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Taxing TIMES

SUPPLEMENT

OCTOBER 2014

1 Chairman Camp's Tax Reform Discussion Draft: What Does It Mean to the Life Insurance Industry?
By Brion D. Graber and Peter H. Winslow

10 Sections 3506 and 3508: Insurance Company Proration
By Robert Shanahan and Mark Smith

13 Sections 3401 to 3434: Taxation of Financial Products
By Brion D. Graber and Peter H. Winslow

17 Sections 3504 and 3510: Computation of Insurance Tax Reserves
By Kristin Norberg

23 Section 3505: Adjustments for Changes in Tax Reserve Basis
By Tim Branch

25 Section 3512: Capitalization of Certain Policy Acquisition Expenses
By Daniel Stringham

26 Sections 3701 to 3705: Taxation of Foreign Persons
By Edward C. Clabault

28 Provisions Affecting Life Insurance Products and Policyholders
By Craig R. Springfield and Alison R. Peak

31 Epilogue
By Marc Rockower

35 ACLI Update: Chairman Camp's Tax Reform Discussion Draft
By Pete Bautz and Mandana Parsazad

CHAIRMAN CAMP'S TAX REFORM DISCUSSION DRAFT: WHAT DOES IT MEAN TO THE LIFE INSURANCE INDUSTRY?

By Brion D. Graber and Peter H. Winslow

On Feb. 26, 2014, House Ways and Means Committee Chairman Dave Camp (R-MI) released a comprehensive tax reform discussion draft ("Discussion Draft") as part of his ongoing tax reform effort.[1] The legislative language that constitutes the Discussion Draft totals 979 pages and builds on the Committee's prior work on tax reform. The Discussion Draft incorporates proposals included in prior discussion drafts released by Camp focused on international tax reform (released Oct. 26, 2011), financial products tax reform (released Jan. 24, 2013), and small business tax reform (released March 12, 2013). The package of proposals included in the Discussion Draft is intended to lower tax rates, simplify the tax code, and strengthen the economy.[2]

Several documents related to the Discussion Draft were also released, including a Ways and Means Committee section-by-section summary[3] and a Joint Committee on Taxation (JCT) technical explanation that is divided into eight parts (one for each title of the Discussion

CONTINUED ON PAGE 2

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Published by the Taxation Section Council of the Society of Actuaries

This newsletter is free to section members. Current issues are available on the SOA website (www.soa.org).

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Draft).[4] In addition, two JCT revenue estimates were released—one estimate was prepared using the JCT's traditional estimating procedures and the second considered the macroeconomic effects of the proposal (popularly referred to as "dynamic scoring"). The traditional revenue estimate shows the Discussion Draft would increase revenue by approximately $3 billion over the 10-year budget window.[5] The dynamically scored estimate shows the Discussion Draft would increase revenue by $50 billion to $700 billion over the 10-year budget window depending on the modeling assumptions used, increase gross domestic product (GDP) by up to $3.4 trillion (which is equal to about 20 percent of current GDP), and create up to 1.8 million new jobs.[6] Finally, a distributional analysis prepared by the JCT was released.[7] The JCT revenue estimates and distributional analysis support Camp's goal that the proposals would provide revenue and distributional neutrality. But, the revenue neutrality is not achieved on an industry-by-industry basis and relies on what could be considered onerous phase-in and transition rules, as well as on revenue estimates that are limited to 10 years.

It is unlikely that the Camp proposals will be enacted this year and equally unlikely that they will survive intact when, and if, comprehensive corporate tax reform occurs, but the Discussion Draft undoubtedly will be considered by congressional tax-writing committees and policymakers as a starting place for tax reform discussions. For this reason, the Discussion Draft has important implications for life insurance companies, and the editors of *TAXING TIMES* have decided to devote a special edition to this development.

HOW TO ANALYZE THE DISCUSSION DRAFT'S IMPACT ON LIFE INSURANCE COMPANIES

Adoption of the Discussion Draft would have a profound effect on the life insurance industry. Based on our discussions with life insurance company tax professionals, it appears that the insurance industry generally favors the Discussion Draft's overall objective of lowering the corporate tax rate while broadening the tax base by eliminating unnecessary tax expenditures. Even if there is a reduced tax rate, however, no tax reform effort should eliminate tax provisions that are needed to avoid over-taxation of corporate earnings. There is nearly universal agreement in the insurance industry that the Discussion Draft fails in that basic tax reform test.

