KPMG

TaxNewsFlash

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Insurance provisions in tax bill approved by Senate

On December 2, the U.S. Senate passed reconciliation legislation (H.R. 1, the "Tax Cuts and Jobs Act") by a vote of 51 to 49. All but one Republican and no Democrats voted for the bill, which was amended on the Senate floor (read ***TaxNewsFlash***).

Some of these amendments affect insurance provisions (described below).

Documents

- Read the **manager's amendment** [PDF 16.7 MB] that replaced the legislative text of the tax reform title with new text that reflects significant modifications.
- Read a **revenue estimate** that reflects modifications made to the Senate bill, prepared by the Joint Committee on Taxation (JCT)

Major insurance provisions

Modify operations loss deductions of life insurance companies (section 13511 of the bill).

The provision would alter the operations loss carryover and carryback periods for life insurance companies (currently carried back three years and forward 15) by striking Code sections 810 and 844 and conforming these periods to those of other corporations.

The provision also modifies the carryover and carryback rules for all corporations (except for nonlife insurance companies as discussed below). All net operating loss carryback provisions are repealed and taxpayers are allowed to carry net operating losses forward indefinitely (except for a special two year carryback in the case of certain losses incurred in the trade or business of farming). Under the proposed provision, taxpayers' ability to deduct a net operating loss carryover (or carryback,

under the aforementioned casualty loss provision) would be limited to 90% of the taxpayer's taxable income for the year. For tax years beginning after December 31, 2022, the net operating loss deduction would be 80% of taxable income.

These provisions would be effective for losses arising in tax years beginning after 2017 other than the 80% limitation as described above which begins in taxable years after 2022.

KPMG observation

This proposal would put life insurance companies on the same loss carryback and carryforward schedule as other corporations (other than nonlife insurance companies). The repeal of nearly all carrybacks could have a substantial impact on a life company's deferred tax asset admissibility computation for statutory accounting purposes. The first part of the admissibility test under SSAP 101 would no longer be applicable for ordinary deferred tax assets since it allows insurance companies to use a reversal period that corresponds to the tax loss carryback provisions of the Code.

The limitation of a life insurance company's operating loss deduction to 90% of the company's taxable income would conform to current law regarding the utilization of losses to compute alternative minimum tax. The 80% limitation beginning in taxable years after 2022 would also be applicable to life insurance companies.

The Ways and Means bill includes a similar provision; however the 80% limitation in taxable years beginning after 2022 is specific to the Senate bill.

Retain operations loss deductions of property and casualty insurance companies (section 13302 of the bill)

This section would preserve present law for net operating losses of property and casualty companies. Under the modification, net operating losses of property and casualty companies may be carried back two years and carried forward 20 years to offset 100 percent of taxable income in such years.

KPMG observation

This proposal would put life insurance companies and non-life insurance companies on different loss carryback and carryforward schedules. Unlike the impact on the life insurance industry, a nonlife insurance's company's deferred tax asset admissibility computation for statutory accounting purposes would not change. The first part of the admissibility test under SSAP 101 would still be applicable and would allow the same computations as under current law.

The House bill does not include a similar provision. The House bill would repeal all carrybacks and limit non-life insurance company's operating loss to 90% of the company's taxable income. This difference will need to be resolved in the final statute.

Repeal small life insurance company deduction (section 13512 of the bill)

This proposed provision would repeal the Code section 806 special deduction for small life insurance companies, effective for tax years beginning after 2017.

KPMG observation

This proposal is described as eliminating special treatment for a segment of the insurance industry in which "the risk distribution benefits of risk pooling are the weakest." The proposal would not eliminate a similar benefit for small property and casualty insurers. This proposal is also included in the House bill.

Repeal Code section 807(f) spread – adjustment for change in computing reserves (section 13513 of the bill)

This section would repeal the special 10-year period for adjustments to take into account changes in a life insurance company's basis for computing reserves. The general rule for tax accounting method adjustments would apply to changes in computing reserves by life insurance companies; generally, income would be includable ratably over a four-year period instead of over a 10-year period. The provision would be effective for tax years beginning after 2017.

