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ACLI Update

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JOINT COMMITTEE ON TAXATION UPDATES ITS LIST OF TAX EXPENDITURES

On Jan. 30, 2017, the Joint Committee on Taxation (JCT) updated its tax expenditure list to, among other things, add as a tax expenditure "amounts received under a life insurance contract that are paid by reason of the death of the insured." JCT estimates the revenue cost of this item as $128.3 billion over five years, $116.7 billion of which is attributed to individual taxpayers and $11.6 billion attributed to corporate taxpayers.

By way of context, among the most expensive tax expenditures in JCT's 2016–2020 list are the items shown in Table 1.

Inclusion of death benefits in the list is not a surprise. The JCT removed inside build-up from its list of tax expenditures for fiscal years 2015–2019 in December 2015, noting that it did not meet the definition of a tax expenditure under the Congressional Budget and Impoundment Control Act of 1974 (Budget Act). In the same report, they wrote that "it may be appropriate to include a tax expenditure estimate of the exclusion from gross income of death benefits payable under a life insurance contract by reason of the death of the insured," presumably because a specific provision of federal tax law provides an exclusion for that item from income, thus meeting the definition of a tax expenditure under the Budget Act.

Table 1

JCT Tax Expenditure	2016 -2020 Projected Cost (billions)
Deferral of income of controlled foreign corporations	587.2
Mortgage interest deduction	357.0
Lower tax rates on dividends and capital gains	677.7
Exclusion of employer contributions for health care	863.1
Defined benefit plans	424.3
Defined contribution plans	583.6
Earned income tax credit	373.4
Total of these tax expenditures	**3,866.3**

ACLI and its member companies have developed sound tax policy arguments as to why the current exclusion of death benefits from income should continue. We will continue to study the issue to determine how best to address this change.

Finally, the life insurance-related items from previous years continue to remain on the list with the updated revenue estimates shown in Table 2.

SENATOR CARDIN'S PROGRESSIVE CONSUMPTION TAX ACT OF 2016

In late December 2016, Senator Ben Cardin (D-MD) introduced the Progressive Consumption Tax Act of 2016 (Bill). The Bill is substantially similar to the Progressive Consumption Tax Act of 2014 in its structure, with significant improvements concerning the treatment of insurance companies and products. ACLI provided comments to Senator Cardin's staff on the prior bill, which exempted financial supplies, such as life insurance and annuity contracts, from the consumption tax. We requested they provide a partial input credit for insurance companies so the consumption tax is not passed onto insurance customers in the form of a "hidden" cost.

The 2016 Bill also provides an exemption from the consumption tax for financial supplies, such as insurance and annuity contracts. Senator Cardin and his staff were responsive to our request for partial input credits. The Bill provides for a 60 percent input credit for the consumption taxes paid on goods and services used to develop insurance and annuity contracts. Goods and services used to develop insurance and annuity contracts are defined as partially creditable acquisitions, and include insurance services and brokerage services. Other creditable acquisitions include:

- Banking or cash management services, including services related to issuing, closing, operating, and maintaining accounts, and the processing of account information and applications;

Table 2

	Five Year Revenue Estimate (billions)
Special treatment of life insurance company reserves	16.5
Small life insurance company taxable income adjustment (The estimate for each year is a “positive tax expenditure of less than $50 million,” which is below the de minimis amount.)	Not Available
Exclusion of premiums on group term life insurance	21.5
Exclusion of premiums on accident and disability insurance	23.1
Treatment of loans under life insurance and annuity contracts and 401(k) plans	Not Available
Plans covering partners and sole proprietors—Keogh plans	63.0
Defined benefit plans	424.3
Defined contribution plans	583.6
Traditional IRAs	85.8
Roth IRAs	44.6
IRA Contributions	7.0
Total of these 5 Year Revenue Estimates	**1,269.4**

- Payment and fund transfer services, including for the operation of a payment system and processing account transactions;
- Securities transaction services for the provision, acquisition, or disposal of an interest in a security;
- Loan and debt collection services, including mortgage brokerage services, services related to mortgage insurance and loan protection insurance, and loan application, management, and processing services; and
- Capital markets, financial instruments, or fund management services.

The Bill allows for regulatory guidance on additional items that may qualify as creditable acquisitions.

More generally, the Bill reduces the corporate income tax rate to 17 percent. Individual income tax rates are reduced to three brackets of 15 percent, 25 percent, and 28 percent, with an exemption (“family allowance”) of $100,000 for joint filers, $50,000 for single filers, and $75,000 for head of household filers. The consumption tax is applied at a 10 percent rate. A cap is placed on how much is raised by the consumption tax on an annual basis. The cap, called a “circuit breaker,” requires that any consumption tax revenues in excess of 10 percent of the gross domestic product in a calendar year be refunded to all individual income tax filers, including those taxpayers who have filed for a consumption tax rebate.