Another way to analyze the potential impact of the Discussion Draft on the life insurance industry is to weigh the benefits provided by the Discussion Draft against the various burdens it imposes—to see whether the industry is paying a disproportionate share as the price for tax reform. On this measure, indications are that the life insurance industry would lose far more as a result of the base-broadening provisions than it would gain from the corporate rate reduction and other potentially beneficial provisions.

The articles that follow in this special edition of *TAXING TIMES* discuss the specific provisions of the Discussion Draft in detail, but, as an introduction, we would like to provide a framework for thinking about the proposals. First of all, in con-

sidering the individual merits of the various proposals, it is important to keep in mind the way insurance companies earn income, because it differs in key ways from most other corporate taxpayers. Insurers collect premiums from policyholders upfront and pay obligations under insurance contracts and related expenses over an extended period. Insurers invest the premiums collected in a way to match the investment earnings to the obligations to policyholders. In light of this business model, it is essential that insurance companies obtain reserve deductions for their expenses before the tax accrual standard is satisfied. Reserve accounting is not a special tax benefit for the industry; it is necessary to clearly reflect income under the insurance industry's unique business model in which a statutory accounting regime requires premiums and investment income to be included in gross income long before claim payments are made.

Consequently, sound tax policy for taxation of life insurance companies should: (1) provide reserve accounting for policy-related expenses; (2) provide consistent character (i.e., capital vs. ordinary) of related items of income and expense; (3) avoid inappropriate multiple taxation of corporate earnings before they are distributed to shareholders; and (4) allow life insurers the same general tax treatment (use of losses, consolidation, etc.) as other corporate taxpayers. Evaluated against these tax policy goals, several of the proposals in the Discussion Draft may have the effect of moving the U.S. tax system away from a proper determination of taxable income of insurance companies. Moreover, the Discussion Draft does not address and remedy a number of current law provisions that are inconsistent with these tax policy goals.

DISCUSSION DRAFT TRADE-OFFS

The most significant benefits for corporations in the Discussion Draft are a proposed reduction in the top marginal corporate tax rate to 25 percent from 35 percent in two- percent increments beginning in 2015,[8] and a repeal of the corporate alternative minimum tax (AMT).[9] In exchange for these benefits, the Discussion Draft proposes a number of changes that would broaden the tax base, including several that would adversely impact insurance companies. Subtitle F of Title III of the Discussion Draft is titled "insurance tax reforms" and includes 15 separate provisions.[10] Other parts of the Discussion Draft include provisions that, while not specifically directed at insurance companies, would have a significant, and probably disproportionately adverse, impact on the industry as compared to most other types of businesses. Provisions in the Discussion Draft generally would be effective for taxable years beginning after Dec. 31, 2014, but it is doubtful this effective date will be retained.

PROPOSALS AFFECTING INCOME

Multiple Taxation of Corporate Earnings: Dividends. A long-standing tax policy is that corporate income should not be subject to multiple layers of corporate income tax. Corporations regularly invest in the stock of other corporations in the ordinary course of business and receive dividends on the stock. The Internal Revenue Code mitigates the effect of multiple levels of corporate tax through a dividends-received deduction (DRD) generally available to all corporations. If the dividend recipient owns at least 80 percent of the stock of the dividend-paying company, the DRD is equal to 100 percent of the amount of the dividend.[11] If the dividend recipient owns at least 20 percent, but less than 80 percent, of the dividend-paying company, the dividend recipient is entitled to an 80-percent DRD.[12] In most other cases involving less than 20 percent ownership, the DRD is limited to 70 percent of the amount of the dividend.[13]

Under current law, life insurers, unlike other corporations, are subject to a special limitation on the DRD commonly referred to as "proration."[14] The tax policy underlying proration is that to the extent dividend income is used to fund policyholder benefits, the life insurer should not be entitled to a double tax benefit—the reserve deduction for the benefits funded by the dividends and, in addition, the DRD.

The Discussion Draft would change the current law proration formula to compute the allowable company's share for both the company's general account and each separate account as a percentage determined by (1) the excess of the mean of the assets over the mean of reserves, divided by (2) the mean of the assets.[15] The practical effect of this formula would be to virtually eliminate the DRD for many insurance companies, even including the DRD related to the portion of dividends that is retained by the company as profit and not credited to policyholders. No noninsurance corporations are treated this way in the Discussion Draft.

