

Non-Life Insurance Practice Network Workshop

October 23, 2018

Tax Cuts & Jobs Act (TCJA) Provisions
Affecting Non-Life Insurance Companies.



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Course Objectives

- ❖ At the end of this presentation, you will be able to:
 - Describe the Tax Cuts & Jobs Act (TCJA).
 - Identify the TCJA Provisions owned by the Non-Life Insurance Practice Network.
 - Identify the TCJA Provisions that Affect Non-Life Insurance, but, are not Owned by the Non-Life Insurance Practice Network (NLI PN).
 - Describe how the Identified TCJA Provisions Affect Non-Life Insurance Companies and the Form 1120-PC.

Presentation Outline

- Tax Cuts & Jobs Act Overview
- Provisions owned by the NLI PN:
 - ❖ Modification of Proration Rules for Property & Casualty (P&C)
 - Provision 13515
 - ❖ Repeal of Special Estimated Tax Payments
 - Provision 13516
 - ❖ Modification to Discounting Rules for P&Cs
 - Provision 13523

Presentation Outline – Cont'd

➤ Provisions not owned by the NLI PN:

- ❖ NOL Deduction
 - Provision 13302(d)
- ❖ New Global Intangible Low-Taxed Income (GILTI) Income Inclusion
 - Provision 14201
- ❖ New Deduction Applicable to Foreign-Derived Intangible Income (FDII) & GILTI
 - Provision 14202
- ❖ New Foreign Source Dividend Received Deduction (DRD)
 - Provision 14101
- ❖ New Treatment of Deferred Foreign Income
 - Provision 14103
- ❖ New Base Erosion and Anti-abuse Tax (BEAT)
 - Provision 14401

Tax Cut & Jobs Act (TCJA) Overview

Subject Matter Expert (SME)
Non-Life Insurance Practice Network



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Tax Cuts & Jobs Act of 2017

Public Law 115-97:

- The final bill, The Tax Cuts and Jobs Act (TCJA) was agreed upon by the congressional committee on December 15th 2017.
- It was approved by the House and the Senate on December 20th 2017.
- Signed by the President on December 22nd 2017.
- The final bill results in an estimated \$1.4 trillion tax cut with the majority of the corporate tax changes being permanent and the individual tax changes being temporary (generally expiring 12/31/25).

Tax Reform Implementation Office (TRIO):

- ❖ Oversees the IRS implementation of the Tax Cuts and Jobs Act (TCJA). TRIO interacts with business divisions and the Office of Chief Counsel to ensure smooth roll-out of provisions.
- ❖ Identifies areas of impact, establishes and monitors implementation action plans.
- ❖ Ensures communication with external stakeholders and IRS employees; also ensures risks are identified and addressed quickly.

Modification of Proration Rules TCJA Provision 13515

Subject Matter Expert (SME)
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Modification of Proration Rules

Provision 13515

❖ Prior law under IRC section 832(b)(5)(B):

- In calculating the deductible amount of its reserve for losses incurred, a property and casualty insurance company must reduce the amount of losses incurred by 15 percent of:
 1. the insurer's tax-exempt interest,
 2. the deductible portion of dividends received (with special rules for dividends from affiliates), and
 3. the increase for the taxable year in the cash value of life insurance, endowment, or annuity contracts the company owns.

Modification of Proration Rules

Provision 13515 (cont'd)

- ❖ **Current law under IRC section 832(b)(5)(B):**
 - TCJA (P.L. 115-97) replaced the 15-percent reduction with a reduction equal to 5.25 percent divided by the top corporate tax rate.
 - For 2018 and thereafter, the top corporate tax rate is 21 percent, therefore the percentage reduction is 25 percent (5.25 percent/21 percent).
 - The modification is effective for taxable years beginning after December 31, 2017.

Modification of Proration Rules

Provision 13515 – (cont'd)

❖ Implementation:

- **Form 1120-PC, Schedule F, Losses Incurred** – Line 13 revised for new requirements
- **Form 1120-PC, Instructions, What's New Section** – Added Notification of Modification of Proration Rules
- **Form 1120-PC, Instructions** – Add Line 13 instruction for calculation of Applicable Percentage

Modification of Proration Rules

Provision 13515 – (cont'd)

❖ What Examiners Need to Know:

- Prior Law – Applicable Percentage was fixed at 15 percent.
- TCJA – Applicable Percentage is tied to the top corporate tax rate.

