

Information Reporting for Certain Life Insurance Contract Transactions and a Modification to the Transfer for Valuable Consideration Rules

Notice 2018-41

SECTION 1. PURPOSE

This notice announces that the Department of the Treasury (“Treasury”) and the Internal Revenue Service (“IRS”) intend to issue proposed regulations providing guidance to assist taxpayers in complying with new information reporting obligations for certain life insurance contract transactions under § 6050Y, which was added to the Internal Revenue Code (the “Code”) by section 13520 of “[a]n Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018,” P.L. 115-97 (the “Act”). The proposed regulations also will provide guidance on a modification to the transfer for valuable consideration rules for life insurance contracts added to § 101(a) by section 13522 of the Act. This notice requests public comments on the implementation of these provisions of the Act.

This notice also provides transitional guidance under § 6050Y. Specifically, as

provided in section 3.A.iv. of this notice, to ensure efficient administration of this new provision, reporting will not be required under § 6050Y until final regulations are issued. For reportable policy sales and payments of reportable death benefits occurring after December 31, 2017, and before the date final regulations under § 6050Y are published in the Federal Register, Treasury and the IRS intend to allow additional time after the date final regulations are published to file the returns and furnish the written statements required by § 6050Y.

SECTION 2. BACKGROUND

A. Sales of Life Insurance Contracts

A life insurance policyholder who sells a life insurance contract may have taxable gain on the sale.¹ Rev. Rul. 2009-13, 2009-21 I.R.B. 1029, holds that gain on the sale of a life insurance contract is included in gross income under § 61(a)(3). The gain is capital gain, except to the extent of the amount that would be recognized as ordinary income if the contract were surrendered, which is ordinary income under the substitute for ordinary income doctrine. See Rev. Rul. 2009-13; see also Rev. Rul. 2009-14, 2009-21 I.R.B. 1031. The amount that would be recognized as ordinary income under § 72(e)(5) if the contract were surrendered is the “inside buildup” – the excess of the amount that would be received upon surrender over the investment in the contract as defined in § 72(e)(6).² Section 72(e)(6) defines the “investment in the contract” as of

¹ In this notice, a reference to a sale of a life insurance contract includes a sale of any interest in a life insurance contract.

² For some contracts, such as term life insurance contracts, the amount that would be received upon surrender of the contract is zero and the policyholder therefore has no ordinary income on the sale of the contract.

any date as the aggregate amount of premiums or other consideration paid for the contract before that date, less the aggregate amount received under the contract before that date to the extent that such amount was excludable from gross income.

Life insurance contracts may be sold in transactions known as life settlement transactions. In a typical life settlement transaction, the policyholder, often the individual insured under the life insurance contract, sells his or her life insurance contract to an unrelated person. The consideration paid generally is a lump-sum cash payment that is less than the death benefit on the policy, but more than the amount that would be received by the policyholder upon surrender of the life insurance contract. In general, life settlement transactions may be arranged by a life settlement broker, who negotiates the sale of a life insurance contract on behalf of the policyholder in exchange for a fee or commission.

Over 40 states regulate life settlement transactions. State law may require that life settlement brokers be licensed and that the contract of sale (the life settlement contract) only be entered into by the policyholder and a licensed life settlement provider. A life settlement provider may purchase a life insurance contract on its own behalf. Alternatively, the life settlement provider may purchase a life insurance contract on behalf of the ultimate beneficial owner (for example, a financing entity that provides the funds to purchase the life insurance contract). The ultimate beneficial owner of the life insurance contract may continue to pay the premiums on the life insurance contract and receive death benefits under the contract on the death of the insured, or may, in a separate transaction, sell the life insurance contract to another investor in life insurance

contracts.