Tax-Exempt Interest. Because current-law proration rules applicable to the DRD also apply to tax-exempt interest, most life insurers find that they can achieve a better after-tax yield by investing in taxable bonds. However, some statutory life

CONTINUED ON PAGE 4

insurers are nonlife insurance companies for tax purposes because, for example, they may issue large amounts of cancellable group accident and health insurance contracts that do not give rise to life insurance reserves under the 50-percent reserve ratio test for life company status in I.R.C. § 816. Under current law, the level of nonlife insurance companies' investment in tax-exempt bonds is significant because proration for these types of companies currently is a fixed 15-percent reduction in the tax benefit for tax-preferred income items.[16] The Discussion Draft would change this rule to a disallowance of the benefit from preferred income items based on a percentage that is equal to the ratio of the basis of the company's assets producing the tax-preferred income to the basis of all assets of the company.[17] The proposed disallowance formula is complicated and lacks a discernible tax policy objective other than to prevent insurance companies from investing heavily in tax-exempt bonds. For this reason, adoption of the proposal likely would disrupt the tax-exempt bond market and the overall economy in unpredictable ways. Many constituencies are likely to oppose its adoption.

Hedging. Unlike the DRD and tax-exempt interest proposals, the Discussion Draft would improve current law for insurers' hedging transactions. A non-industry-specific proposal in the Discussion Draft would require that derivatives be marked-to-market at the end of each tax year, with any resulting gains or losses treated as ordinary income or loss.[18] The proposal would not apply to transactions properly identified as qualified hedging transactions for tax purposes, and the definition of a hedging transaction would be modified to allow a hedge of a bond or other evidence of indebtedness held by an insurance company to qualify.[19] Under current law, tax hedge qualification does not apply to a hedge of capital assets. Therefore, the proposed change would be a significant benefit, particularly for so-called "gap hedges" (which close a duration gap between capital assets and ordinary liabilities) in light of the Internal Revenue Service's (IRS') questionable current position that gap hedges qualify for tax hedge treatment only if they are more closely related to the liabilities.[20] Adoption of this proposal would resolve many current disputes and, in effect, clarify that tax hedge accounting applies to virtually all insurance company hedges. This treatment would also avoid the inappropriate application of the straddle rules that could occur under the IRS' current position. Although this hedging proposal would be beneficial, the Discussion Draft stopped short of solving all the problems with insurer hedges because it would preserve the character mismatch between the ordinary derivatives and the hedged capital assets.

Other Financial Products Changes. Another major proposal of the Discussion Draft is to require the current accrual of market discount on bonds.[21] As applied to the insurance industry, the revenue estimate of $0.9 billion would appear to be grossly understated.[22] Another sleeper proposal is an expansion of the wash sale rules to apply to related-party sales.[23] The Discussion Draft appears to permanently disallow a loss on sales between affiliated corporations in the same ownership chain because there is no provision for a carryover of basis. This harsh treatment probably is unintended and would need to be fixed. Otherwise, for example, parent-subsidiary conventional coinsurance transactions where depreciated assets are transferred could not occur without a tax cost.

Other Income. The Discussion Draft includes a sweeping proposal that would generally require taxpayers that use the accrual method of accounting to include an item in taxable income no later than the year in which the item is included in income for financial statement purposes.[24] As written, this rule is extremely broad and would apply in a wide range of situations that probably were not contemplated. For example, the proposed rule appears to cover embedded derivatives that are required to be marked-to-market for financial accounting purposes, even though the Discussion Draft's separate proposal requiring that derivatives be marked-to-market excepts certain embedded derivatives from its scope.[25] This proposal needs further consideration to avoid unintended consequences.

So far, based on the provisions affecting the income side of life insurance companies, how would the life insurance industry fare under the Discussion Draft? It seems to these authors that the adverse impact on the DRD, tax-exempt interest, and accrual of market discount far outweigh the favorable tax reform with respect to hedging transactions.

PROPOSALS AFFECTING DEDUCTIONS

The major changes in the Discussion Draft relating to deductions involve insurance reserves and policy acquisition costs.

