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Changes to the Computation of Tax Reserves under P.L. 115-97

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One of the more groundbreaking changes in the insurance provisions of Public Law No. 115-97[1] (the Act) was the introduction of a modified framework for computing tax-basis life insurance reserves. The previous proposal for comprehensive tax reform, in 2014,[2] would have maintained the general prior-law structure requiring a distinct tax reserve based on a specified method, mortality or morbidity table, and interest rates, changing only the approach for determining the interest rates. The Act took a very different approach, generally defining tax reserves as a percentage of statutory reserves with a net surrender value floor. This has the benefit of improving conformity with statutory accounting, especially as the National Association of Insurance Commissioners (NAIC) continues implementation of principle-based reserve (PBR) approaches. There are, however, several important nuances, potential pitfalls and unanswered questions, which we will explore in this article.

The Act changed not only life insurance reserves held under Internal Revenue Code (I.R.C.)[3] §807(c)(1), but also reserves held under I.R.C. §807(c)(3) for insurance and annuity contracts not involving life contingencies, and discounted unpaid losses computed under I.R.C. §846 relating to property/casualty (P&C) insurance contracts and some types of accident and health (A&H) insurance. The new requirements are briefly summarized in the sidebar and discussed in more detail below.

This article will focus on reserves held under I.R.C. §§807(c)(1) and (3). A separate article in this issue of *Taxing Times* will address changes made to discounted unpaid losses under I.R.C. §§807(c)(2) and 805(a)(1). The Act also made significant revisions to I.R.C. §807(f) relating to treatment of changes in the basis for determining reserves; because the industry and IRS are currently engaged in discussions on the guidance that may be

A SHORTHAND GUIDE TO INSURANCE RESERVES UNDER THE ACT

Life insurance reserves (non-variable contracts)—The tax reserve is generally the greater of:

1. The contract's net surrender value, or
2. 92.81 percent of the reserve computed using the "tax reserve method," which generally is the CRVM/CARVM[4] reserve.

Life insurance reserves (variable contracts)—The tax reserve is generally:

1. The greater of:
   a. The entire contract's net surrender value, or
   b. 100 percent of the portion of the CRVM/CARVM reserve that is separately accounted for under I.R.C. §817,

plus

2. 92.81 percent of any excess of the entire contract's CRVM/CARVM reserve over the amount in paragraph 1.

Insurance and annuity contracts not involving life or A&H contingencies—The tax reserve is generally the greater of:

1. The contract's net surrender value, or
2. 100 percent of the discounted value of the obligations, using the highest discount rate or rates permitted by the NAIC as of the date the reserve is determined.

Other considerations

- Life insurance reserves continue to be subject to a contract-level statutory cap.
- Items that were not previously deductible (*e.g.*, deficiency reserves, reserves attributable to deferred and uncollected premiums if the premiums are not included in taxable income, and excess interest reserves) remain nondeductible and are excluded prior to applying the percentage factor.
- CRVM/CARVM (or other NAIC method if the contract is not subject to CRVM or CARVM) is as prescribed by the NAIC and in effect as of the date the reserve is determined.

necessary for implementing the changes to I.R.C. §807(f), we have deferred that topic to a later issue of *Taxing Times*. Reserves held under I.R.C. §§807(c)(4), (5) and (6) were unchanged by the Act.

LIFE INSURANCE RESERVES FOR NON-VARIABLE CONTRACTS

Prior to the Act, life insurance reserves were computed using prescribed methods and assumptions that were generally determined when a contract was issued and not changed thereafter. The federally prescribed reserve was determined using the tax reserve method, the prevailing commissioners' standard mortality or morbidity tables, and the greater of the applicable federal interest rate (AFIR) or the prevailing state assumed interest rate (PSAIR). The tax reserve method was generally the commissioners' reserve valuation method (CRVM) for contracts subject to CRVM, the commissioners' annuity reserve valuation method (CARVM) for contracts subject to CARVM, and one- or two-year preliminary term methods for noncancellable A&H insurance contracts. The prevailing tables and PSAIR were determined based on the rates that at least 26 states permitted to be used for valuation. The federally prescribed reserve was subject to a net surrender value floor and a statutory reserve cap, both applied at the contract level.