Examiners need to determine proper Applicable Percentage was used.

5.25 percent/top corporate tax rate = Applicable Percentage

Repeal of Special Estimated Tax Payments TCJA Provision 13516

Subject Matter Experts (SMEs)
Non-Life Insurance Practice Network



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Repeal of Special Estimated Tax Payments Provision 13516

❖ Prior law under IRC section 847:

- An insurance company required to discount its reserves is allowed an additional deduction that is not to exceed the excess of:
 1. the amount of the undiscounted unpaid losses over
 2. The amount of the related discounted unpaid losses, to the extent the amount was not deducted in a preceding taxable year.
- The provision imposes the requirement that a special loss discount account (SLDA) be established and maintained, and that special estimated tax payments (SETP) be made. Unused amounts of SETP are treated as a section 6655 estimated tax payment for the 16th year after the year for which the special estimated tax payment was made.

Repeal of Special Estimated Tax Payments Provision 13516 – (cont'd)

❖ Current law:

- The TCJA (Pub. L. No. 115-97) repeals section 847. Thus, the election to apply section 847, the additional deduction, special loss discount account, special estimated tax payment, and refundable amount rules of prior law are eliminated.

Repeal of Special Estimated Tax Payments Provision 13516 – (cont'd)

❖ Implementation:

- Form 1120PC and Instructions:
 - Delete Line 14d, page 1, and Obsolete Line 27, Sch.A
- Form M-3 and Instructions:
 - Obsolete Part III, line 33
- Form 8816 and Instructions:
 - Obsolete Part I and Revised Part II and III of Form 8816
 - Add Repeal of 847 in the Instructions

Repeal of Special Estimated Tax Payments Provision 13516 – (cont'd)

❖ Tax planning:

- Taxpayer may elect to take IRC 847 deductions at 35% in 2017 and report the income at 21% in 2018.

Repeal of Special Estimated Tax Payments Provision 13516 – (cont'd)

❖ Tax Planning Example:

2017

Form 8816
(Rev. September 2017)
Department of the Treasury
Internal Revenue Service

Special Loss Discount Account and Special Estimated Tax Payments for Insurance Companies
▶ Attach to tax return.
▶ Go to www.irs.gov/Form8816 for the latest information.

Name _____ Employer Identification Number _____

Part I Special Loss Discount Amount

Accident year	2017	
1 Undiscounted unpaid losses . . .	200	
2 Discounted unpaid losses . . .	100	
3 Special loss discount limitation. Subtract line 2 from line 1 . . .	100	

Part II Special Loss Discount Account (See instructions.)

4 Balance at the beginning of the year . . .	0	
5 Additions—section 847(4) . . .	100	
6 Subtractions—section 847(5) . . .	0	
7 Balance at the end of the year. Add lines 4 and 5 and subtract line 6 from the result . . .	100	

Part III Special Estimated Tax Payments (See instructions.)

8 Balance at the beginning of the year . . .	0	
9 Payments made for year . . .	35	
10 Prior section 847 payments transferred to current year . . .	0	
11 Payments applied for year . . .	0	
12 Balance at the end of the year. Add lines 8 through 10 and subtract line 11 from the result . . .	35	

Form 8816
(Rev. September 2017)
Department of the Treasury
Internal Revenue Service

Special Loss Discount Account and Special Estimated Tax Payments for Insurance Companies
▶ Attach to tax return.
▶ Go to www.irs.gov/Form8816 for the latest information.

2018
OMB No. 1545-0123

Name _____ Employer Identification Number _____

Part I Special Loss Discount Amount

Accident year	2017 AY in 2017 tax year	2017 AY in 2018 tax year	
1 Undiscounted unpaid losses . . .	200	Obsolete	
2 Discounted unpaid losses . . .	100	Obsolete	
3 Special loss discount limitation. Subtract line 2 from line 1 . . .	100	Obsolete	

Part II Special Loss Discount Account (See instructions.)

4 Balance at the beginning of the year . . .	0	100	
5 Additions—section 847(4) . . .	100	Obsolete	
6 Subtractions—section 847(5) . . .	0	100	
7 Balance at the end of the year. Add lines 4 and 5 and subtract line 6 from the result . . .	100	0	

Part III Special Estimated Tax Payments (See instructions.)