Tax Reserves. The Discussion Draft would replace the current-law prescribed discount rate for life insurance reserves[26] with the average applicable federal mid-term rate over the 60 months ending before the beginning of the calendar year for which the determination is made, plus 3.5 percentage points.[27] For unpaid losses on contracts other than life insurance contracts, the discount rate would be changed to the corporate bond yield curve (as specified by Treasury).[28] The rationale for these proposed changes is that the discount rate on tax reserves should better match the rate of return on corporate

bonds held to fund the reserve liabilities. However, the proposals undoubtedly would result in excessive discounting and inadequate reserve deductions under many economic conditions.

With respect to life insurance reserves, the discounting proposal also seems to miss an opportunity for real tax reform. The trend in statutory reserves is to move from deterministic net premium reserves to principle-based stochastic reserves with unlocked assumptions. The Discussion Draft would impose a discounting rule that assumes the continued use of traditional reserving methods and does not adequately address how the tax law should apply to evolving reserve methodologies.

The Discussion Draft would repeal I.R.C. § 807(f), which provides a 10-year spread of adjustments resulting from most changes in assumptions in computing tax reserves by life insurance companies.[29] Under the Discussion Draft, a change in computing reserves would not require IRS consent, but the other general rules for tax accounting method changes would apply.

The Discussion Draft fails to address the inconsistent tax treatment of life and nonlife insurance companies under current law. For example, statutory accounting rules require both types of insurance companies to report loss adjustment expenses (LAE) on an estimated basis. Even though the same tax reserve discounting rules also apply for unpaid losses of both types of companies,[30] the IRS' position is that only nonlife insurance companies are permitted a tax deduction for estimated unpaid LAE. A comprehensive tax reform package should fix this inconsistency and permit all insurers to deduct LAE, along with the unpaid losses to which they relate, on an estimated discounted basis.

The Discussion Draft would make a little-noticed conforming change that could have a major impact on disability income disabled-lives reserves. The proposal would eliminate the special rule in I.R.C. § 846(f)(6)(A) that permits the reserve discount rate to be determined at the time the disability claim is incurred, rather than the time the contract was originally issued, at least for cancellable contracts.[31] A more logical rule would conform the tax treatment to the statutory accounting requirements and use the claim-incurral date to determine the discount rate. Moreover, in overall tax reform this rule probably should apply for all disability income claim reserves, including reserves that qualify as life insurance reserves.

DAC. The Discussion Draft would modify the policy acquisition expense capitalization rules (the so-called "DAC tax")[32] that require a percentage of net premiums to be capitalized and amortized over 10 years. Under current law, the net premium percentages required to be capitalized are 1.75 percent for nonqualified annuities, 2.05 percent for group life insurance, and 7.7 percent for certain other types of insurance. The Discussion Draft would increase these percentages and use only two categories—5 percent for group insurance contracts and 12 percent for all other specified contracts.[33] This proposal seems particularly harsh for annuity contracts, which rarely have acquisition costs as high as 12 percent. When the increase in the DAC tax is coupled with the potential impact of the DRD proposal, the impact on variable annuities likely would be a significant increase in charges to the customer even taking into account the lower 25-percent corporate tax rate. This higher cost will be greater for the years immediately following enactment of the DAC tax increase because the lower corporate tax rate is phased in but the higher DAC tax rates are not.

Another problem with the DAC proposal is that it seems to duplicate another provision in the Discussion Draft. Under Draft Tax Reform Act of 2014, § 3110, only 50 percent of advertising expenses would be permitted as a deduction, with the remaining 50 percent amortized over a 10-year period. Because the DAC capitalization amounts presumably are intended to encompass all policy acquisition costs, including advertising expenses, this proposed 50-percent of advertising expense disallowance probably should not be made applicable to life insurance companies.

Other Deduction Items. The Discussion Draft has many other miscellaneous changes to deductions, but four have particular relevance to insurers. One proposal would deny a domestic insurance company a deduction for property and casualty reinsurance premiums paid to a related company that is not subject to U.S. taxation on the premiums (or foreign taxation at an equal or greater rate of tax), unless the related company elects to treat the premium income as effectively connected to a U.S. trade or business (and thus subject to U.S. tax).[34] This proposal is essentially the same as the so-called "Neal Bill," which is intended to deny a tax advantage to U.S. insurers with foreign parents located in low-tax jurisdictions.[35]

CONTINUED ON **PAGE 6**

A second proposal would repeal the I.R.C. § 806 small life insurance company deduction. [36]

A third proposal would revise and extend the provisions in I.R.C. § 265 that disallow interest deductions for companies that invest in tax-exempt bonds.[37] This provision would be in addition to the proration changes and, obviously, would affect insurers that are taxed as nonlife insurance companies and invest in tax-exempt bonds (assuming that tax-exempt investments remain viable in light of the proposed proration changes).