A viatical settlement, a subset of life settlement transactions, may involve the sale of a life insurance contract, but may not be taxed as a sale. Under a viatical settlement, a policyholder may sell or assign a life insurance contract after the insured has become terminally ill or chronically ill. If any portion of the death benefit under a life insurance contract on the life of an insured who is terminally ill or chronically ill (within the meaning of § 101(g)) is sold (through the sale of the life insurance contract) or assigned in a viatical settlement to a viatical settlement provider, the amount paid for the sale or assignment of that portion is treated as an amount paid under the life insurance contract by reason of the death of the insured, rather than gain from the sale or assignment. See §§ 101(a) and (g). Amounts received under a life insurance contract paid by reason of the death of the insured are excluded from federal income tax. See § 101(a)(1). For this purpose, a viatical settlement provider is a person regularly engaged in the trade or business of purchasing, or taking assignments of, life insurance contracts insuring the lives of terminally ill or chronically ill individuals (provided certain requirements are met). See Rev. Rul. 2002-82, 2002-51 I.R.B. 978.

B. Information Reporting for Certain Life Insurance Contract Transactions

Section 13520 of the Act added § 6050Y to the Code. In general, § 6050Y imposes information reporting requirements on the acquirer and issuer in the case of the acquisition, or notice of the acquisition, of an existing life insurance contract in a reportable policy sale, and on each person who makes a payment (the “payor”) of reportable death benefits. The reporting requirements set forth in § 6050Y are effective

for reportable policy sales that occur after December 31, 2017, and for reportable death benefits paid after December 31, 2017.

The term “reportable policy sale” is defined in § 6050Y(d)(2), by cross-reference to § 101(a)(3)(B), which was added by section 13522 of the Act, to mean “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.” Section 101(a)(3)(B) provides that, for purposes of determining whether an acquisition of an interest in a life insurance contract is a reportable policy sale, “the term ‘indirectly’ applies to the acquisition of an interest in a partnership, trust, or other entity that holds an interest in the life insurance contract.” The term “reportable death benefits” is defined in § 6050Y(d)(4) to mean “amounts paid by reason of the death of the insured under a life insurance contract that has been transferred in a reportable policy sale.”

Section 6050Y(a) imposes reporting requirements on every person who acquires a life insurance contract, or any interest in a life insurance contract, in a reportable policy sale during the taxable year (the “acquirer”). Under § 6050Y(a)(1), the acquirer must file a return with the IRS setting forth (1) the acquirer’s name, address, and taxpayer identification number (TIN); (2) the name, address, and TIN of each recipient of payment in the reportable policy sale; (3) the date of the sale; (4) the name of the issuer of the life insurance contract sold and the policy number of such contract; and (5) the amount of each payment. Under § 6050Y(a)(2), the acquirer must furnish written statements to each payment recipient and the issuer named in the return required by

§ 6050Y(a)(1). The statement furnished by the acquirer to any payment recipient must include items (1) through (5), above. The statement furnished by the acquirer to the issuer must include items (1) through (4), above; however, the statement is not required to include item (5) (the amount of each payment). The statements furnished by the acquirer to each payment recipient and the issuer must also include the name, address, and phone number of the acquirer's information contact. The term "payment" is defined by § 6050Y(d)(1) with respect to any reportable policy sale as "the amount of cash and the fair market value of any consideration transferred in the sale." The term "issuer" is defined by § 6050Y(d)(3) as "any life insurance company that bears the risk with respect to a life insurance contract on the date any return or statement is required to be made under this section."

Section 6050Y(b) imposes reporting requirements on an issuer of a life insurance contract upon the receipt of a written statement furnished by an acquirer under § 6050Y(a)(2), or upon any notice of the transfer of a life insurance contract to a foreign person. Under § 6050Y(b)(1), the issuer must file a return with the IRS setting forth (1) the name, address, and TIN of the seller who transfers any interest in such contract in such sale; (2) the seller's investment in the contract within the meaning of § 72(e)(6); and (3) the policy number of the contract. Under § 6050Y(b)(2), the issuer must furnish the seller with a written statement that includes items (1) through (3), above, as well as the name, address, and phone number of the issuer's information contact.

Section 6050Y(c) imposes reporting requirements on every person who makes a payment of reportable death benefits during any taxable year. Under § 6050Y(c)(1), the

payor must file a return with the IRS setting forth (1) the payor's name, address, and TIN; (2) the name, address, and TIN of each recipient of such payment; (3) the date of each such payment; (4) the gross amount of each such payment; and (5) the payor's estimate of the buyer's investment in the contract within the meaning of § 72(e)(6). Under § 6050Y(c)(2), the payor must furnish to each recipient of such payment a written statement that includes items (1) through (5), above, as well as the name, address, and phone number of the payor's information contact.

