Coalition for Competitive Insurance Rates

December 11, 2017

Dear Conferees on the Tax Cuts and Jobs Act:

The Coalition for Competitive Insurance Rates (CCIR) urges you to support the interests of US consumers – particularly those in areas prone to natural disasters – by agreeing to anti-base erosion measures that would not result in higher prices for property and casualty insurance.

State insurance commissioners, business and consumer organizations and elected officials have consistently sounded an important alarm: if Congress endorses the view of some domestic insurance companies that a punishing excise tax on the face value of affiliated reinsurance transactions should be enacted, then US consumers and small businesses will surely suffer from higher insurance premiums and see their potential tax relief from this bill disappear.

The double taxation that would result from enactment of the Senate Base Erosion and Anti-Abuse Tax ("BEAT") is something that appears nowhere else in the Internal Revenue Code. The Coalition for American Insurance (CAI) – a group of highly successful domestic insurance companies that stand to benefit greatly from the market distortion that would occur if BEAT becomes law – made several assertions in defense of a self-interested system that creates "double taxation" to the members of this conference committee that need to be debunked.

MYTH: CAI claims that BEAT is needed to, "prevent US generated profits from being shifted overseas" and that, "under current law, foreign-based insurers are able to strip their profits from U.S. generated business to affiliates located in low or no tax jurisdictions like Bermuda."

FACT: Under current law, global insurers can deploy capital to take on US risks on the same basis as US based insurers, BUT they must pay either an additional 1% Federal Excise Tax on all premiums regardless of whether they make a profit or have income or pay corporate taxes on profits in the jurisdictions where the profits are earned. US insurers would be significant beneficiaries of the reduced corporate income tax rate. Furthermore, when US-based companies incur losses, it creates a tax benefit for them – something which is not available to the US subsidiaries of non-US based insurers which have transferred the risk out of the US. BEAT assumes all US-based affiliate premium is akin to 100% pure profit and taxes it upfront with no opportunity to adjust for ceding commissions received or claims payments received – both of which are currently and will remain subject to US corporate income tax. In the context of the non-US-based reinsurance industry, the BEAT would function in a manner similar to a protectionist tariff. If Congress wants to level the playing field, it should allow foreign insurers to deduct their costs and losses like US insurers. This would remove the double taxation that would result from enactment of the pending Senate measure.

MYTH: CAI says that, "it is important to note that the BEAT language included in the Senate bill would not penalize foreign-based companies. Instead, they would have the option to be treated like US based companies or pay the BEAT tax, bringing their total tax payment in line with what is already being paid by US based insurers."

FACT: US-based insurers are taxed based on their profits. Foreign-based insurers are taxed based either on their profits taxed under the law of foreign jurisdictions or on premium collected under the Federal Excise Tax, regardless of profitability or losses.

MYTH: CAI attempts to argue that the result of the BEAT tax would not be to concentrate risk in the US, as well as to reduce insurance coverage and increase costs for consumers in regions that are prone to catastrophe. CAI asserts these are flawed arguments, that the geographic location of an insurer does not determine its ability to diversify risk. Rather, geographic risk diversification relates to the location of the risks such as earthquakes in California or hurricanes in Texas or Florida. The location of the insurer is irrelevant."

FACT: The CAI simply obfuscates reality. The geographic location of the insurer's capital for regulatory purposes is key to determining whether that capital can be used to diversify global risk from beyond its borders. Risk cannot be effectively diversified unless it is pooled onto a single balance sheet. For a US insurer that is likely in the US; for a global insurer it is in its parent jurisdiction. The BEAT prevents affiliate reinsurance from being used to match risk with capital; foreign capital is effectively being locked out of the US market for insurance groups. The result is "Americanizing" our country's unique extreme event risk — something that is simply dangerous for solvency regulation, harmful to US insurance consumers, and will likely result in retaliation against US insurers in their global operations.

MYTH: CAI claims that "all insurers, both foreign and US-based, engage in risk diversification and would continue to do so under a reformed tax system."

FACT: The current level of risk diversification would not continue if 1/8th of the industry is locked out due to tariffs and/or the EU retaliates against the new tariff in ways that prevent US risk from diversifying worldwide. A punishing, duplicative excise tax on affiliate reinsurance will increase consumer costs, increase risk concentrations and limit diversification of global extreme event risks.

MYTH: CAI asserts that, "on coverage and costs, reinsurance capacity is at record levels, and continues to grow, while costs are at record lows."

FACT: Capacity is at record levels thanks to foreign capital absorbing US risk, which in turn has decreased costs to record lows – an equation that CAI evidently wants to reverse. CAI's proposals will increase their profits to the detriment of US consumers all while diminishing global reinsurance supply.

MYTH: CAI says that, "there is no evidence that foreign insurers have passed the benefit of their tax subsidy onto US consumers. There is no reason for it to remain in place."

FACT: There is no tax subsidy. These profits are already taxed as noted above. US regulation has encouraged cross border trade in reinsurance. The resulting "open" reinsurance market has boosted competition which has led to lower consumer insurance prices.

MYTH: CAI has said that, "the inclusion of the BEAT in the Tax Cuts and Jobs Act will ensure that these incentives (i.e. incentives to undertake inversion transactions or off-shore jobs) are at the very least reduced and all insurers and businesses will pay taxes on profits earned here in the US."

FACT: This inaccurate statement is based on the premise that the BEAT targets profits; BEAT will not target profits – it will target gross revenue which taxes all premiums that are generated from catastrophic losses like those generated by foreign reinsurers in response to the 2017 trio of hurricanes.

BEAT will penalize foreign based companies at the expense of US consumers and businesses at a time when a good portion of the Gulf Coast and Caribbean is still working to rebuild after a disastrous hurricane season. Global reinsurers are contributing more than 55% of the claims payments for Hurricanes Harvey, Irma and Maria. This global risk distribution system provides enormous value to US insurance consumers.

Further, we urge you not to lose sight of the key point that this is double taxation. Premium income is taxed going offshore and taxed again when coming back onshore in the form of a reinsurance claim payment. Double taxation, which results from current Base Erosion tax proposals, is punitive and counterproductive in the management of America's unique extreme event risks.

Enactment of the BEAT or a similar measure would shrink the US reinsurance supply and increase consumer insurance costs. CCIR urges you to carefully review the facts and work to perfect the House and Senate anti-base erosion tax provisions as applied to affiliate reinsurance. Thank you for your consideration of our views.

Sincerely,

The Coalition for Competitive Insurance Rates