CARLTON FIELDS

Sen. Wyden Sets Sights on Private Placement Life Insurance

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On February 21, 2024, Senate Finance Committee Chairman Ron Wyden released a report on the findings from a self-styled “democratic staff investigation” into the use of private placement life insurance (PPLI) by “ultra-wealthy” investors. The report, which characterizes PPLI as a “buy, borrow, die” tax shelter, is highly critical of the uses and tax advantages afforded to the purchasers of such products that are not available to less affluent purchasers of life insurance. The report contains a framework for legislation purporting to curb the use of PPLI as a means of tax avoidance for the wealthy. The committee received information from seven leading PPLI carriers on more than 3,000 in-force PPLI policies as of the end of 2022, representing $9.5 billion in assets under administration and face amounts totaling approximately $40 billion. The report singles out marketing materials promoting PPLI as tax-free investments in alternative investments, such as private equity and hedge funds, and as a means to avoid income, gift, and estate taxes. The report also takes issue with the ability of wealthy policyholders to borrow against such assets “at extremely favorable rates, and then pass[ ] the benefit to wealthy heirs upon the death of the policy owner tax-free.” According to the report, unlike traditional variable life insurance policies that allow policyholders to invest in basic equity and debt funds, PPLI policies offer highly customizable investment options, thus allowing wealthy policyholders to invest on a tax-advantaged basis in asset classes not typically available to middle-class policyholders. The report expresses concern that the Internal Revenue Service is largely unable to enforce existing “investor control rules” designed to curb abuse of PPLI policies due to a lack of reporting requirements. The report’s proposed legislation framework would, among other things, eliminate the present tax advantages for new and existing PPLI policies (as well as certain private placement annuity contracts to prevent the shifting of assets to such contracts) and require PPLI information to be reported to the IRS. Whether such legislation reaches the Senate floor, much less passes Congress, remains to be seen.

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