This highly prescribed framework, and particularly the "locking in" of methods and assumptions at issue, had not kept pace with the direction taken by the NAIC. Through PBR initiatives including Actuarial Guideline 43 (AG 43, now incorporated in Valuation Manual section 21 (VM-21)) for variable annuities and Valuation Manual section 20 (VM-20) for individual life insurance, the NAIC had moved toward a more dynamic, economically responsive framework that better recognized company-specific and product-specific risk characteristics. Fitting the square peg of PBR into the round hole of the pre-2018 Code had been a challenge, leading to a Priority Guidance Plan project, an IRS Large Business and International Division campaign, and an ongoing industry issue resolution project.[5] The Congressional tax-writing committees were aware of these challenges and were interested in a solution that would simplify the process of determining tax reserves.[6]

The solution Congress ultimately adopted was to use a percentage of reserves computed under CRVM, CARVM or other NAIC-prescribed reserve methods. The methods are those "in effect as of the date the reserve is determined," significantly improving the alignment with NAIC approaches and apparently

eliminating the issues (for tax years after 2017) raised by the *American Financial* case decided in 2012.[7] The new definition appears to contemplate changes in methodology after issue, whether the change is specifically prescribed by the NAIC or a company changes between two alternative permissible methods within CRVM/CARVM. Companies will still need to determine whether a particular change in method should be considered an I.R.C. §807(f) change in basis.

The Act did not change several tax-specific adjustments that existed prior to 2018:

- *Deferred and uncollected premiums.* Reserves attributable to deferred and uncollected premiums, when the premiums are not properly included in taxable income, cannot be deducted. *See* I.R.C. §§811(c)(1) and 807(d)(4).

- *Deficiency reserves.* Reserves held "because the net premium (computed on the basis of assumptions required under [I.R.C. §807(d)]) exceeds the actual premiums or other consideration charged for the benefit," *i.e.*, deficiency reserves, cannot be deducted. *See* I.R.C. §807(d)(3)(C).[8]

- *Excess interest reserves.* Reserves held for contracts that guarantee interest at a rate that exceeds the PSAIR must be modified to take into account such excess interest guarantee only up to the end of the taxable year. *See* I.R.C. §811(d).[9]

The new law does not contain any provisions relating to the treatment of asset adequacy testing reserves, which may be required for an actuary to issue the actuarial opinion required under section 3 of the Standard Valuation Law. Accordingly, the

treatment of such reserves would appear to be unchanged from the treatment under prior law; the Committee Reports to the Act indicate that asset adequacy reserves are not deductible.[10]

Also, it appears that life insurance companies may still be challenged on their deductions of unpaid loss adjustment expenses that do not meet the all-events test under I.R.C. §461, as Congress indicated in the Committee Reports to the Tax Reform Act of 1986.[11] The current Congress did not identify any changes to this intention in the 2017 Act or its legislative history.

Permitted or Prescribed Practices

States sometimes permit or require reserve methodologies that differ from the NAIC-prescribed methods. For example, New York generally requires the use of "continuous" CARVM for deferred annuities, requiring consideration of available values at any time within a contract year and not just "at the end of each respective contract year" as stated in the Standard Valuation Law.[12] The IRS determined in a 1994 technical advice memorandum[13] that CARVM as defined in the Standard Valuation Law was based only on end-of-year values; continuous CARVM was not the NAIC-prescribed method, so it could not be used under the then-current Code. It is foreseeable that the IRS would apply similar reasoning with regard to a state-specific variation under the new law; *i.e.*, it is the method prescribed by the NAIC that is relevant for tax reserves, not state-specific deviations from that method. This will, in turn, likely lead to further scrutiny around what it means to be prescribed by the NAIC.

Similarly, not all states have yet enacted the 2009 version of the Standard Valuation Law that enables use of the Valuation Manual, so VM-20 is not available for valuation of individual life insurance contracts in those states. If a state has not enacted the enabling legislation by 2020 (when the three-year transition to VM-20 expires), it is possible that a company that computes reserves under such state's laws for contracts issued after 2019 that are otherwise in the scope of VM-20 could be required to recompute its reserves for such contracts using VM-20, before applying the 92.81 percent factor under new I.R.C. §807(d)(1)(A)(ii).