C. Proceeds of Life Insurance Contracts Payable by Reason of Death

Generally, amounts received under a life insurance contract that are paid by reason of death of the insured are excluded from federal income tax. See § 101(a)(1). However, if a life insurance contract is sold or otherwise transferred for valuable consideration (such as in a life settlement transaction or viatical settlement), the excludable portion of the amount paid by reason of the death of the insured is limited. See § 101(a)(2). In general, under the § 101(a)(2) limitation, the excludable amount following a transfer for valuable consideration may not exceed the sum of (1) the actual value of the consideration paid by the transferee to acquire the life insurance contract and (2) the premiums and other amounts subsequently paid by the transferee. The second sentence of § 101(a)(2) provides that the § 101(a)(2) limitation does not apply if (1) the transferee's basis in the contract is determined in whole or in part by reference to the transferor's basis in the contract or (2) the transfer is to the insured, to a partner of the insured, to a partnership in which the insured is a partner, or to a corporation in which the insured is a shareholder or officer. See § 101(a)(2).

Rev. Rul. 2009-14 holds that a portion of the death benefit received by a buyer of a life insurance contract on the death of the insured is included in income under § 101(a)(2). The portion included in income is the excess of the death benefit over the premiums or other consideration the buyer paid for the contract. Rev. Rul. 2009-14 holds that the receipt of a death benefit from the issuer under the terms of the contract does not produce a capital gain and, therefore, the income recognized by the buyer upon the receipt of death benefits under the contract is ordinary income.

D. A Modification to the Transfer for Valuable Consideration Rules

Section 13522 of the Act added § 101(a)(3), which provides that the exception to the § 101(a)(2) limitation provided in the second sentence of § 101(a)(2) does not apply in the case of a reportable policy sale. Accordingly, in the case of a reportable policy sale, the amount of death benefits excluded from gross income under § 101(a)(1) shall not exceed an amount equal to the sum of the actual value of the consideration the buyer paid for the contract and the premiums or other amounts subsequently paid by the buyer. As a result, some portion of the death benefit ultimately payable under such a contract may be includable in income under § 101(a)(2) (for example, if the life insurance contract is transferred for valuable consideration and the death benefit exceeds the sum of the actual value of the consideration and the premiums or other amounts subsequently paid by the transferee of the contract). The modification to the rules for transfers for valuable consideration is effective for transfers occurring after December 31, 2017.

SECTION 3. INTENDED PROPOSED GUIDANCE

A. Information Reporting for Certain Life Insurance Contract Transactions

Section 6050Y provides that each of the returns required by § 6050Y are to be made “at such time and in such manner as the Secretary shall prescribe.” Treasury and the IRS intend to propose regulations under § 6050Y describing the manner by which and time at which the reporting requirements of § 6050Y must be satisfied. The proposed regulations will also clarify which parties are subject to the reporting requirements and other definitional issues. For example, Treasury and the IRS intend to define the term “reportable policy sale” in the proposed regulations to include a viatical settlement.³ In addition, Treasury and the IRS intend to clarify the extent to which § 6050Y applies to sales or acquisitions effected by transferors and transferees outside the U.S. and to sellers and issuers that are foreign persons for purposes of reporting under section 6050Y(b) or (c).

i. Section 6050Y(a) Reporting of Payments by Acquirer in a Reportable Policy Sale

Treasury and the IRS intend to propose regulations under § 6050Y(a)(1) requiring every person who acquires a life insurance contract or any interest in a life insurance contract in a reportable policy sale to file an information return, to be made according to forms and instructions to be published by the IRS, reporting the following information to the IRS: (1) the acquirer’s name, address, and TIN; (2) the name, address, and TIN of each recipient of payment in the reportable policy sale; (3) the date of the sale; (4) the

³ Treasury and the IRS are also considering how to distinguish viatical settlements from other life settlement transactions for information reporting purposes.

name of the issuer of the life insurance contract sold and the policy number of such contract; and (5) the amount of each payment.

