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Insurance initiatives in 2018-2019 priority guidance plan

The U.S. Treasury Department and IRS on November 8, 2018, released the 2018-2019 priority guidance plan containing guidance projects that will be the focus of efforts during the 12-month period from July 1, 2018, through June 30, 2019 (the plan year).

The [priority guidance plan](#) [PDF 123 KB] has several insurance-specific items:

Implementation of the new U.S. tax law (the “Tax Cuts and Jobs Act” (TCJA))

- Guidance under sections 101 and 1016 and new section 6050Y regarding reportable policy sales of life insurance contracts (Notice 2018-41 was published on May 14, 2018)
- Guidance under section 807 regarding the determination of life insurance reserves for life insurance and annuity contracts, including guidance to implement changes under section 13517 of the TCJA
- Guidance under section 807(f) as amended by section 13513 of the TCJA, regarding adjustments for changes in the basis of computing reserves
- Regulations providing guidance under section 846, as amended by section 13523 of the TCJA, regarding the discount rate and unpaid loss and salvage discount factors for years beginning in 2018 (proposed regulations were published on November 5, 2018)
- Regulations addressing when foreign insurance income is excluded from passive income under section 1297(f)

Insurance companies and products

- Final regulations under section 72 on the exchange of property for an annuity contract (proposed regulations were published on October 18, 2006)
- Guidance that allows taxpayers to elect to treat certain mortgage-backed securities as having deemed issuers for purposes of the diversification requirements of section 817(h) (Notice 2018-54 was published on October 16, 2018)

Part 3 of the plan describes certain projects that have been identified as “burden reducing.”

- Guidance under section 954, including regarding the use of foreign statement reserves for purposes of measuring qualified insurance income under section 954(i)
- Revising the withholding requirements on insurance premiums under Chapter 4

International – Subpart F/Deferral

- Guidance under sections 1295, 1297, and 1298 on passive foreign investment companies. Proposed regulations regarding foreign insurance companies were published on April 24, 2015¹

Excise tax

- Final regulations under ACA section 9010 regarding retrospectively rated insurance contracts
- Guidance on the allocated fee amount under ACA section 9010 for the 2019 and 2020 fee year

KPMG observation

The focus over the next year will continue to be the implementation of the new U.S. tax law (Pub. L. No. 115-97 or the TCJA). This priority guidance plan more than doubles the number of TCJA projects overall.

Guidance under section 101 and section 1016 and new section 6050Y regarding reportable policy sales of life insurance contracts remains on the list under the implementation initiatives of the TCJA. These provisions add to the insurer’s reporting responsibilities by requiring it to identify and report seller information to the IRS.

¹ The IRS issued proposed regulations (REG-108214-15) for the Exception from Passive Income for Certain Foreign Insurance Companies on April 24, 2015.

Final regulations providing guidance regarding the discount rate and unpaid loss and salvage discount factors for years beginning in 2018 will also be welcome, as companies are currently considering how to approach their year-end processes absent specific guidance.

The IRS released an advance version of [Rev. Proc. 2018-54](#) as guidance for taxpayers that hold investments in one or more segregated asset accounts on which variable contracts are based. The guidance and rules allow taxpayers to elect to treat certain mortgage-backed securities as having deemed issuers for purposes of the diversification requirements under section 817(h). This revenue procedure aims to create a smooth transition for taxpayers purchasing securities under the "Single Security Initiative." This guidance minimizes the risk of inadvertent noncompliance with the diversification requirement due to the reduced ability of purchasers to identify Uniform Mortgage Backed Securities issuers prior to transaction settlement.

It is also not surprising that guidance under section 954(i) is still anticipated. Several private letter rulings have been released in the past year.** These rulings approved the utilization of foreign statement reserves as the basis for determining foreign personal holding company income.

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