Also, U.S. taxpaying companies not subject to NAIC reporting (*e.g.*, non-NAIC captives in certain U.S. jurisdictions, or non-U.S. insurance companies electing under I.R.C. §953(d) to be treated as U.S. taxpayers) may be required to recompute reserves using the NAIC-prescribed methods prior to applying the 92.81 percent factor.

Assumptions

Mortality, morbidity and interest rate assumptions are no longer explicitly prescribed in the law; only the method is prescribed. The removal of a specific prescription for assumptions suggests that, so long as assumptions selected for statutory reserve purposes are consistent with CRVM/CARVM and actuarial standards, they should carry over for tax purposes. In any event, companies may find it beneficial to develop documentation in support of their interpretations. If the intent of Congress was to simplify reserve computations by basing them on statutory reserves, the simplest way to do this would be to use the statutory reserves as determined for the annual statement, so long as they are consistent with CRVM/CARVM and the tax-specific exclusions mentioned above have been applied.

It appears the IRS may hold this view, based on Rev. Rul. 2018-13[14] released April 26, 2018. In Schedule A of the ruling, which would normally provide the PSAIRs for life insurance contracts

issued in 2018, the rates are marked "N/A" with a footnote that reads, in part (emphasis added):

> Section 807(d), as amended, *requires use of the rate used for statutory reserving*, as life insurance reserves for taxable years beginning after December 31, 2017, are determined, in part, based on the reserve computed as required by the National Association of Insurance Commissioners (NAIC) at the time the reserve is determined.

Where an interest or mortality assumption is specifically prescribed within the NAIC's definition of the method,[15] taxpayers may need to consider whether their tax reserve computation can be based on a reported statutory reserve developed using a more conservative assumption.

To the extent a company changes reserve assumptions after a contract is issued, it may need to consider whether I.R.C. §807(f) applies.

Other Aspects of Life Insurance Reserves

A few other brief remarks can be made on life insurance reserves for non-variable contracts:

- *Supplemental benefits*. The supplemental benefits listed in I.R.C. §807(e)(2)(C) (whether qualified or not) are now subject to the 92.81 percent factor, rather than held equal to the statutory reserve as under prior law. Similar rules apply for aggregation as under prior law; *i.e.*, a qualified supplemental benefit (QSB) is treated as a separate contract, so the net surrender value and statutory cap comparisons would be done separately for the base contract and the QSB.

- *Qualified substandard risks*. Prior I.R.C. §807(e)(5), providing rules for reserves on qualified substandard risks, was repealed. It appears that these would now be subject to the 92.81 percent factor, to the extent the reserve is determined under the method prescribed by the NAIC.

- *Modified guaranteed contracts*. I.R.C. §817A was amended to remove a cross-reference to the calculation of required interest for proration purposes,[16] but it was otherwise unchanged by the Act despite the modified framework for tax reserves. As a result, I.R.C. §817A(e)(2) continues to provide authority to Treasury to prescribe regulations for determining "interest rates applicable under sections 807(c)(3) and 807(d)(2)(B) with respect to a modified guaranteed contract."[17] However, I.R.C. §807(d)(2)(B) no longer exists. In the absence of technical corrections or other authoritative clarification, it may be reasonable to apply the 92.81 percent factor to the NAIC-basis reserve for life-contingent modified guaranteed contracts with reserves held under I.R.C. §807(c)(1), while continuing to apply Treas. Reg. §1.817A-1 to modified guaranteed contracts for which reserves are held under I.R.C. §807(c)(3).

This highly prescribed framework, and particularly the "locking-in" of methods and assumptions at issue, had not kept pace with the direction taken by the NAIC.