No tax reform effort should eliminate tax provisions that are needed to avoid over-taxation of corporate earnings.

A fourth, non-industry-specific, provision would require that research and development expenses be amortized over a five-year period instead of being currently deducted.[38]

To summarize the deduction proposals, it seems to be all bad news. The increase to the DAC tax percentages and reserve discounting rates appears to be too high, and in the case of advertising expenses, duplicative. And, an opportunity for real tax reform has been missed by not accommodating modern reserving methods, not fixing current law problems, and creating, perhaps inadvertently, reserve problems that do not currently exist (disabled-lives reserves).

OTHER PROPOSALS AFFECTING TAX LIABILITY

Use of Losses. The Discussion Draft appears to want to conform the tax treatment of life insurers' losses from operations to the treatment of net operating losses (NOLs) of other types of corporations. But it does not succeed. The Discussion Draft would change the current three-year carryback and 15-year carryforward rule for operations losses applicable to life insurance companies[39] to a two-year carryback and 20-year carryforward rule.[40] This proposal would result in NOL conformity with other taxpayers, but the Discussion Draft does not address the life/nonlife consolidated return rules that require life and nonlife subgroup losses to be computed separately and prevent one subgroup's losses from fully offsetting the other subgroup's income.[41] In addition, although the Discussion Draft would repeal the corporate AMT, it would effectively reinstate and expand a key AMT provision by allowing a corporation's NOL carryover or carryback to offset no more than 90 percent of the corporation's taxable income (determined without regard to the NOL carryover or carryback). [42]

Another adverse aspect of the Discussion Draft is what it does not do for capital losses, but should have done, as part of tax reform. Under current law, capital losses can only offset capital gains. Although unused capital losses can be carried forward, they expire if they are not used in five years. As Camp was developing his proposals, members of the insurance industry urged him to address the fundamental problem insurers face with the limitation on capital losses on sales of investment assets used to fund ordinary liabilities. In rising interest rate environments, substantial capital losses from asset sales could be generated and expire unused after five years. To prevent this inappropriate result, comprehensive tax reform should designate insurance company investment assets to have an ordinary character to match the character of the insurance obligations they fund.

Foreign Income. The Discussion Draft proposes to adopt a territorial tax regime to make the United States competitive with other countries.[43] It would accomplish this result by introducing a participation exemption system for the taxation of foreign business income. The participation exemption would take the form of a 95-percent DRD for the foreign-source portion of dividends received from controlled foreign corporations (CFCs) by domestic corporations that are 10 percent shareholders of those CFCs. No foreign tax credit (or deduction) would be allowed for any foreign taxes paid or accrued with respect to any exempt dividend.

A transition rule would require a 10-percent U.S. shareholder of a CFC to include in income its pro rata share of the CFC's previously deferred foreign income, which would be taxed at a rate of 8.75 percent in the case of the CFC's earnings and profits (E&P) retained in the form of cash and cash equivalents and 3.5 percent in the case of all other E&P. Foreign tax credits would be partially available to offset this tax and an election would be available to pay the resulting U.S. tax liability in installments over a period of up to eight years.

There are many other detailed rules that would substantially revise the regime for taxing foreign-source income. One item of special interest to insurers is the active financing exception, which has been a feature of the tax law for the last 15 years (albeit as a repeatedly extended temporary provision).[44] The

Discussion Draft would extend the provision for five more years so that insurers and other financial institutions could benefit from the territorial regime in the same manner as other industries.[45] Unlike other industries, however, the continued temporary nature of the active financing exception would leave insurers facing considerable uncertainty over the taxation of the earnings from their foreign insurance operations after that time, with the possibility that insurers would face much higher U.S. taxation on their foreign earnings than other industries. Moreover, insurance companies would be fully subject to the transition rule requirement to include all previously deferred income of their CFCs in income even though they might not receive the benefits of the participation exemption after the temporary five-year extension of the active financing exception expires.