KPMG observation

This proposal would put life reserve computation changes on the one-year or four-year spread rules applicable to general changes in methods of accounting. The proposal appears to provide that changes in life insurance reserve basis would continue to be an automatic adjustment and not require prior approval for such changes. The proposal is identical to one included in the House bill.

Repeal special rule for distributions to shareholders from pre-1984 policyholders surplus accounts (section 13514 of the bill)

This proposed measure would repeal rules (originally enacted in 1959) relating to the tax treatment of distributions from policyholders surplus accounts. From 1959 to 1984, half of a life insurer's operating income was taxed only when the company distributed it, and a "policyholders surplus account" kept track of the untaxed income. Legislation enacted in 2004 provided a two-year holiday that permitted tax-free distributions of these balances during 2005 and 2006. During this period, most companies eliminated or significantly reduced their balances.

The provision would generally be effective for tax years beginning after 2017, and any remaining balances would be subject to tax payable ratably over the first eight taxable years beginning after December 31, 2017.

KPMG observation

This proposal was one suggested by the ABA Tax Section Insurance Companies Committee and is not expected to raise significant revenue. This proposal is identical to one in the House bill.

Modify proration rules for property and casualty (P&C) insurance companies (section 13515 of the bill)

The proposed provision replaces the 15% reduction under present law with a reduction equal to 5.25% divided by the top corporate tax rate. For 2018, the top corporate tax rate is 35%, and the percentage reduction is 15%. For 2019 and thereafter, the corporate tax rate is 20 percent, and the percentage reduction is 26.25% under the proration rule for P&C companies. The proration percentage will be automatically adjusted in the future if the top corporate tax rate is changed, so that the product of the proration percentage and the top corporate tax rate always equals 5.25%.

The provision would be effective for tax years beginning after 2017.

KPMG observation

The JCT description states that the increase in the haircut within the provision would keep the reduction in the reserve deduction consistent with current law by adjusting the rate proportionally to the decrease in the corporate tax rate. That rationale may not be consistent with the provision's purpose under current law, which is to measure the amount of tax-exempt income credited to reserves (estimated at 15%) in order to eliminate a double benefit. Although the reduction is significant, a rate tied to the product of the proration percentage and top corporate tax rate may still be preferable overall to many insurers as the calculated rate facilitates predictability of after-tax rates of return on tax-exempt bonds and compares those rates to other investments.

With a permanent corporate tax rate of 20%, both the House bill and the Senate bill would result in a proration rate of 26.25%. However, in contrast to the House bill (which has a fixed rate of 26.25%), the Senate bill's proration rate would automatically adjust based on changes to the corporate tax rate. The effective date for the 20% corporate tax rate (House bill proposes 20% corporate tax rate for tax years starting after December 31, 2017; Senate bill proposes 20% corporate tax rate for tax years starting after December 31, 2018) will need to be resolved in the final statute.

Repeal elective deduction and related special estimated tax payment rules (section 13516 of the bill)

This provision would repeal the Code section 847 elective deduction and related special estimated tax payment rules. The entire balance of an existing account is included in income of the taxpayer for the first taxable year beginning after 2017, and the entire amount of existing special estimated tax payments are applied against the amount of additional tax attributable to the inclusion. Any special estimated tax

payments in excess of this amount are treated as estimated tax payments under section 6655.

KPMG observation

Code section 847 was originally enacted to provide for the admissibility of deferred tax assets associated with loss reserve discounting under the recognition rules of FAS 96. FAS 109 liberalized these requirements, and, as a result, section 847 is largely unnecessary and administratively burdensome. The proposal is identical to one in the House bill.

Computation of life insurance tax reserves (section 13517 of the bill)

Under this section, life insurance company tax reserves for any contract would be equal to the greater of (1) the net surrender value of the contract or (2) a specific percentage, 92.87% of the reserve computed as required by the National Association of Insurance Commissioners (NAIC) at the time the reserve is determined.

Items taken into account in determining life insurance reserves will be the same as in the current law and include (1) reserves as described under section 816(b), (2) the unearned premiums and unpaid losses included in total reserves under section 816(c)(2), (3) the amounts necessary to satisfy the obligations under insurance and annuity contracts, (4) dividend accumulations and other amounts, (5) premiums received in advance and liabilities for premium deposit funds, and (6) reasonable special contingency results under contracts of group term life insurance or group accident and health insurance which are established and maintained for the provision of insurance on retired lives, for premium stabilization, or a combination thereof.