LIFE INSURANCE RESERVES FOR VARIABLE CONTRACTS

There is perhaps no greater example under prior law of the tax issues resulting from the implementation of PBR than when AG 43 was adopted for variable annuities. AG 43 was effective Dec. 31, 2009, but it applied by its terms to variable annuity contracts issued on or after Jan. 1, 1981. However, there has been some uncertainty with regard to the tax treatment of AG 43. The Treasury Department and the IRS issued Notice 2010-29,[18] which provided a "safe harbor" for contracts issued on or after Dec. 31, 2009. This ultimately created non-parallel tax treatment for variable annuities valued under AG 43 depending on the year of issue. The fact that the safe harbor did not extend to contracts issued prior to Dec. 31, 2009, resulted in companies using a variety of approaches for calculating tax reserves for these contracts (*e.g.*, AG 33/43 hybrid approaches or AG 39). The Act would seem to simplify this non-parallel treatment for variable annuity contracts by using the method that is "applicable to the contract and in effect as of the date the reserve is determined." It would appear that for contracts subject to AG 43 or VM-21 on a statutory basis, reserves for tax purposes should now be determined under AG 43/VM-21.

Further complicating the calculation of tax reserves under prior law was the fact that Notice 2010-29 allowed some provisions of AG 43 (*i.e.*, the Standard Scenario Amount (SSA)) to be taken into account, but excluded others (*i.e.*, the Conditional Tail Expectation (CTE) Amount) from the federally prescribed reserve under the safe harbor. Among the IRS's stated concerns with the inclusion of the CTE Amount were: (1) the nature of an aggregate calculation rather than one on a policy-by-policy basis, (2) the fact that assumptions were based on company experience and subject to change on an annual basis, and (3) difficulty in auditing.[19] Despite these concerns, it appears Congress's intent in the Act was to include the entire NAIC-prescribed reserve method (*see* endnote 6). The CTE Amount is not a "solvency" or "contingency" reserve as the IRS suggested

in Notice 2008-18, but rather a core part of the method developed by the NAIC that is necessary in order to recognize the risks inherent in contracts subject to AG 43.

Treatment of General and Separate Accounts

For a contract meeting the definition of a variable contract in I.R.C. §817(d), the Act first requires a company to determine the greater of the contract's net surrender value (both general and separate accounts) or the portion of the reserve that is separately accounted for under I.R.C. §817. The 92.81 percent factor is then applied to the excess, if any, of the CRVM/CARVM reserve (for the entire contract) over this amount.

What is "the portion of the reserve that is separately accounted for under I.R.C. §817"? I.R.C. §817(c) requires that a company separately account for items attributable to variable contracts using "the method regularly employed by such company, if such method is reasonable." As a general rule, reserves supporting guaranteed benefits on a variable contract (such as a guaranteed minimum death benefit) must be held in the company's general account.[20] There is some flexibility in the allocation method beyond that rule,[21] but as long as a company's allocation method for statutory reporting purposes is reasonable, it appears that "the portion of the reserve that is separately accounted for under I.R.C. §817" would generally be the amount in Exhibit 3 of the company's separate account annual statement.

An example may be helpful to clarify the process and terminology. Assume that a company issues a variable annuity contract that has an account value of 1,000, a surrender charge of 8 percent, a Basic Reserve (as defined in AG 43) of 940, and a total CARVM reserve of 970. The contract holder has allocated 80 percent of his funds to the separate account, and the company uses a proportional approach to allocate the Basic Reserve between the general and separate accounts. Table 1 illustrates the application of I.R.C. §807(d)(1)(B) to this contract:

Table 1

	General (GA)	Separate (SA)	Total
Account Value (AV)	200	800	1,000
Net Surrender Value (NSV) (8% Surrender Charge)	184	736	920
Basic Reserve (BR) (Proportional to AV)	188	752	940
Statutory CARVM Reserve (GA = Excess over SA BR)	218	752	970
Max (NSV, SA Reserve)	Max (920, 752)		920
Excess CARVM Reserve	(970 – 920)		50
Excess * 92.81%	(50 * 0.9281)		46.41
Tax Reserve	Min (920 + 46.41, 970)		**966.41**

This special reserve definition for variable contracts can possibly produce different results, depending on the contract holders' distribution of the fund value and the allocation method for the CARVM reserve. In addition, the definition of the product (*i.e.*, as variable or non-variable) may create other differences. For example, a living benefit rider attached to a fixed indexed annuity (which is not a "variable contract" under I.R.C. §817(d)) may generate a lower tax reserve than a similar rider attached to a variable annuity.