Bank Tax. The Discussion Draft also would impose a quarterly excise tax on every systemically important financial institution as defined in the Dodd-Frank Wall Street Reform and Consumer Protection Act (i.e., certain domestic banks and insurance companies).[46] The tax would be 0.035 percent on assets in excess of $500 billion, with this threshold indexed for increases in the gross domestic product beginning in 2016. Although this provision would affect only a handful of companies, it seems particularly unfair to impose on assets of state-regulated insurers if the tax policy is to reimburse the federal government for the increased regulatory oversight of large financial companies.

Transition Rules. A significant factor in evaluating the impact of the Discussion Draft is its various transition rules. To achieve revenue neutrality with the reduced corporate rate, several transition rules appear to be unduly harsh with the primary goal to raise revenue during the 10-year estimating window. For example, a fresh start is not granted for the change to nonlife reserve discounting, but instead, an I.R.C. § 481-type adjustment would be spread over eight years.[47] In addition, the reduced corporate tax rate of 25 percent would be phased in.[48] And, as discussed above, insurers would be required to include in income all previously deferred foreign income of their CFCs even though the new participation exemption regime generally would not benefit them beyond the five-year period covered by the temporary extension of the active financing exception. [49]

These miscellaneous aspects of the Discussion Draft may best be evaluated by summarizing what could have been proposed in the interest of comprehensive tax reform and simplification, but is not included in the Discussion Draft. It is unfortunate that the Discussion Draft does not fix the current-law problems of capital asset/ordinary liability character mismatch and outdated life/nonlife consolidated return limitations, and make the active financing exception permanent.

POLICYHOLDER CONSIDERATIONS

The Discussion Draft includes provisions targeted at individuals that might reduce the incentive for them to save for retirement.[50] Moreover, it would directly discourage insurance protection by expanding the pro rata interest expense disallowance rule for corporate-owned life insurance. The exception for contracts covering a single employee, officer and director would be eliminated (i.e., only insurance on 20-percent owners would be excepted).[51]

Significantly, the Discussion Draft does not propose to change the taxation of the inside buildup of life insurance contracts. The industry has long opposed changes to the taxation of inside buildup because of the adverse impact any such changes would have on policyholders and beneficiaries, and the Discussion Draft appears to have heeded the industry's concerns. However, the other changes proposed by the Discussion Draft, including those that seek to raise additional revenue from insurance companies, likely would lead to an increase in the cost to consumers of various retirement savings products and insurance protection offered by insurers and a decrease in consumption of these items that benefit society. The lack of transition rules for certain proposals, such as the DAC tax increase, would have an adverse impact on previously issued contracts that have been priced based on existing tax law. Presumably, the rationale for not providing retroactive protection of the economics of existing contracts is that Camp assumed that the reduced 25-percent tax rate would offset the increased taxable income to the company, but this, in fact, probably is an incorrect assumption for several product lines.

OTHER CONSIDERATIONS

A few of the Discussion Draft's proposals have previously been discussed as possible changes to the tax laws, and thus have been the subject of public discussion and analysis for some time. For example, the Administration's budget proposal has, for several years, included proposals to disallow a life insurance company's separate account DRD in the same

CONTINUED ON **PAGE 8**

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proportion that the mean of the separate account reserves bears to the mean of the separate account assets,[52] to repeal the exception from the pro rata interest expense disallowance rule for corporate-owned life insurance contracts covering employees, officers or directors, other than 20-percent owners of the business that is the owner or beneficiary of the contracts,[53] and to disallow deductions for certain foreign related-party property and casualty reinsurance premiums.[54] The inclusion of these proposals in the Discussion Draft likely did not come as a surprise to the industry, although certain modifications to the proposals raise new issues. In addition, the Discussion Draft appears to have listened to the industry's previously expressed concerns about the consequences to policyholders and beneficiaries of attempting to tax the inside buildup of life insurance contracts and did not include any such proposal. In other respects, however, the scope of the proposals in the Discussion Draft specifically addressed to the insurance industry (as well as the broader changes that would impact the industry) caught many in the industry by surprise.