The Senate bill also maintains the requirement that tax reserves cannot be less than the contract's cash surrender value. Additionally, the Senate bill preserves the requirement that the tax reserve cannot be greater than the statutory reserve for the contract. The Senate bill eliminates the requirement that the reserve method used for tax purposes be the method prescribed by the NAIC in effect on the date of the issuance of the contract. A reporting requirement with respect to the opening and closing balance of reserves and with respect to the method of computing reserves for purposes of determining income is added.

The provision would generally be effective for tax years beginning after 2017. The effect of the provision on computing reserves for contracts issued before the effective date would be taken into account ratably over the succeeding eight tax years.

KPMG observation

The provision generally simplifies the current complex section 807 reserve calculation. The current rules in the Tax Code do not explicitly provide how reserves measured in the new manner (i.e., principle-based reserves) should be taken into account for tax purposes.

Initially, the House had proposed a 23.5% haircut of statutory reserves that would have led to a significant reduction of currently deductible life insurance company reserves. Some life insurance companies may not have had sufficient surplus to absorb this increased tax liability. This provision was subsequently removed from the final House bill, and a placeholder 8% surtax on life insurance company taxable income was added. The proposed provision in the Senate bill uses a 7.13% haircut of statutory reserves.

The elimination of the current law requirement that the reserve method be set at the time the contract is issued will also eliminate any question about whether changes made by the NAIC to reserve methods should be reflected in the tax reserve.

The initial House proposal also specifically stated that asset adequacy reserves would not be included for tax purposes. This language related to adequacy reserves is not included in the Senate bill.

Modify rules for life insurance proration for purposes of determining the dividends received deduction (DRD) (section 13518 of the bill)

This section would change the life insurance company proration rules for the DRD in Code section 805(a)(4) by changing the company share to 70% and the policyholder share to 30%.The provision would be effective for tax years beginning after 2017.

KPMG observation

The current rules are complex and based on an archaic system of life insurance company taxation. The House bill initially included a similar proposal, but set the company share at 40%. The House bill DRD proration provision was eliminated and the 8% surtax was added. The Senate bill sets the company share at 70%.This provision would simplify the proration calculation by setting the company share and policyholder share percentages to a fixed amount.

Capitalize certain policy acquisition expenses (DAC) (section 13519 of the bill)

This provision would substantially increase the capitalization rates applicable to specified insurance contracts under Code section 848. The current proxy rates applied to net premiums on “specified insurance contracts” are 1.75% for annuity contracts, 2.05% for group life insurance contracts and 7.7% for individual life insurance, group and individual health insurance, and other insurance contracts. The current provision allows for a 10-year spread.

The proposed capitalization rates are as follows:

- Annuity Contracts (2.1%)
- Group Life Contracts (2.46%)
- All other specified contracts (9.24%)

The proposal extends the amortization period from a 120-month period to the 180-month period beginning with the first month in the second half of the taxable year. The proposal does not change the special rule providing for the 60-month amortization of the first $5 million (with phase-out).

The provision would be effective for tax years beginning after 2017.

KPMG observation

When section 848 was originally enacted, there was significant debate over the appropriate capitalization percentage and amortization period. The House bill does not currently suggest a change to DAC. Ways and Means Committee Chairman Brady's mark initially increased the DAC capitalization rates, but that proposal was withdrawn during the markup and an 8% surtax on life insurance company taxable income was inserted as a placeholder. The Senate Finance Committee bill initially proposed a significant increase to the amount of DAC capitalized and the amortization period, so the final Senate bill is a more modest change. A reconciliation between the different House and Senate proposals will be necessary.

Tax reporting for life settlement transactions, clarification of tax basis of life insurance contracts, and exception to transfer for valuable consideration rules (sections 13520, 13521, and 13522 of the bill)

Under current law section §101(a)(1) there is an exclusion from federal income tax for amounts received under a life insurance contract paid by reason of the death of the insured. Under §101(a)(2), under the transfer for value rules, if a life insurance contract is sold or otherwise transferred for valuable consideration, the amount paid by reason of the death of the insured that is excludable is generally limited.

