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Insurance initiatives in IRS priority guidance plan, second quarter update

The IRS and Treasury Department this week released the second quarter update to the 2017-2018 priority guidance plan, with updates to the list of insurance guidance initiatives.

The priority guidance plan (PGP) contains guidance projects that the tax authorities “hope to complete” during the 12-month period from July 1, 2017, through June 30, 2018 (the plan year).

The [second quarter update](#) [PDF 324 KB] to the 2017-2018 PGP has eliminated all but a few insurance initiatives; and only one new insurance initiative specifically related to the enactment of the new tax law (Pub. L. No. 115-97, signed into law on December 22, 2017) has been added to the plan.

Insurance items

The second quarter update to the 2017-2018 PGP—similar to the [first quarter update](#) [PDF 302 KB] (released October 2017)—only contains a few insurance-specific items.

Initial implementation of Pub. L. No. 115-97 (referred to in the PGP as the *Tax Cuts and Jobs Act*)

- Guidance under sections 101 and 1016 and new section 6050Y regarding reportable policy sales of life insurance contracts.

Insurance companies and products

- Final regulations under section 72 on the exchange of property for an annuity
- Guidance under sections 807 and 816 regarding the determination of life insurance reserves for life insurance and annuity contracts using principles-based methodologies, including stochastic reserves based on conditional tail expectation

In addition, part 3 of the PGP describes certain projects that have been identified as “burden reducing” and that the IRS believes can be completed in the remaining months of the plan year. This part includes the following insurance projects as “near-term burden reduction” projects:

- 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 (REG-108215-15) regarding foreign insurance companies were published in April 2015)

KPMG observation

Guidance projects related to many insurance initiatives that for several years, appeared on previous versions of the PGP, have now been removed—presumably, the result of resource constraints and the IRS and Treasury focus on guidance initiatives for the new tax law (Pub. L. No. 115-97).

Guidance relating to principles-based reserves remains on the PGP list and is also included on the IRS’s issues-based compliance campaign. Because the new tax law modified the methodology for calculating tax reserves, life insurance companies will need to continue to evaluate their insurance tax reserves calculations to allow for an orderly transition and accurate assessment of related tax issues, as principles-based reserving becomes mandatory on January 1, 2020.

Tax professionals were not surprised to see that guidance under section 954(i) is anticipated. Several private letter rulings—including PLR 201637005 (June 8, 2016), PLR 201718020 (February 9, 2017), and PLR 201739009 (June 30, 2017)—approved the utilization of foreign statement reserves as the basis for determining foreign personal holding company income.

Guidance projects under sections 101 and 1016 and new section 6050Y regarding reportable policy sales of life insurance contracts have now been added to the list under the implementation initiatives of the new tax law. These provisions add to the insurer's reporting responsibilities by requiring it to identify and report seller information to the IRS. In addition, the IRS may want to update its existing published guidance to reflect congressional reversal of the IRS's position in Rev. Rul. 2009-13. The revisions to the "transfer for value" rules under section 101 have raised interpretative questions that may be addressed by future guidance.

Overall, there are very few insurance-specific initiatives. Accordingly, forthcoming guidance specifically addressing insurance industry issues may be limited.

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