Treasury and the IRS intend to propose regulations under § 6050Y(a)(2) requiring every person required to file a return under § 6050Y(a)(1) to furnish written statements to each payment recipient and issuer whose name is required to be set forth in such return. The statements will be required to set forth the name, address, and phone number of the information contact of the acquirer, together with the information required to be reported to the IRS under § 6050Y(a)(1), except that the amount of each payment and the name, address, and TIN of payment recipients other than the seller need not be reported to the issuer. The requirement to provide such statements may be satisfied by furnishing a copy of the information return provided to the IRS (provided the return includes the name, address, and phone number of the acquirer's information contact, or this information is added to the copy furnished to the payment recipient), or an acceptable substitute statement.

Treasury and the IRS intend to propose regulations that will define "acquirer" for purposes of § 6050Y to be any person who acquires a life insurance contract, or an interest in a life insurance contract, directly or indirectly, and who has no substantial family, business, or financial relationship with the insured apart from the acquirer's interest in such life insurance contract. The proposed regulations may further refine the definition of an "acquirer" for purposes of § 6050Y. For example, the proposed regulations may define "acquirer" in a reportable policy sale to include any person, including the life settlement or viatical settlement provider or financing entity, that takes

title or possession for state law purposes or acquires a beneficial interest in the life insurance contract at any time. The statute defines “indirectly,” for purposes of a reportable policy sale, as the acquisition of an interest in a partnership, trust, or other entity that holds an interest in the life insurance contract. The proposed regulations may further refine the definition of “indirectly” for purposes of § 6050Y reporting.

Treasury and the IRS intend to propose regulations regarding the definition of a reportable payment for purposes of § 6050Y. Section 6050Y(d)(1) defines “payment,” with respect to any reportable policy sale, as “the amount of cash and the fair market value of any consideration transferred in the sale.” Treasury and the IRS intend to clarify that a reportable payment may include payments to persons other than the seller, such as brokers and, potentially, life settlement providers acting as intermediaries. Additionally, Treasury and the IRS intend to clarify that the “payment” to the seller reported under § 6050Y(a) is the seller’s net proceeds. The net proceeds equal the gross proceeds minus any selling expenses (for example, broker’s fees and commissions).

ii. Section 6050Y(b) Reporting of Transferor’s Investment in the Contract by Issuer (Reportable Policy Sale or Transfer to a Foreign Person)

Treasury and the IRS intend to propose regulations implementing reporting obligations under § 6050Y(b) on any issuer of a life insurance contract who has either (1) received the statement required by § 6050Y(a)(2) to be furnished by the acquirer in a reportable policy sale or (2) has received notice of a transfer of a life insurance contract to a foreign person.

Section 6050Y(d)(3) defines “issuer” to mean “any life insurance company that bears the risk with respect to a life insurance contract on the date any return or statement is required to be made under this section.” Treasury and the IRS intend to limit the information reporting obligations imposed under § 6050Y(b) to the life insurance company that is responsible for administering the contract, including paying death benefits under the life insurance contract. Under the proposed regulations, the reporting obligations would not apply, for instance, to a reinsurer in an indemnity contract covering all or a portion of the risks that the original issuer (and continuing contract administrator) might otherwise have incurred with respect to a life insurance contract. This proposed definition of “issuer” will reduce the burden on reporting life insurance companies and prevent duplicative reporting.

Treasury and the IRS intend to propose regulations under § 6050Y(b)(1) requiring issuers who have received a statement under § 6050Y(a)(2) reporting a reportable policy sale or notice of a transfer of a life insurance contract to a foreign person to file an information return, to be made according to forms and instructions to be published by the IRS, reporting the following information to the IRS: (1) the name, address, and TIN of each seller who transfers an interest in a life insurance contract; (2) the investment in the contract (as defined in § 72(e)(6)) with respect to such seller; (3) the policy number of such contract; and (4) the amount that would have been received by the policyholder upon surrender of the contract. Treasury and the IRS intend to propose regulations requiring the issuer to report the amount that would have been received by the policyholder upon surrender of the contract because this information is needed to

determine the amount of the seller's gain that is ordinary income. See Rev. Rul. 2009-13; see also Rev. Rul. 2009-14.