Further, in Revenue Ruling 2009-13, the IRS ruled that income recognized under section 72(e) on surrender to the life insurance company of a life insurance contract with cash value is ordinary income. In the case of a sale of a cash value life insurance contract, the IRS ruled that the insured's (seller's) basis is reduced by the cost of insurance, and the gain on sale of the contract is ordinary income to the extent of the amount that would be recognized as ordinary income if the contract were surrendered (the "inside buildup") and excess is long-term capital gain.

In Revenue Ruling 2009-14, the IRS ruled that under the transfer for value rules, a portion of the death benefit received by a buyer of a life insurance contract on the death of the insured is includable as ordinary income. The portion is the excess of the death benefit over the consideration and other amounts (ex. premiums) paid for the contract. Upon sale of the contract by the purchaser of the contract, the gain is long-term capital gain and in determining the gain, the basis of the contract is not reduced by the cost of insurance.

The bill imposes reporting requirements in the case of the purchase of an existing life insurance contract in a reportable policy sale and imposes reporting requirements on the insurance company issuing the life insurance or annuity contract. Lastly, the

provision modifies the transfer for value rules in a transfer of an interest in a life insurance contract in a reportable policy sale.

Reporting requirements for acquisitions of life insurance contracts

The reporting requirement applies to 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. A reportable policy sale means 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 the life insurance contract). An indirect acquisition includes the acquisition of an interest in a partnership, trust, or other entity that holds an interest in the life insurance contract. Under the reporting requirement, the buyer reports information about the purchase to the IRS, to the insurance company that issued the contract, and to the seller. The information reported by the buyer about the purchase is (1) the buyer'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, and (4) the amount of each payment. The statement the buyer provides to any issuer of a life insurance contract is not required to include the amount of the payment or payments for the purchase of the contract.

Reporting of seller's basis in the life insurance contract

On receipt of a report described above, or on any notice of the transfer of a life insurance contract to a foreign person, the issuer is required to report to the IRS and to the seller (1) the basis of the contract (i.e., the investment in the contract within the meaning of section 72(e)(6)), (2) the name, address, and TIN of the seller or the transferor to a foreign person, and (3) the policy number of the contract. Notice of the transfer of a life insurance contract to a foreign person is intended to include any sort of 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.

Reporting with respect to reportable death benefits

When a reportable death benefit is paid under a life insurance contract, the payor insurance company is required to report information about the payment to the IRS and to the payee. Under this reporting requirement, the payor reports (1) the gross amount of the payment; (2) the taxpayer identification number of the payee; and (3) the payor's estimate of the buyer's basis in the contract. A reportable death benefit means an amount paid by reason of the death of the insured under a life insurance contract that has been transferred in a reportable policy sale. For purposes of these reporting requirements, a payment means the amount of cash and the fair market value of any consideration transferred in a reportable policy sale.

Determination of basis

The provision provides that in determining the basis of a life insurance or annuity contract, no adjustment is made for mortality, expense, or other reasonable charges incurred under the contract (known as "cost of insurance"). This reverses the position of the IRS in Revenue Ruling 2009-13 that on sale of a cash value life insurance contract, the insured's (seller's) basis is reduced by the cost of insurance.

Scope of transfer for value rules

The provision provides that the exceptions to the transfer for value rules do not apply in the case of a transfer of a life insurance contract, or any interest in a life insurance contract, in a reportable policy sale. Thus, some portion of the death benefit ultimately payable under such a contract may be includable in income.

Under the provision, the reporting requirement is effective for reportable policy sales occurring after December 31, 2017, and reportable death benefits paid after December 31, 2017. The clarification of the basis rules for life insurance and annuity contracts is effective for transactions entered into after August 25, 2009. The modification of exception to the transfer for value rules is effective for transfers occurring after December 31, 2017.

