholder's last-reported physical address as the place of his or her tax residency and tax report accordingly.

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A principal problem in this respect is that there appears to be no mechanism under Chapter 4 under which any amount that would be withheld on a distribution by a life insurer to a policyholder and then paid over to the Internal Revenue Service ever could be recovered by the policyholder, even if the policyholder was a Canadian person who initially simply failed to respond to the request for section 1471 information, but subsequently agreed to provide that information.

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As to such taxes, we note that section 1471(b)(3)(C)(ii) requires the insurer to waive treaty benefits, keeping such taxes at a 30-percent level regardless of the character of the withholdable payments.

n21

You should be aware that many of the policies issued by our members are long-term in nature, with some of our members' existing life insurance policies having been issued as long ago as 50 (or more) years - well before anti-money laundering concerns existed and insurers adopted "know your customer" and related procedures. The insurers generally do not have United States tax identification numbers for the holders of their existing policies and may lack "account balance or value" information for certain policies.

n22

Again, tax disclosure is made to the CRA with respect to all premiums paid by, and all payments made to, policyholders under these annuities.