Treasury and the IRS intend to propose regulations under § 6050Y(b)(2) requiring every issuer required to make a return under § 6050Y(b)(1) to furnish written statements to each seller whose name is required to be set forth in a return made under § 6050Y(b)(1). The statements will be required to set forth the name, address, and phone number of the information contact of the issuer, together with the information required to be reported to the IRS under § 6050Y(b)(1) and the proposed regulations. The requirement to provide such statements may be satisfied by furnishing a copy of the information return provided to the IRS (provided the return includes the name, address, and phone number of the issuer's information contact, or this information is added to the copy furnished to the seller), or an acceptable substitute statement.

Treasury and the IRS intend to propose regulations defining "seller" for purposes of § 6050Y(b) to include any person who transfers an interest in a life insurance contract to an acquirer in a reportable policy sale or to a foreign person.

Treasury and the IRS intend to define the term "investment in the contract" that is required to be reported by the issuer with respect to a seller. Section 6050Y(b) requires an issuer to report the "investment in the contract (as defined in section 72(e)(6)) with respect to such seller." Section 72(e)(6) defines the "investment in the contract" as of any date as the aggregate amount of premiums or other consideration paid for the contract before that date, less the aggregate amount received under the contract before that date to the extent that amount was excludable from gross income. With respect to

the original policyholder, the issuer will have all of the information required to determine the seller's investment in the contract. With respect to a seller other than the original policyholder, an issuer may not have all the information required to determine the seller's investment in the contract, as defined in § 72(e)(6), because the acquirer of the contract from the original policyholder is not required under § 6050Y(a) to report to the issuer the amount paid for the contract. For this reason, the issuer's obligation to report the "investment in the contract" on any date will be limited to the information that is known to the issuer (in general, the amount of premiums received from the seller for the contract before that date, less the aggregate amount paid to the seller under the contract before that date).

Treasury and the IRS intend to propose regulations defining notice of a transfer of a life insurance contract to a foreign person for purposes of § 6050Y(b) as any notice, including information provided for nontax purposes such as change of address notices for purposes of sending statements or for other purposes, or information relating to loans, premiums, or death benefits with respect to the contract. See H.R. Rep. No. 115-466, at 485 (2017) (Conf. Rep.).

Issuers of life insurance contracts acquired by a domestic person in a reportable policy sale are subject to the reporting obligations of § 6050Y(b) only if the issuer receives the statement required by § 6050Y(a)(2) to be furnished by the acquirer in a reportable policy sale to the issuer. Treasury and the IRS intend to propose regulations providing that issuers who have not received a written statement from an acquirer under § 6050Y(a)(2), but who have received notice of a transfer of a life insurance contract to

a domestic person, may optionally file a return with the IRS under § 6050Y(b)(1) and furnish written statements to sellers under § 6050Y(b)(2), unless the issuer knows the transfer is not a reportable policy sale.

iii. Section 6050Y(c) Reporting of Reportable Death Benefits by Payor

Treasury and the IRS intend to propose regulations related to the reporting obligations under § 6050Y(c) on persons making payments of reportable death benefits during any taxable year. Every person making payments of reportable death benefits during any taxable year is subject to the reporting obligations of § 6050Y(c), regardless of whether such person received a statement from the acquirer in the reportable policy sale under § 6050Y(a)(2).

Treasury and the IRS intend to propose regulations under § 6050Y(c)(1) requiring a payor of reportable death benefits to file an information return, to be made according to forms and instructions to be published by the IRS, reporting the following information to the IRS: (1) the payor's name, address, and TIN; (2) the name, address, and TIN of each recipient of such payment; (3) the date of each such payment; (4) the gross amount of each such payment; and (5) the payor's estimate of the investment in the contract (as defined in § 72(e)(6)) with respect to the buyer.

Treasury and the IRS intend to propose regulations under § 6050Y(c)(2) requiring every person required to file a return under § 6050Y(c)(1) to furnish written statements to each recipient of reportable death benefits whose name is required to be set forth in a return made under § 6050Y(c)(1). The statements will be required to set forth the name, address, and phone number of the information contact of the payor, together with

the information required to be reported to the IRS under § 6050Y(c)(1). The requirement to provide such statements may be satisfied by furnishing a copy of the information return provided to the IRS (provided the return includes the name, address, and phone number of the payor's information contact, or this information is added to the copy furnished to the payment recipient), or an acceptable substitute statement.