KPMG observation

The provision would add to the insurer's reporting responsibilities by requiring it to identify and report seller information to the IRS. In addition, the reversal of the IRS's position in Rev. Rul. 2009-13 simplifies the insurer's reporting responsibilities by eliminating the bifurcated basis and investment in the contract calculations for contracts surrender at a gain vs. contracts surrendered at a loss. Whether or not to reduce a seller's basis by the cost of insurance has been a controversial issue, and the provision provides clarity to this situation. This provision was not included in the House bill.

Modification of insurance exception to the passive foreign investment company rules (section 14501 of the bill)

This provision is materially the same as section 4501 of the House bill, and has the same effective date and revenue effect. The section number of this provision of the Senate bill was changed, however, and now it is section 14501, whereas it was section 14502 of the original Senate mark.

Current law contains an exception from passive income that prevents certain investment income derived from the active conduct of an insurance business from causing a foreign corporation to be a PFIC. As under section 4501 of H.R. 1, this section of the bill passed by the full Senate would amend the exception in the PFIC rules to apply only to a foreign corporation whose applicable insurance liabilities constitute more than 25% of its total assets as reported on the corporation's applicable financial statement for the last year ending with or within the taxable year. Applicable liabilities of any property and casualty or life insurance business include

loss and loss adjustment expenses and certain reserves, but do not include unearned premium reserves.

An applicable financial statement is a statement for financial reporting purposes that is made on the basis of generally accepted accounting principles (GAAP), on the basis of international financial reporting standards (IFRS) if no GAAP statement is available, or, "except as otherwise provided by the Secretary in regulations," on the basis of the annual statement required to be filed with the applicable insurance regulatory body, but only if neither a GAAP nor IFRS statement is available. Unless otherwise provided in regulations, GAAP means U.S. GAAP.

Like section 4501 of the House bill, this section provides potential relief to a foreign corporation that cannot meet the new 25% test by giving the Secretary regulatory authority to allow a U.S. person owning stock of such a foreign corporation to elect to treat it as a qualifying insurance company if (1) its applicable liabilities equal at least 10% of its assets, and, (2) (a) the foreign corporation is predominantly engaged in an insurance business, and (b) the failure to satisfy the greater than 25% threshold is due solely to run-off-related or rating-related circumstances involving such insurance business.

The provision would apply to tax years (presumably of foreign corporations being tested for PFIC status) beginning after December 31, 2017.

KPMG observation

This provision largely tracks prior legislative proposals that were described as addressing a perceived abuse whereby some insurance activities were used to shelter large investments. The change may also have impacts on non-U.S. insurance companies that insure long-tail and catastrophic risks.

U.S. persons owning stock of a corporation treated as a PFIC because it is ineligible for the active insurance exception in Code section 1297(b)(2)(B) would be required to begin filing Form 8621, *Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund*, and to consider available PFIC-related elections.

Under current law (Code section 6501(c)(8)), a U.S. person that fails to file Form 8621 for a year generally would have the statute of limitations for its tax return for that year kept open until three years after the U.S person furnishes the required information to the IRS.

Like section 4501 of H.R. 1, the Senate version also could require the Department of the Treasury to issue new regulations, and the IRS to amend Form 8621, for taxpayers to take advantage of the election it would provide to U.S. shareholders of certain affected foreign corporations that fail the 25% liabilities test.

Limitation on the deduction of net business interest expense (section 13301 of the bill)

The Senate bill would amend section 163(j) to disallow a deduction for net business interest expense of any taxpayer in excess of 30% of a business's adjusted taxable income. The new limitation would not apply to certain small businesses; that is, any taxpayer (other than a tax shelter prohibited from using the cash receipts and disbursements method of accounting under section 448(a)(3)) that meets the gross receipts test of section 448(c) (which is would be modified to $15 million under section 13102 of the Senate bill) for any tax year.

For this purpose, adjusted taxable income generally would be a business's taxable income computed without regard to: (1) any item of interest, gain, deduction, or loss that is not properly allocable to a trade or business; (2) business interest or business interest income; (3) the 23% deduction for certain passthrough income, and (4) the amount of any net operating loss deduction. The trade or business of performing services as an employee would not be treated as a trade or business for purposes of the limitation. The proposal would permit the Secretary to provide other adjustments to the computation of adjusted taxable income. A business's adjusted taxable income may not be less than zero for purposes of the limitation. Business interest would be defined as any interest paid or accrued on indebtedness properly allocable to a trade or business. Any amount treated as interest for tax purposes would be treated as "interest" for purposes of this proposal. The term "business interest" would not include investment interest within the meaning of section 163(d).

