Clarify that Non-Financial Insurance Premiums are Exempt from the Foreign Account Tax Compliance Act (FATCA)

THE COUNCIL
The Council of Insurance Agents & Brokers

BACKGROUND

The Foreign Account Tax Compliance Act (FATCA) went into effect on July 1, 2015, with the intent of targeting and ultimately closing illegal offshore tax shelters. The law requires any U.S. entity conducting business with a Foreign Financial Institution (FFI) to demonstrate that the institution is not holding untaxed U.S. dollars by collecting W8-BEN-E certification forms. If the certification cannot be acquired, then the U.S. company conducting the transaction will be required to withhold 30% of the payment. **The law currently applies to non-cash value property/casualty insurance premiums sent overseas.**

THE ISSUE

Non-cash value insurance premium payments made to overseas insurers are naturally non-financial transactions, and cannot be used as a vehicle to avoid taxes. A premium is paid to an insurer for coverage during a policy period and no money is returned unless there is a claim or the policy is canceled. Property/casualty insurance is not an investment vehicle. FATCA's goal is to close international accounts with cash value that are being exploited to avoid U.S. taxes, but **it is misguided to equally target international property/casualty insurance premium payments.**

There is precedence demonstrating regulatory recognition of the non-financial nature of property/casualty insurance premiums. The post-9/11 Patriot Act regulations excluded non-cash value insurance from its anti-money laundering requirements because regulating them would not further its purposes, and other countries around the globe have similar tax evasion laws that exclude non-financial property/casualty premiums from their reach.

There is a complex global web of non-financial property/casualty transactions within the insurance and reinsurance industry. In fact, approximately $500 billion in annual premium volume is within the scope of FATCA. Following and documenting the international trail of these premiums related to U.S. risks is significantly cumbersome, and **requiring brokers to comply with FATCA's certification process is excessive and expensive.**

OUR POSITION

Non-financial/non-cash value insurance premiums should be exempt from FATCA requirements. U.S. interests are not served by including all property/casualty insurance and other non-cash value insurance and reinsurance premiums within FATCA. The regulatory compliance cost facing the global insurance marketplace is significant, with no apparent benefit to the U.S. government. Neither individuals nor corporations can use insurance premiums or other non-cash value products to evade U.S. taxes, which is the abuse targeted by FATCA.

Reps. Ed Royce (R-CA) and John Larson (D-CT) have introduced HR 6159, which would establish that non-cash-value property casualty international transactions should not be subject to the FATCA regime. **We urge co-sponsorship of this legislation, and its inclusion in any significant tax package that moves this year.**

ABOUT US

The Council of Insurance Agents & Brokers is the premier association for the top regional, national and international commercial insurance and employee benefits brokerage firms worldwide. Council members are market leaders who annually place 85% of U.S. commercial property/casualty insurance.

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