8 Balance at the beginning of the year . . .	0	35	
9 Payments made for year . . .	35	Obsolete	
10 Prior section 847 payments transferred to current year . . .	0	Obsolete	
11 Payments applied for year . . .	0	21	
12 Balance at the end of the year. Add lines 8 through 10 and subtract line 11 from the result . . .	35	14	

This column is not showing in the 2018 Form 8816, but included for discussion purposes only

Report in Line 27, Sch A, Form 1120-PC or Line 17, Form 1120-L in the 2017 return

Report in Line 12, Sch A, Form 1120-PC or Line 6, Form 1120-L in the 2018 return

Report in Line 14d, Page 1, Form 1120-PC or Line 29d, Page 1, Form 1120-L in the 2017 return

Report in Line 15b, Page 1, Form 1120-PC or Line 28b, Page 1, Form 1120-L as "Prior year(s) special estimated tax payments to be applied" in the 2018 tax return.

Credit as regular estimated tax payments under IRC Section 6655 in the 2018 return



Repeal of Special Estimated Tax Payments Provision 13516 – (cont'd)

Form **1120-PC** U.S. Property and Casualty Insurance Company
Income Tax Return

Department of the Treasury Internal Revenue Service

For calendar year 2017, or tax year beginning _____, 2017, ending _____, 20____

OMB No. 1545-0123

2017

Go to www.irs.gov/Form1120PC for instructions and the latest information.

A Check if:

1 Consolidated return (attach Form 851)

2 Life-nonlife consolidated return

3 Schedule M-3 (Form 1120-PC) attached

Please print or type

Name _____

Number, street, and room or suite no. if a P.O. box, see instructions. _____

City or town, state or province, country, and ZIP or foreign postal code _____

B Employer identification number _____

C Date incorporated _____

D Check applicable box if an election has been made under section(s):

E Check if: (1) Final return (2) Name change (3) Address change (4) Amended return 831(b) 953(c)(3)(C) 953(d)

1	Taxable income (Schedule A, line 37)				1	
2	Taxable investment income for electing small companies (Schedule B, line 21)				2	
3	Check if a member of a controlled group (attach Schedule O (Form 1120))			<input type="checkbox"/>		
4	Income tax				4	
5	Enter amount of tax that a reciprocal must include				5	
6	Alternative minimum tax (attach Form 4626)				6	
7	Add lines 4 through 6				7	
8a	Foreign tax credit (attach Form 1118)	8a				
8b	Credit from Form 8834 (attach Form 8834)	8b				
8c	General business credit (attach Form 3800)	8c				
8d	Credit for prior year minimum tax (attach Form 8827)	8d				
8e	Bond credits from Form 8912	8e				
f	Total credits. Add lines 8a through 8e	8f				
9	Subtract line 8f from line 7	9				
10	Foreign corporations—Tax on income not connected with U.S. business	10				
11	Personal holding company tax (attach Schedule PH (Form 1120))	11				
12	Other taxes. Check if from: <input type="checkbox"/> Form 4255 <input type="checkbox"/> Form 8611 <input type="checkbox"/> Other (attach statement)	12				
13	Total tax. Add lines 9 through 12	13				
14a	2016 overpayment credited to 2017	14a				
b	Prior year(s) special estimated tax payments to be applied	14b				
c	2017 estimated tax payments (see instructions)	14c				
d	2017 special estimated tax payments (Don't include on line 14f.)	14d		35		
e	2017 refund applied for on Form 4466	14e				
f	Enter the total of lines 14a through 14c less line 14e	14f				
g	Tax deposited with Form 7004	14g				

Tax Computation and Payments

Repeal of Special Estimated Tax Payments Provision 13516 – (cont'd)