The provision would apply to all businesses, regardless of form, and any disallowance or excess limitation would generally be determined at the filer level (e.g., at the partnership level instead of the partner level). For a group of affiliated corporations that file a consolidated return, it applies at the consolidated tax return filing level. Any business interest disallowed would be carried forward indefinitely. Carryover amounts would be taken into account in the case of certain corporate acquisitions described in section 381 and would be subject to limitation under section 382.

KPMG observation

There appear to be no special rules for financial services entities. As a result, the determination of net business interest expense is unclear for a company like an insurer that generates significant interest income related to investments as an integral part of its active insurance business. The House bill contains a similar proposal. However, unlike the provision within the House bill, the Senate proposal would determine adjusted taxable income by including certain deductions allocable to the trade or business such as depreciation, amortization, and depletion. In addition, any disallowed interest would be carried forward indefinitely (as opposed to the 5-year carryover in the House bill).

Tax on base erosion payments (section 14401 of the bill)

This base erosion provision imposes a surtax on the tax benefits associated with certain payments between related parties.

KPMG observation

While the proposal would significantly affect most inbound companies and many U.S.-headquartered companies, the proposal would affect certain industries disproportionately. As just one example, the proposal would have an economic impact on related-party cross border reinsurance, and therefore would significantly affect insurance companies that include off-shore reinsurance to an affiliated entity as an integral part of their business model.

Below is a table comparing the insurance provisions within the current versions of the House and Senate legislation.

	House: H.R. 1, the "Tax Cuts and Jobs Creation Act"	Senate: the "Tax Cuts and Jobs Act"
Life: Modify Operations Loss Deduction	• Conform OLD to section 172 general net operating loss deductions • Generally $0 ordinary carryback, unlimited carryover subject to an annual cap of 90% of taxable income • JCT: No separate revenue estimate provided	• Conform OLD to section 172 general net operating loss deductions • Generally $0 ordinary carryback, unlimited carryover subject to an annual cap of 90% of taxable income (**cap of 80% in taxable years beginning after 2022**) • JCT: No separate revenue estimate provided
Nonlife: Retain Net Operations Loss Deduction	• No similar provision	• Preserves current law for NOLs of P&C insurance companies • NOLs may be carried back two years and forward 20 years to offset 100% of taxable income in those years • JCT: No separate revenue estimate provided
Life: Repeal Small Life Insurance Company Deduction	• Eliminates deduction related to small life insurance company incomes • Maintains anti-abuse rule for nonlife insurance business	• Same

	• JCT: $0.2B over ten years	
Life: Surtax on Life Insurance Taxable Income	• Placeholder provision • Generally preserves current tax law treatment of insurance company reserves • Imposes 8% surtax on life insurance income • JCT: $23B over ten years	• No similar provision
Life: Section 807(f) Spread	• Repeal special 10-year period for reserve adjustments • General section 481 accounting rules would apply • JCT: $1.2B over ten years	• Same
Life: Pre-1984 Policyholder Surplus Accounts	• Tax any remaining deferred pre-1984 policyholder surplus account amounts • Any remaining balances taxed over 8 years • JCT: <$50 M over 10 years	• Same
Nonlife: Nonlife Proration	• Increases fixed proration percentage to 26.25% • JCT: $2.1B over ten years	• Increases fixed proration percentage to 26.25% starting in 2019. In 2018 the reduction would continue to be 15%. • JCT: $2.2 B over ten years
Nonlife: Nonlife Reserves	• Revised interest rate: corporate bond yield • Repeals company experience election • Payment pattern extension: • Cut off at 18 years for short-tail	• No similar provision

	lines • Cut off at 25 years for long-tail lines • Transitional rule: impact on reserves for contracts issued prior to effective date would be taken into account over the next 7 years • JCT: $13.2B over ten years	
General: Section 847: Special Estimated Tax Payments	• Repeal • JCT: <$50M over ten years	• Same
Life: Computation of Life Insurance Tax Reserves	• No similar provision	• Tax reserves equal the greater of (1) the net surrender value of the contract or (2) 92.87% of statutory reserves • JCT: $15.2B over ten years
Life: Proration for Purposes of Determining the Dividends Received Deduction	• No similar provision	• Company share set to 70%; policyholder share set to 30% • JCT: $0.6B over ten years
General: Section 848: Deferred Acquisition Costs	• No similar provision	• Annuity Contracts: 2.1% of net premium • Group Life Contracts: 2.46% • All other specified contracts: 9.24% of net premium • Amortize over 15 years • JCT: $7.2B over ten years