The House Ways & Means Tax Reform Blueprint contains consumption tax elements insofar as it aims to impose a tax at the source of consumption. Thus, although the idea of a value-added tax has long been rejected as a possible source of revenue in the U.S., serious consideration of novel approaches to taxation such as the Blueprint suggest that a serious discussion of a consumption tax —albeit by a name other than a value-added tax, or “VAT”—is worthwhile. To that end, ACLI and its member companies continue to analyze this revised Bill to assess its impact on our industry.

REPRESENTATIVES TIBERI AND KIND INTRODUCE BILL TO REQUIRE TAX INFORMATION REPORTING FOR SALES OF LIFE INSURANCE POLICIES

On Feb. 28, 2017, Representatives Pat Tiberi (R-OH)and Ron Kind (D-WI) introduced HR 1262, a bill “To amend the Internal Revenue Code of 1986 to clarify the tax treatment of certain life insurance contract transactions, and for other purposes,” which essentially requires tax information reporting for sales of life insurance contracts. It establishes reporting requirements for acquisitions of life insurance contracts in a reportable policy sale, which is defined as “the acquisition of an interest in a life insurance contract, directly or indirectly, if the acquirer has no substantial family, business, or financial relationship with the insured apart from the acquirer’s interest in such life insurance contract.” In this regard, the definition appropriately carves out transfers of life insurance policies that occur in the context of business continuity and family estate planning.

Regarding tax information reporting, under the bill, purchaser of any life insurance policy must report the sale (including identity of the policyholder/seller and policy information) to the Internal Revenue Service (IRS) and the insurance company that issued the policy, and provide the amount of the sale to the IRS. Such a report notifies the life insurance company that issued the sold policy of its obligation to provide other specified details. The insurance company must provide the policyholder/seller's basis in the contract to the policyholder as well as to the IRS. In furnishing this report, the bill confirms that no basis adjustment shall be made for mortality, expense, or other reasonable charges incurred under an annuity or life insurance contract. The insurance company must also report any subsequent payments of death benefits on the sold policy to the IRS, and the new policy owner.

The bill captures the changes ACLI and other trade associations suggested to a bill introduced by Senator Casey in past congresses that required similar reporting of life settlement transactions, and has ACLI's support. ■

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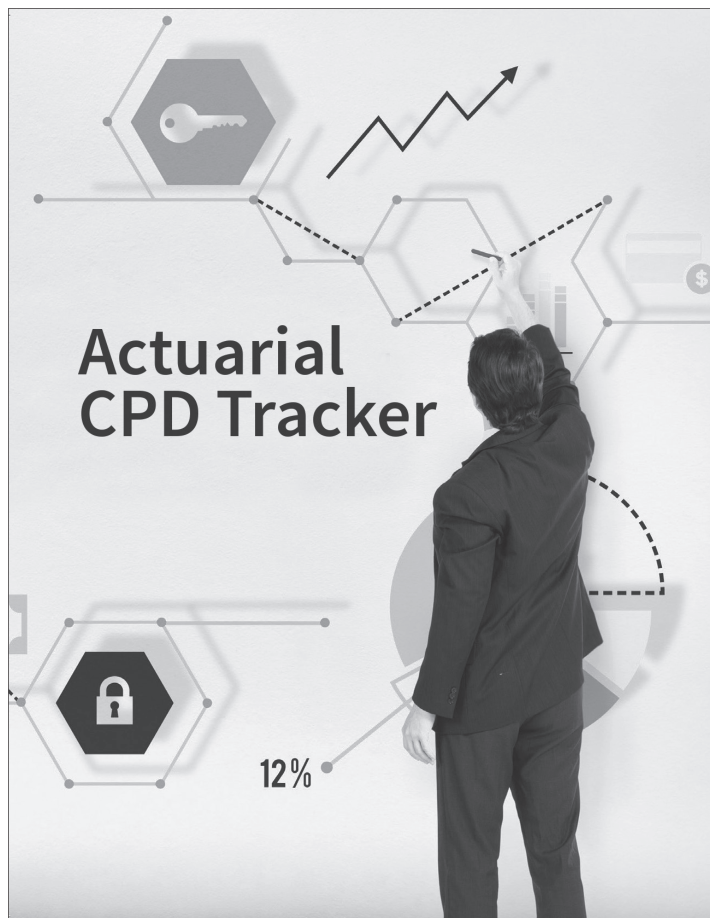

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