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TAX REFORM FAQ FOR INSURERS

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The $1.5 trillion tax reform legislation known as the "Tax Cuts and Jobs Act" (TCJA) represents the biggest change to the tax code since 1986. While the business implications are broad and complex, we've summarized some of the most commonly asked tax reform questions related to insurance:

1. How will the reduction in the corporate tax rate affect insurance companies?

The Act reduces the corporate tax rate from 35 percent to 21 percent for taxable years beginning after December 31, 2017. This will impact all corporations, including insurance companies, beginning in 2018. It will also affect the calculation of deferred tax assets as of Q4 2017 for both GAAP (ASC 740) and STAT (SSAP 101) purposes.

2. How can insurance companies adapt to the TCJA's changes to net operating losses?

Changes to the treatment of life insurance company net operating losses are effective for losses arising in tax years beginning after December 31, 2017. Accordingly, such losses are now subject to the general rule which eliminates any carryback, but are allowed to be carried forward indefinitely, along with the general rule limiting the use of such losses to 80 percent of taxable income.

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For property and casualty insurance companies, the TCJA retains the previous rule allowing a two-year carryback and 20-year carryforward of net operating loss carryforwards.

3. How will the new computation of life insurance reserves affect companies? How should companies prepare for this new computation?

The new provision simplifies the calculation of tax reserves under IRC Section 807 by tying it into a percentage of the statutory reserve. It avoids what was a complex calculation of life insurance reserves under prior law, and uses an approach that has been applied to property and casualty insurance reserves in the form of a discounting methodology. None of these changes impact the consolidated return rules affecting the use of losses of life insurance companies against non-life insurance company income, and vice versa. This change would negate DTA admissibility under paragraph 11.a. of SSAP-101.

4. How should companies adapt to the TCJA's new standards for tax reporting for life settlement transactions?

Insurance companies will have to comply with additional information reporting rules regarding the sale of such contracts and the payment of death benefits. The Act's changes to the transfer for value rules will, however, provide some amount of simplification with respect to those reporting requirements.

5. What are the most impactful international provisions for insurance companies, and how can insurers adapt?

The new rules are applicable to certain foreign corporations' last taxable year before January 1, 2018. Most of the other international changes will impact tax year 2018. Companies should be preparing for 2017 transition tax filings and discussing impacts on foreign-derived intangible income ("FDII"), global intangible low-taxed income ("GILTI"), and Base Erosion and Anti-Abuse Tax ("BEAT") for tax year 2018.

Insurance companies should also be aware of the new rules regarding the definition of a "U.S. shareholder" that determine whether a foreign insurance company is a "controlled foreign corporation (CFC)" for federal income tax purposes. Additionally, companies should take note of the new rule regarding whether a foreign insurance company is in the "active conduct" of an insurance business to determine whether it is a "passive foreign investment company (PFIC)" for federal income tax purposes.

6. How will the new tax reserve rules impact property and casualty insurance companies?

Property and casualty insurance companies are required to use a new discounting rate (based on the 60-month "bond yield curve") to calculate their tax reserves. Furthermore, the ability to elect to use the company's own "payment pattern" has been discontinued for years beginning after December 31, 2017.

7. Which insurance-related provisions does the TCJA eliminate?

The TCJA repeals Section 847, thereby allowing certain special estimated tax payments. The TCJA also repeals the small life insurance deduction under IRC Section 806, as well as the rules dealing with the "policyholders surplus account" for life insurance companies under IRC Section 815.

8. What other changes are relevant to insurance companies?

The TCJA changes the proration rules for life insurance companies to fix the "company share" percentage at 70 percent and the "policyholder share" percentage at 30 percent. For property and casualty insurance companies, the reduced corporate tax rate adjusts the proration percentage (formerly 15 percent) to result in a 25 percent proration percentage.

In addition, the TCJA increases the capitalization rates for "specified insurance contracts" under the proxy DAC rules of IRC Section 848, and also changes the amortization period for such capitalized amounts from 120 months to 180 months.

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