General: Section 163(j): Limitation on the Deduction of Net Business Interest Expense	• Disallow a deduction for net business interest expense in excess of 30% of a business's adjusted taxable income • Adjusted taxable income = taxable income computed without regard to: (1) any item of interest, gain, deduction, or loss that is not property allocable to a trade or business; (2) business interest or business interest income; (3) the amount of any net operating loss deduction; and (4) depreciation, amortization, and depletion • Business interest: any interest paid or accrued on indebtedness properly allocable to a trade or business • Disallowed interest can be carried forward for five years • JCT: $171.7B over ten years	• Disallow a deduction for net business interest expense in excess of 30% of a business's adjusted taxable income • Adjusted taxable income = taxable income computed without regard to: (1) any item of interest, gain, deduction, or loss that is not property allocable to a trade or business; (2) business interest or business interest income; (3) the 23 percent deduction for certain pass-through income (4) the amount of any net operating loss deduction • Business interest: any interest paid or accrued on indebtedness properly allocable to a trade or business • Disallowed interest can be carried forward indefinitely • JCT: $308.1B over ten years
General: Tax Reporting for Life Settlements, Clarification of Tax Basis, Transfer for Value	• No similar provision	• Adds to the insurer's reporting responsibilities by requiring it to identify and report seller information to IRS • Reversal of the IRS's position in Rev. Rul. 2009-13 • Clarifies that basis is not reduced by COI • JCT: $0.2B over ten years

General: Base Erosion	• Excise tax on certain payments from domestic corporation to related foreign corporations
	
	• Rate = highest corporate tax rate (20%)
	
	• Excise tax on "specified amounts" – amounts paid or incurred by domestic corps to foreign corps that are part of the same international financial reporting group
	
	  • Includes amounts that are allowable as a deduction or including in COGS, inventory, or the basis of a depreciable asset
	
	  • Excludes: interest, payments for actively traded commodities and related hedges, certain FDAP payments subject to a withholding tax and payments for services that are charged at cost
	
	  • **Includes reinsurance payments**
	
	• Threshold: specified amounts paid or incurred must exceed $100M annually using a three year averaging test
	
	• Nondeductible
	
	• No excise tax if taxpayer makes an election to treat specified amounts as ECI and as income attributable to a permanent establishment
	
	• JCT: $94.5B over ten years
		• Base erosion minimum tax: income tax
		
		• Excess of 10% of Modified Taxable Income (12.5% after 2025) over regular taxable liability (subject to a credit adjustment)
		
		• Modified Taxable Income = taxable income computed without regards to any base erosion tax benefit with respect to a Base Erosion Payment
		
		  • Base Erosion Tax Benefit = deduction allowed with respect to a base erosion payment for the taxable year
		
		  • Base Erosion Payment = amount paid /accrued to a related party to which a deduction is allowable
		
		• There are special rules for treatment of NOL's
		
		• Applies to taxpayers with average annual gross receipts over $500M using a three year average and which has a base erosion percentage of at least 4%
		
		• No ECI election
		
		• JCT: $140B over ten years

General: Passive Foreign Investment Company Rules	• Expands application of PFIC rules, which deny U.S. investors the benefit of U.S. tax deferral for PFIC earnings
	
	• Limits the exception for active insurance business to “qualifying insurance corporation”
	
	• Qualifying insurance corporation includes requirement:
	
	  • Applicable insurance liabilities constitute more than 25% of its total assets based on financial statement
	
	  • Applicable insurance liabilities includes loss and loss adjustment expenses, unearned premiums and certain reserves
	
	• JCT: $1.1B over ten years
		• Same

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