Schedule A Taxable Income—Section 832 (see instructions)				
Income	1 Premiums earned (Schedule E, line 7)		1	
	2 Dividends (Schedule C, line 14)		2	
		(a) Interest received	(b) Amortization of premium	
	3a Gross interest			
	b Interest exempt under section 103			
	c Subtract line 3b from line 3a			
	d Taxable interest. Subtract line 3c, column (b) from line 3c, column (a)			3d
	4 Gross rents			4
	5 Gross royalties			5
	6 Capital gain net income (attach Schedule D (Form 1120))			6
	7 Net gain or (loss) from Form 4797, Part II, line 17 (attach Form 4797)			7
	8 Certain mutual fire or flood insurance company premiums (section 832(b)(1)(D))			8
	9 Income on account of special income and deduction accounts			9
	10 Income from protection against loss account (see instructions)			10
11 Mutual interinsurers or reciprocal underwriters—decrease in subscriber accounts			11	
12 Income from a special loss discount account (attach Form 8816)			12	
13 Other income (attach statement)			13	
14 Gross income. Add lines 1 through 13			14	
Adjustments for limitations on deductions.	15 Compensation of officers (attach statement) (see instructions)			15
	16 Salaries and wages (less employment credits)			16
	17 Agency balances and bills receivable that became worthless during the tax year			17
	18 Rents			18
	19 Taxes and licenses			19
	20a Interest ▶		b Less tax-exempt interest exp. ▶	c Bal. ▶
	20c			20c
	21 Charitable contributions			21
	22 Depreciation (attach Form 4562)			22
	23 Depletion			23
	24 Pension, profit-sharing, etc., plans			24
	25 Employee benefit programs			25
	26 Losses incurred (Schedule F, line 14)			26
	27 Additional deduction (attach Form 8816)			27 100
28 Other capital losses (Schedule G, line 12, column (g))			28	
29 Dividends to policyholders			29	
30 Mutual interinsurers or reciprocal underwriters—decrease in subscriber accounts			30	

Repeal of Special Estimated Tax Payments Provision 13516 – (cont'd)

Form 1120-L		U.S. Life Insurance Company Income Tax Return		OMB No. 1545-0123
Department of the Treasury Internal Revenue Service		For calendar year 2017 or tax year beginning _____, 2017, ending _____, 20____		2017
▶ Go to www.irs.gov/Form1120L for instructions and the latest information.				
A Check if:		B Employer identification number		
1 Consolidated return (attach Form 851) <input type="checkbox"/>		Name		
2 Life-nonlife consolidated return <input type="checkbox"/>		Number, street, and room or suite no. If a P.O. box, see instructions.		C Date incorporated
3 Schedule M-3 (Form 1120-L) attached <input type="checkbox"/>		City or town, state or province, country, and ZIP or foreign postal code		D Check applicable box if an election has been made under section(s):
				<input type="checkbox"/> 953(c)(3)(C) <input type="checkbox"/> 953(d)
E Check if: (1) <input type="checkbox"/> Final return (2) <input type="checkbox"/> Name change (3) <input type="checkbox"/> Address change (4) <input type="checkbox"/> Amended return				
Income	1	Gross premiums, etc., less return premiums, etc. Enter balance	1	
	2	Net decrease, if any, in reserves (see instructions)	2	
	3	10% of any decrease in reserves under section 807(f)(1)(B)(ii)	3	
	4	Investment income (Schedule B, line 8) (see instructions)	4	
	5	Net capital gain (Schedule D (Form 1120), line 17)	5	
	6	Income from a special loss discount account (attach Form 8816)	6	
	7	Other income (attach statement)	7	
	8	Life insurance company gross income. Add lines 1 through 7	8	
Deductions (See instructions for limitations on deductions.)	9	Death benefits, etc.	9	
	10	Net increase, if any, in reserves (Schedule F, line 35)	10	
	11	10% of any increase in reserves under section 807(f)(1)(B)(i)	11	
	12	Deductible policyholder dividends (Schedule F, line 18e)	12	
	13	Assumption by another person of liabilities under insurance, etc., contracts	13	
	14	Dividends reimbursable by taxpayer	14	
	15a	Interest ▶	15c	
	15b	Less tax-exempt interest expense		
	15c	Balance		
	16	Deductible policy acquisition expenses (Schedule G, line 20)	16	
17	Additional deduction (attach Form 8816)	17	100	
18	Other deductions (see instructions) (attach statement)	18		
19	Add lines 9 through 18	19		
20	Subtotal. Subtract line 19 from line 8	20		
21a	Dividends-received deduction (Schedule A, line 16, column (c))	21a		
21b	Plus: b Operations loss deduction (see instructions) (attach statement)	21b		
21c		21c		
22	Gain or (loss) from operations. Subtract line 21c from line 20	22		
23	Small life insurance company deduction (Schedule H, line 17)	23		
24	Life insurance company taxable income (LICTI). Subtract line 23 from line 22	24		
25	Limitation on noninsurance losses (Schedule I, line 9)	25		
26	Amount subtracted from policyholders surplus account (Schedule J, Part II, line 10)	26		
27	Taxable income. Add lines 24, 25, and 26 (see instructions)	27		
28	Total tax (Schedule K, line 10)	28		
Payments	29a	2016 overpayment credited to 2017	29a	
	29b	Prior year(s) special estimated tax payments to be applied	29b	
	29c	2017 estimated tax payments	29c	
	29d	2017 special estimated tax payments (Do not include on line 29f)	29d	35
	29e	Less 2017 refund applied for on Form 4466	29e	
	29f	Tax deposited with Form 7994	29f	

Lets Take a Break



Please return

at: _____



Click the GREEN CHECKMARK When Back.

