KPMG

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Insurance initiatives in 2016-2017 priority guidance plan

The IRS and Treasury Department this week released the 2016-2017 priority guidance plan that includes several insurance-specific initiatives.

The IRS and Treasury use the guidance priority plan each year, to identify and prioritize the tax issues that are to be addressed through regulations, revenue rulings, revenue procedures, notices, and other published administrative guidance.

The 2016-2017 priority guidance plan [PDF 160 KB]—updated August 15, 2016—contains 281 guidance and regulatory projects that the IRS has identified as priorities and intends to work on during the 12-month period from July 2016 through June 2017.

Insurance initiatives

The priority guidance plan for 2016-2017 provides the following insurance-specific items of interest:

1. Final regulations under section 72 on the exchange of property for an annuity. *This item related to the final regulations was initially added to the 2007-2008 priority guidance plan on August 13, 2007. Proposed regulations were published on November 20, 2006. REG-141901-05, 71 Fed. Reg. 61441 (October 18, 2006).*

2. Regulations under sections 72 and 7702 defining cash surrender value. *This item was initially added to the 2010-2011 priority guidance plan on June 30, 2011. The regulations were initially proposed on December 15, 1992. Qualified Accelerated Death Benefits Under Life Insurance Contracts, 57 Fed. Reg. 59319 (December 15, 1992).*

3. Guidance on annuity contracts with a long-term care insurance rider under sections 72 and 7702B. *This item was initially added to the 2009-2010 priority*

guidance plan on November 24, 2009. Guidance relates to provisions added to the Code in the Pension Protection Act of 2006. Notice 2011-68 (September 6, 2011).

4. 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. *This item was amended in the 2015-2016 priority guidance plan issued July 31, 2015, to expand the project to provide guidance for the principles based reserve for life insurance adopted in Valuation Manual 20 with an effective date of January 1, 2017. The project was originally added in the 2012-2013 priority guidance plan on November 19, 2012, to provide guidance on whether the conditional tail expectation amount of AG 43 could be included in the statutory cap under section 807(d)(6).*

5. Guidance on exchanges under section 1035 of annuities for long-term care insurance contracts. *This item was initially added to the 2011-2012 priority guidance plan on September 2, 2011. See comment to item 2, listed above. Notice 2011-68 (September 6, 2011).*

6. Guidance related to captive insurance companies. *This item was initially added to the 2014-2015 priority guidance plan on August 26, 2014. It is unclear whether this guidance will relate to micro-captives under section 831(b)[1] or will address the IRS position following recent U.S. Tax Court decisions in Rent-A-Center[2] and Securitas[3].*

KPMG observation

Guidance under section 833 was removed from the 2016-2017 priority guidance plan, since the IRS published final regulations effective June 22, 2016 (T.D. 9772, 81 Fed. Reg. 40518 (June 22, 2016)) that provide guidance on computing and applying the medical loss ratio (MLR) and the consequences of not meeting the MLR threshold. However, no new insurance-related items have been added to the priority guidance

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[1] President Obama on December 18, 2015, signed into law the *Protecting Americans from Tax Hikes Act of 2015* (PATH Act), which made several significant amendments to section 831(b). Prior to these amendments, section 831(b) permitted an insurance company with up to $1.2 million in annual underwriting income to elect to exclude its underwriting income from taxable income and be subject to tax only on its investment income. Under the PATH Act, Congress: (1) increased the amount of underwriting income that may be excluded from taxable income annually from $1.2 million to $2.2 million; (2) indexed the $2.2 million ceiling for 2016 and subsequent years; and (3) added alternative anti-abuse provisions to section 831(b) - namely, a diversification requirement and an ownership test.

[2] *Rent-A-Center, Inc. v. Commissioner*, 142 T.C. 1 (2014)

[3] *Securitas, Inc. v. Commissioner*, T.C. Memo 2014-225

plan. As of note, guidance related to many of the insurance initiatives have been on the priority guidance plan for several years.