RESERVES FOR INSURANCE AND ANNUITY CONTRACTS WITHOUT LIFE CONTINGENCIES

While the interest rate assumptions are no longer explicitly prescribed in the law for calculating life insurance reserves, that is not the case for insurance and annuity contracts without life, accident or health contingencies that are subject to I.R.C. §807(c)(3). The amounts are to be held, discounted using the highest rate or rates permitted to be used by the NAIC as of the date the reserve is determined. The determination of interest rates is a departure from prior law, where the assumed discount rate was generally based on the greatest of the PSAIR, AFIR and the contract guaranteed rate, all determined at issuance of the contract (or when the obligation first did not involve life, accident or health contingencies). Unlike prior law, the Act will generally require a separate tax-specific calculation of amounts under I.R.C. §807(c)(3) only where maximum interest rates permitted by the NAIC differ from those being used in the statutory valuation of contracts (*e.g.*, when using more conservative interest rates or rates that differ based on the state of domicile).

Similar to issues mentioned previously with states yet to adopt VM-20, the treatment of I.R.C. §807(c)(3) amounts for term-certain income annuities subject to Valuation Manual section 22 (VM-22) raises additional considerations. If a company is

domiciled in a state that has not yet adopted VM-22, it is possible a company may be required to compute I.R.C. §807(c)(3) amounts for contracts issued after 2017 using the highest discount rate or rates specified under VM-22, which may differ from the rates under such state's laws.

TRANSITION RULES FOR I.R.C. §807

The Act provides for certain "transition relief" to account for differences in reserves calculated under the prior-law definition vs. those calculated under the Act. The amount of reserve difference is determined as of Dec. 31, 2017 and spread equally over the following eight taxable years (*i.e.*, one-eighth of the amount in each year from 2018 through 2025). As the Act refers to the transition amount as the difference in the amount of reserves determined under the prior-law vs. new-law definitions of I.R.C. §807(d), which only defines the computation of life insurance reserves, it is unclear if I.R.C. §807(c)(3) amounts would be included in the amount spreadable under the Act's transition rules. This may have been an inadvertent oversight, but in the absence of explicit inclusion in the transition rule, the change in basis of computation of I.R.C. §807(c)(3) amounts might be viewed as a change in method of accounting requiring an adjustment under I.R.C. §481(a) pursuant to the new provisions of I.R.C. §807(f).

Once calculated, there is generally no difference in treatment whether the amount is an increase or a decrease in reserve (with the possible exception of I.R.C. §807(c)(3) amounts if viewed as a change in accounting method).[22] Increases in reserves are deducted under I.R.C. §§805(a)(2) or 832(c)(4), while decreases in reserves are included in income under I.R.C. §§803(a)(2) or 832(b)(1)(C). It is interesting to note that Congress did not permit a "fresh start" as in 1984 when the federally prescribed reserve framework was first enacted, nor a grandfathering of existing contracts as in 1988 when the AFIR was introduced. The redetermination of tax reserves on in-force contracts and the so-called transition relief in the Act were necessary in order to produce Congress's desired amount of revenue from the life insurance industry to offset part of the cost of the broader tax cuts.

LIFE INSURANCE COMPANY RESERVES—HOW DID WE GET HERE?

Before closing, it is worth taking a step back to consider how we ended up at the final rules in the Act. The original H.R. 1, introduced Nov. 2, 2017, had a very different approach. It would have repealed all of prior I.R.C. §§807(c), (d) and (e), replacing them with a single method for determining "reserves for future unaccrued claims." The tax reserve was generally defined as 76.5 percent of the annual statement reserve, with no net surrender value floor. "Reserves for future unaccrued claims" had only three components:

- Life insurance reserves.
- Unpaid losses (which were discounted under I.R.C. §846 prior to applying 76.5 percent).
- The amount (not included in the first two bullets) of "reserves solely for claims with respect to insurance risks."

