TaxNewsFlash

United States

Insurance provisions in tax reform approved by Senate Finance Committee (as of November 20)

The U.S. Senate Finance Committee on November 16, 2017, completed its markup of a tax reform bill, and approved the bill on a party-line vote of 14 to 12, thus sending the bill to the full Senate for its consideration. On November 20, legislative text was released for the bill that was ordered reported.

The following table compares insurance or insurance-related provisions within the current versions of the tax reform bill (H.R. 1) as passed by the House of Representatives on November 16, and the version of the legislation approved by the Senate Finance Committee also on November 16, 2017.

	House: H.R. 1, the "Tax Cuts and Jobs Act"	Senate: "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 tax years beginning after 2022**) • JCT: No separate revenue estimate provided
Nonlife: Retain Net Operations Loss	• No similar provision	• Preserves current law for NOLs of P&C insurance companies • NOLs may be carried back two

Deduction		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 • JCT: $0.2B over 10 years	• Same
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 10 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 10 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 10 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 10 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 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 10 years	• No similar provision
General: Section 847: Special Estimated Tax Payments	• Repeal • JCT: <$50M over 10 years	• Same
General: Section 848: Deferred Acquisition Costs	• No similar provision	• Annuity Contracts: 3.7% of net premium • Group Life Contracts: 3.72% • All other specified contracts: 13.97% of net premium • Amortize over 50 years • JCT: $23B over 10 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: $172B over 10 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 17.4% 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: $308.3B over 10 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 10 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 10 years
		• Base erosion minimum tax: income tax
		
		• Excess of 10% of Modified Taxable Income 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 NOLs
		
		• 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: $123.5B over 10 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 10 years
		• Same

For more information contact a tax professional in KPMG's Washington National Tax:

Sheryl Flum | +1 (202) 533-3394 | sflum@kpmg.com

Fred Campbell-Mohn | +1 (212) 954-8316 | fcampbellmohn@kpmg.com

Liz Petrie | +1 (202) 533-3125 | epetrie@kpmg.com

Rob Nelson | +1 (312) 665-6457 | rsnelson@kpmg.com

partners, or joint venturers. No member firm has any authority (actual, apparent, implied or otherwise) to obligate or bind KPMG International or any member firm in any manner whatsoever.

Direct comments, including requests for subscriptions, to Washington National Tax. For more information, contact KPMG's Federal Tax Legislative and Regulatory Services Group at + 1 202.533.4366, 1801 K Street NW, Washington, DC 20006-1301.

To unsubscribe from TaxNewsFlash-United States, reply to Washington National Tax.

Privacy | Legal