Few people believe tax reform will be enacted this year. While Camp has been an active participant in the tax reform process, he announced on March 31, 2014, that he will not seek re-election.[55] Assuming the Republicans maintain a majority in the House in this fall's election, Reps. Paul Ryan (R-WI) and Kevin Brady (R-TX) are generally viewed as the leading contenders to replace Camp as Ways and Means Committee chairman in the next Congress. Both Ryan and Brady are tax reform proponents and would undoubtedly bring their own tax reform ideas to the position. However, neither individual is likely to ignore the Discussion Draft and all of the work that has gone into it. Rather, both Ryan and Brady can be expected to consider each of the proposals in the Discussion Draft in developing their own tax reform proposal, with the result that some proposals might be included unchanged; others might be abandoned; and still others might be incorporated in a modified form.

In the Senate, the tax reform process is somewhat behind the House. In part, the delay is due to the fact that Senate Finance Committee Chairman Ron Wyden (D-OR) has only held the position since Feb. 12, 2014. Wyden replaced Sen. Max Baucus (D-MT), who resigned from the Senate to become the U.S. Ambassador to China. Shortly before his departure, Baucus released discussion drafts on international business tax reform, tax administration reform, cost recovery and tax accounting reform, and energy tax reform, but not a comprehensive discussion draft. Wyden previously co-authored two bipartisan tax reform bills, first with Sen. Judd Gregg (R-NH) in 2010[56] and then with Sen. Dan Coats (R-IN) in 2011.[57] Wyden has indicated he intends to explore whether the ideas in those bills can serve as a basis for the Finance Committee's tax reform effort. He also has indicated he will hold hearings on tax reform. But he too can be expected to consider each of the proposals in the Discussion Draft.

CONCLUSION

The proposals in the Discussion Draft are likely to be a continuing part of the tax reform discussion. That is not to suggest, however, that any particular proposal will be enacted or will not be modified before enactment. Camp released the Discussion Draft to generate discussion and to provide a context for that discussion. As many of the proposals in the Discussion Draft (including most of the insurance tax reforms) are being considered publicly for the first time, it is important that the insurance industry provide input to Congress, including on issues such as whether implementation of a given proposal might present technical or administrative difficulties, the impact a proposal might have on the pricing or availability of certain insurance products, and whether a proposal might be based on a misunderstanding of how the industry operates. The insurance industry should also use this opportunity to alert Congress to additional areas in which current law can be improved to further the goals of tax reform.

END NOTES

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4 Joint Committee on Taxation, *Technical Explanation of the Tax Reform Act of 2014, a Discussion Draft of the Chairman of the House Committee on Ways and Means to Reform the Internal Revenue Code: Title I—Tax Reform for Individuals* (JCX-12-14) (Feb. 26, 2014); Joint Committee on Taxation, *Technical Explanation of the Tax Reform Act of 2014, a Discussion Draft of the Chairman of the House Committee on Ways and Means to Reform the Internal Revenue Code: Title II—Alternative Minimum Tax Repeal (JCX-13-14) (Feb. 26, 2014)*; Joint Committee on Taxation, *Technical Explanation of the Tax Reform Act of 2014, a Discussion Draft of the Chairman of the House Committee on Ways and Means to Reform the Internal Revenue Code: Title III—Business Tax Reform* (JCX-14-14) (Feb. 26, 2014); Joint Committee on Taxation, *Technical Explanation of the Tax Reform Act of 2014, a Discussion Draft of the Chairman of the House Committee on Ways and Means to Reform the Internal Revenue Code: Title IV—Participation Exemption System for the Taxation of Foreign Income (JCX-15-14) (Feb. 26, 2014)*; Joint Committee on Taxation, *Technical Explanation of the Tax Reform Act of 2014, a Discussion Draft of the Chairman of the House Committee on Ways and Means to Reform the Internal Revenue Code: Title V—Tax*

END NOTES CONTINUED

Exempt Entities (JCX-16-14) (Feb. 26, 2014); Joint Committee on Taxation, *Technical Explanation of the Tax Reform Act of 2014, a Discussion Draft of the Chairman of the House Committee on Ways and Means to Reform the Internal Revenue Code: Title VI—Tax Administration and Compliance (JCX-17-14) (Feb. 26, 2014); Joint Committee on Taxation, Technical Explanation of the Tax Reform Act of 2014, a Discussion Draft of the Chairman of the House Committee on Ways and Means to Reform the Internal Revenue Code: Title VII—Excise Taxes (JCX-18-14) (Feb. 26, 2014); Joint Committee on Taxation, Technical Explanation of the Tax Reform Act of 2014, a Discussion Draft of the Chairman of the House Committee on Ways and Means to Reform the Internal Revenue Code: Title VIII—Deadwood and Technical Provisions (JCX-19-14) (Feb. 26, 2014).*