The original H.R. 1 explicitly excluded "any amount of asset adequacy reserves, contingency reserves, unearned premium reserves, or any other amount not constituting reserves for future unaccrued claims as provided in guidance by the Secretary."[23] As in the version ultimately enacted, the rules would have applied to all in-force reserves, with an eight-year spread of the impact.

Had H.R. 1 been enacted as originally introduced, it would have been devastating to the life insurance industry. A factor of 76.5 percent without a net surrender value floor would have created reserves that were significantly lower than the aggregate level of tax reserves under prior law. Income and deductions would not have been matched at all: Unearned premiums, premiums paid in advance, and amounts applied to premium deposit funds would still have been included in income under I.R.C. §803(b), but the corresponding reserve deductions would all have been repealed. Similarly, considerations paid for insurance or annuity contracts not involving life contingencies (*i.e.*, deposit-type contracts under NAIC classifications) would have been included in gross income, but it is not clear whether the corresponding reserves would have been considered "reserves solely for claims with respect to insurance risks." After all, the first sentence of the NAIC's definition of such contracts is: "Deposit-type contracts do not incorporate insurance risk."[24] Further, with no net surrender value floor, the reserve rule in the original H.R. 1 was akin to taxing banks on 23.5 percent of their deposits (but even worse, because a significant portion would have been taxed at 100 percent, as just described).

The Joint Committee on Taxation estimated that the original insurance reserves provision would have raised $14.9 billion of tax revenue over 10 years. The industry, led by the American Council of Life Insurers (ACLI), gathered data suggesting that the actual impact of the proposed changes would have been many times that amount. In light of this, the industry and ACLI engaged in a significant undertaking during November and December with members of Congress and their staff, tax-writing committees, and revenue estimators on these issues. The result of this effort was an approach that (1) maintained the reserve categories and net surrender value floor of prior law, (2) retained and refined Congress's original attempt to define tax reserves as a percentage of statutory reserves in order to

accommodate PBR methods, and (3) was reasonably in line with Congress's revenue target of $15 billion[25] from the provision. Although the life insurance industry was still targeted with base broadeners in a way few other industries were and will incur significant tax costs especially during the eight-year spread, the reserve provisions in the final version of the Act provide a compromise that is far better than the catastrophic alternative in the original H.R. 1. ■

Note: The views expressed are those of the authors and do not necessarily reflect those of Ernst & Young LLP or Symetra Life Insurance Company.

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ENDNOTES

1. "An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018," enacted Dec. 22, 2017.
2. The Tax Reform Act of 2014, released as a discussion draft on Feb. 26, 2014, and introduced by House Ways and Means Committee Chairman Dave Camp (R-Mich.) as H.R. 1 (113th Cong.) on Dec. 10, 2014.
3. References to the I.R.C. or Code are to the Internal Revenue Code of 1986, as amended. Unless otherwise specified, this includes the amendments made by the Act.
4. Throughout this article, the term "CRVM/CARVM" is used as shorthand for the tax reserve method as defined in I.R.C. §807(d)(3). This includes not only CRVM and CARVM in the case of contracts covered by such methods, but also other reserve methods prescribed by the NAIC that cover a contract, and, in a case where the NAIC has not prescribed a method for a particular type of contract, a reserve method that is consistent with an NAIC-prescribed method (whichever is most appropriate). Under the Act, the relevant methods are those in effect as of the date the reserve is determined.
5. *See* the 2012–2013 and subsequent Priority Guidance Plans and the Jan. 31, 2017 announcement of the initial 13 Large Business and International campaigns (*www.irs.gov/businesses/large-business-and-international-launches-compliance-campaigns*, accessed May 10, 2018).
6. *See, e.g.*, Ways and Means Committee Majority Tax Staff, *Tax Cuts and Jobs Act*, H.R. 1: Section-by-Section Summary (Nov. 2, 2017) at 51. This was a summary of the original version of the bill as introduced in the House; the insurance provisions in the original H.R. 1 differed significantly from those in the final Act, but the original also provided for tax reserves to be based on a percentage of the NAIC reserve. The Ways and Means summary noted with respect to PBR:

    > Insurance regulators have been changing how life insurance companies must calculate and maintain reserves. The current rules in the Tax Code do not provide how reserves measured in the new [manner] should be taken into account for tax purposes.