Treasury and the IRS intend to define the term "estimate of the investment in the contract" that is required to be reported by the payor with respect to a buyer to include only the amount of premiums paid by the buyer under the contract, less the aggregate amount received by the buyer under the contract. In addition, Treasury and IRS intend to define "buyer" in the proposed regulations. For example, the proposed regulations may define "buyer" to include any person either holding a beneficial interest in the life insurance contract or taking title or possession for state law purposes.

Section 6050Y(d)(4) defines "reportable death benefits" as "amounts paid by reason of the death of the insured under a life insurance contract that has been transferred in a reportable policy sale." The definition of "reportable policy sale" applies only to transfers made after December 31, 2017. Accordingly, death benefits are "reportable death benefits" under § 6050Y(d)(4), and are subject to the reporting requirements of § 6050Y(c), only if the death benefits are paid by reason of the death of the insured under a life insurance contract transferred after December 31, 2017, in a reportable policy sale.

iv. Timing of Section 6050Y Reporting

Among other requirements, § 6050Y(a) requires the acquirer in a reportable policy

sale to report the amount of each payment made in a reportable policy sale to the IRS and each payment recipient. Section 6050Y(b) requires each issuer of a life insurance contract who receives notice of a reportable policy sale via receipt of a statement required under § 6050Y(a)(2), or who receives notice of a transfer of a life insurance contract to a foreign person, to report the seller's investment in the life insurance contract to the IRS and the seller. Section 6050Y(c) requires the payor of a reportable death benefit to report the payment to the IRS and each payment recipient.

The recipients of the written statements required to be furnished under § 6050Y may use the information therein to determine their taxable income. To facilitate recipients' proper tax reporting, Treasury and the IRS intend to require that an acquirer furnish the written statements required under § 6050Y(a)(2) to an issuer by the later of (1) 20 days after the reportable policy sale, or (2) 5 days after the end of the applicable state law rescission period, if any, but in no event later than January 15 of the year following the calendar year in which the reportable policy sale occurs. Treasury and the IRS intend to require that all other written statements required under §§ 6050Y(a)(2), (b)(2), and (c)(2) be furnished to the recipients identified in the statute and regulations no later than January 31 of the year following the calendar year in which the reportable policy sale or reportable death benefit payment occurs. The earlier deadline for acquirers to furnish issuers with the written statements required under § 6050Y(a)(2) is needed because reporting under § 6050Y(b) is contingent on the issuer receiving either notice of a reportable policy sale via a written statement furnished under § 6050Y(a)(2) or notice of the transfer of a life insurance contract to a foreign person.

Treasury and the IRS intend to propose regulations requiring the returns required by §§ 6050Y(a)(1), (b)(1), and (c)(1) to be filed with the IRS no later than February 28 of the year following the calendar year in which the reportable policy sale or reportable death benefit payment occurs, for paper returns, and no later than March 31 of the year following the calendar year in which the reportable policy sale or reportable death benefit payment occurs, for electronically filed returns.

Treasury and the IRS intend to propose regulations regarding reporting obligations upon the rescission of a reportable policy sale or transfer to a foreign person. Upon receiving notice of the rescission, any person who has filed a return required by § 6050Y with respect to the reportable policy sale or transfer would have 15 days to file a corrected return. Upon receiving notice of the rescission, any person who has furnished a written statement under § 6050Y with respect to the reportable policy sale or transfer would have 15 days to furnish the recipient of that statement with a corrected statement reporting the rescission.

The reporting requirements of § 6050Y apply to reportable policy sales that occur after December 31, 2017, and reportable death benefits paid after December 31, 2017. For reportable policy sales and payments of reportable death benefits occurring after December 31, 2017, and before the date final regulations under § 6050Y are published in the Federal Register, Treasury and the IRS intend to allow additional time after the date final regulations are published to file the returns and furnish the written statements required by § 6050Y.

B. A Modification to the Transfer for Valuable Consideration Rules

Treasury and the IRS intend to propose amendments to § 1.101-1 to reflect the addition of § 101(a)(3) by section 13522 of the Act.