[5] Joint Committee on Taxation, *Estimated Revenue Effects of the "Tax Reform Act of 2014"* (JCX-20-14) (Feb. 26, 2014).
[6] Joint Committee on Taxation, *Macroeconomic Analysis of the "Tax Reform Act of 2014"* (JCX-22-14) (Feb. 26, 2014); Press Release, House Committee on Ways and Means, *supra*.
[7] Joint Committee on Taxation, *Distributional Effects of the "Tax Reform Act of 2014"* (JCX-21-14) (Feb. 26, 2014).
[8] Draft Tax Reform Act of 2014, § 3001.
[9] *Id.* § 2001.
[10] *Id.* §§ 3501-3515.
[11] I.R.C. § 243(a)(3). Unless otherwise indicated, all I.R.C. § references and references to "the Code" in this *TAXING TIMES* supplement are to the Internal Revenue Code of 1986, as amended.
[12] I.R.C. § 243(c).
[13] I.R.C. § 243(a)(1).
[14] I.R.C. § 812.
[15] Draft Tax Reform Act of 2014, § 3506.
[16] I.R.C. § 832(b)(5)(B).
[17] Draft Tax Reform Act of 2014, § 3508.
[18] *Id.* § 3401.
[19] *Id.* § 3402(a)(1).
[20] T.D. 8555 (preamble), 1994-2 C.B. 180.
[21] Draft Tax Reform Act of 2014, § 3411.
[22] Joint Committee on Taxation, *Estimated Revenue Effects of the "Tax Reform Act of 2014"* (JCX-20-14), at 8 (Feb 26, 2014).
[23] Draft Tax Reform Act of 2014, § 3422.
[24] *Id.* § 3303.
[25] *Id.* § 3401 (adding new I.R.C. § 486(c)(2)).
[26] I.R.C. § 807(d)(2)(B).
[27] Draft Tax Reform Act of 2014, § 3504.
[28] *Id.* § 3510.
[29] *Id.* § 3505.
[30] I.R.C. § 846.
[31] Draft Tax Reform Act of 2014, § 3504(b)(5).
[32] I.R.C. § 848.
[33] Draft Tax Reform Act of 2014, § 3512.
[34] *Id.* § 4212.
[35] H.R. 2054, 113th Cong. (2013).
[36] Draft Tax Reform Act of 2014, § 3503.
[37] *Id.* § 3124.
[38] *Id.* § 3108.
[39] I.R.C. § 810.
[40] Draft Tax Reform Act of 2014, § 3502.
[41] I.R.C. §§ 1503(c)(1), 1504(c).
[42] Draft Tax Reform Act of 2014, § 3106.
[43] *Id.* §§ 4001-4212.
[44] The active financing exception was first adopted in 1997 to be effective for the 1998 taxable year. Taxpayer Relief Act of 1997, Pub. L. No. 105-34, § 1175. It was subsequently modified and extended on multiple occasions so that it was in effect through 2013. Tax and Trade Relief Extension Act of 1998, Pub. L. No. 105-277, § 1005; Tax Relief Extension Act of 1999, Pub. L. No. 106-170, § 503; Job Creation and Worker Assistance Act of 2002, Pub. L. No. 107-147, § 614; Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. No. 109-222, § 103(a); Tax Extenders and the Alternative Minimum Tax Relief Act of 2008, Pub. L. No. 110-343, § 303; Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, § 750; American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, § 322.
[45] Draft Tax Reform Act of 2014, § 4204.
[46] *Id.* § 7004.
[47] *Id.* § 3510(e).
[48] *Id.* § 3001(a).
[49] *Id.* §§ 4003, 4204.
[50] *See, e.g., id.* §§ 1601-1624, 3801.
[51] *Id.* § 3501.
[52] *E.g.,* Department of the Treasury, General Explanation of the Administration's Fiscal Year 2014 Revenue Proposals 65 (Apr. 2013).
[53] *E.g., id.* at 67.
[54] *E.g., id.* at 52.
[55] Under House Republican rules, Camp would have had to surrender the chairmanship of the Ways and Means Committee at the end of the year, which may have contributed to his decision to retire.
[56] S. 3018, 111th Cong. (2010).
[57] S. 727, 112th Cong. (2011).