    This suggests that the original H.R. 1 and the Act as ultimately enacted do provide for reserves measured in the new manner, and they do so by generally accepting the NAIC's methods, subject to a percentage factor.
7. *American Financial Group v. U.S.*, 678 F.3d 422 (6th Cir., 2012), *aff'g* 726 F. Supp. 2d 802 (S.D. Ohio, 2010).
8. As under prior law, presumably, deficiency reserves remain part of the statutory cap. *See* Notice 2013-19, 2013-1 C.B. 743 (Feb. 26, 2013).
9. I.R.C. §811(d) previously referred to interest in excess of the greater of the PSAIR or AFIR. Due to the removal of the AFIR, the Act included a conforming amendment to I.R.C. §811(d) to refer only to interest in excess of the PSAIR, as now defined in I.R.C. §808(g). The excess interest provision was otherwise unchanged.
10. Tax Cuts and Jobs Act, Conference Report to Accompany H.R. 1, H.R. Rep. No. 115-466, at 478 (December 2017).
11. Tax Reform Act of 1986, Conference Report, H.R. Rep. No. 99-841, at II-361 (September 1986).
12. NAIC Model 820 (2009), section 5a.B. Compare New York requirements at 11 CRR-NY §99.4(e).
13. TAM 9452001 (Aug. 26, 1994).
14. 2018-20 I.R.B. 576.
15. For example, the NAIC has indicated that VM-20 is the CRVM for contracts to which it applies (VM-20 section 1.A.), and VM-20 section 3.C.2. defines the interest rates that "shall" be used in determining the net premium reserve.
16. As discussed at page 26 of this issue of *Taxing Times* ("Dividends Received Deduction—The Company Share (Proration): From a Hard Formula to an Easy One"), proration of the dividends received deduction has been greatly simplified under the Act and the calculation of required interest is no longer necessary.
17. Treasury had exercised this authority under prior law by issuing Treas. Reg. §1.817A-1 in May 2003.
18. 2010-1 C.B. 547 (April 12, 2010).
19. *See* Notice 2008-18, 2008-1 C.B. 363 (Feb. 4, 2008).
20. *See* NAIC Statement of Statutory Accounting Principles No. 56, *Separate Accounts* (as of March 2018), paragraph 7. *See also* the last sentence of I.R.C. §817(d), which requires this same approach for tax purposes: "obligations under [a guarantee on a variable contract] which exceed obligations under the contract without regard to such guarantee shall be accounted for as part of the company's general account."
21. For example, some companies may hold as a separate account reserve only the portion of the net surrender value attributable to the separate account fund options, allocating the rest of the reserve to the general account. Other companies may apply the approach mentioned in the answer to Question 3.9.a. of the AG 43/C-3 Phase II Practice Note:

    > One simplification for determining the portion of the Basic Reserve attributable to the variable portion of the contracts might be to split the Basic Reserve for each contract between General Account and Separate Account based on the ratio of the total fund value of the contract in each fund type (General Account or Separate Account).

    See American Academy of Actuaries Variable Annuity Practice Note Work Group, *A Public Policy Practice Note: The Application of C-3 Phase II and Actuarial Guideline XLIII* (March 2011), Q3.9.a.
22. Under the general accounting method rules, there is a different adjustment period depending on whether the change generates additional income or deductions. A positive §481(a) adjustment (*i.e.*, income) is generally spread over four taxable years, while a negative §481(a) adjustment (*i.e.*, deduction) is generally made in full in the year of change. *See, e.g.*, Rev. Proc. 2015-13, 2015-5 I.R.B. 419 (Jan. 16, 2015), §7.03(1).
23. H.R. 1 as introduced Nov. 2, 2017, §3703(a).
24. NAIC Statement of Statutory Accounting Principles No. 50, *Classifications of Insurance or Managed Care Contracts* (as of March 2018), paragraph 43.
25. Hence the oddly specific factor of 92.81 percent, determined by the staff of the Joint Committee on Taxation in order to meet the identified revenue target.