SECTION 4. REQUEST FOR COMMENTS

Treasury and the IRS request comments on the proposed rules described in this notice and on any additional issues that should be addressed by the regulations, including the following:

(a) The time and manner for reporting certain life insurance contract transactions under § 6050Y, including the timing of reporting under the transition relief for reportable policy sales and payment of reportable death benefits occurring prior to the issuance of final regulations;

(b) Identification of the “acquirer” in a reportable policy sale for purposes of § 6050Y reporting; whether for purposes of § 6050Y there might be more than one person taking title or possession for state law purposes of an insurance contract or acquiring a beneficial interest in a life insurance contract with respect to a series of transfers involving a reportable policy sale and, if so, how § 6050Y should apply; and whether the proposed definition of “acquirer” would lead to duplicate reporting of payments in reportable policy sales;

(c) If each person who takes possession or title as owner or beneficial owner of a life insurance contract as part of a series of transactions is required to report under § 6050Y(a), should the proposed regulations allow each person’s reporting obligation to be discharged through one unified reporting by one of the persons or a third party information reporting contractor;

(d) The application of the rules in § 6050Y(a) to the series of prearranged transfers of an insurance contract as part of the initial reportable policy sale, also known as a secondary market sale, and whether these title and ownership transfers should be aggregated into one reportable policy sale or whether each transfer should be treated as a separate reporting event for purposes of § 6050Y(a);

(e) The application of the rules in § 6050Y(a) to a reportable policy sale that occurs after an initial reportable policy sale, also known as a tertiary market policy sale;

(f) Identification of “payment recipients” in reportable policy sales, other than the seller, for purposes of § 6050Y(a); whether requiring reporting of payments to such persons would duplicate existing information reporting; whether payments to multiple payment recipients in a reportable policy sale should be reported on a single return; and what information reported on the return should be provided to each payment recipient;

(g) Whether there could be payments to payment recipients other than the seller in a reportable policy sale that are not selling expenses, and if so, whether the seller’s net proceeds would include or be net of those amounts, and the extent to which the acquirer would have knowledge of all such payments;

(h) The definition of “reportable policy sale” set forth in § 101(a)(3)(B) and the need for additional guidance regarding the definition (for example, the types of transactions covered by the term, as well as the extent to which the definition should exclude sales or acquisitions effected by transferors and transferees outside the U.S.), as well as how to distinguish viatical settlements from other life settlement transactions for information reporting purposes;

(i) The rules under § 6050Y(b), including the definition of “issuer,” “seller,” and of “notice of a transfer to a foreign person”;

(j) The definition of “buyer” for purposes of § 6050Y(c), including whether it should include the beneficial owner of the life insurance contract and the person holding title or possession for state law purposes, and identification of the person or persons holding the information necessary to determine the investment in the contract made by the “buyer”;

(k) The definition of “investment in the contract” for purposes of § 6050Y(b) and (c);

(l) Documentation requirements that should be applied by acquirers and issuers to determine whether a payment recipient/seller is a non-U.S. person for purposes of excluding their respective reporting under § 6050Y, including addressing any foreign sellers that might be included in the reporting and presumption rules to be applied in the absence of reliable documentation establishing a seller’s non-U.S. status (to the extent permitted for excluding reporting); and

(m) Rules to coordinate any of the provisions of § 6050Y with other sections of the Code addressing withholding and reporting requirements, including coordination with the provisions of chapters 3 and 4 of the Code.

Comments should be submitted in writing on or before June 13, 2018 and should contain reference to this Notice 2018-41. All comments will be available for public inspection and copying. Comments may be submitted in one of three ways:

- (1) By mail to Internal Revenue Service, CC:PA:LPD:PR (Notice 2018-41),
Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC

20044.

- (2) Electronically to Notice.Comments@irsconsult.treas.gov. Please include “Notice 2018-41” in both the body of the comment and on the subject line of any electronic communications.
- (3) By hand-delivery Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Notice 2018-41), Courier’s Desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC 20224.

DRAFTING INFORMATION

The principal author of this notice is Kathryn M. Sneade of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this notice contact Ms. Sneade at (202) 317-6995 (not a toll-free number).