Modification of Discounting Rules for P&Cs TCJA Provision 13523

Subject Matter Expert (SME)
Non-Life Insurance Practice Network



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Modification of Discounting Rules for P&Cs

Provision 13523

❖ Prior law under IRC section 846:

- All unpaid losses and unpaid loss adjustment expenses of property and casualty insurance companies for each line of business (as shown on the annual statement) are required to be discounted for Federal income tax purposes.
- The discounted reserves are calculated using a prescribed interest rate which is based on the applicable Federal mid-term rate.
- To determine the period over which the reserves are discounted, a prescribed loss payment pattern applies. Every 5 years, Treasury determines a loss payment pattern for each line of business. The prior law provides for 2 types of loss payment patterns:
 - *Accident year and the following 3 calendar years, and*
 - *Accident year and the following 10 calendar years.*
- An election is provided permitting a taxpayer to use its own loss payment pattern with respect to all lines of business, subject to certain requirements.

Modification of Discounting Rules for P&Cs

Provision 13523 – (cont'd)

❖ Current law under IRC section 846:

❖ The TCJA (Pub. L. No. 115-97):

- Modifies the discounting rules applicable to property and casualty insurance companies as follows:
 - Provides that the interest rate is an annual rate for any calendar year to be determined by Treasury based on the corporate bond yield curve – rather than the mid-term Applicable Federal Rate (AFR) under prior law.
 - As in prior law, Treasury determines a loss payment pattern for each line of business every 5 years. For lines of business subject to the 10-year rules, the 10-year period is extended by maximum of 14 years in certain cases. The law is unchanged with regard to the 3-year period.
 - Repeals the election to use a taxpayer's historical loss payment pattern.

Modification of Discounting Rules for P&Cs

Provision 13523 – (cont'd)

❖ Implementation:

- Rev. Proc 2018-13 was issued in January 2018, prescribing the unpaid loss discount factors and salvage discount factors for the 2017 accident year.
- New Regulations are being drafted on how to compute the discount rate and unpaid loss discounts factors for years beginning in 2018.
- Form 1120-PC instructions are being revised to remove the statement that the taxpayer can use their own loss experience.

Modification of Discounting Rules for P&Cs

Provision 13523 – (cont'd)

❖ What Examiners Need to Know:

- Taxpayers will not be allowed to use their own discounting experience for taxable years beginning after 12/31/2017.
- Final regulations will be published in the first quarter of 2019.
- Effective for taxable years beginning after December 31, 2017.

NOL Deduction Change – TCJA Provision 13302(d)

GILTI Income Inclusion – TCJA Provision 14201

FDII & GILTI Deduction – TCJA Provision 14202

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Net Operating Loss Deduction Provision 13302(d)

❖ Prior law under IRC section 172:

- In general, 100 percent of NOLs may be carried back 2 years and carried forward 20 years to offset taxable income in such years. This general rule applies to P&C insurance companies.
- Extended carryback periods are allowed for NOLs attributable to specified liability losses and certain casualty and disaster losses under sec.172(b)(1)(C) and (E).
- Limitations are placed on the carryback of excess interest losses attributable to corporate equity reduction transactions.
- A life insurance company is permitted a carryback of its losses from operations (under sec. 810(c)) up to 3 years, and a carryforward up to 15 years.

Net Operating Loss Deduction Provision 13302(d) – (cont'd)

❖ Current law under IRC section 172:

- The TCJA (Pub. L. No. 115-97):
 - Limits the NOL deduction for NOLs arising in tax years *beginning* after Dec. 31, 2017 to 80 percent of taxable income (computed without regard to the NOL deduction); including NOLs attributable to farming losses. The limitation does not apply to insurance companies, other than life insurance companies.
 - Eliminates NOL carrybacks and special carryback provisions, except, farming NOLs and NOLs from insurance companies, other than life insurance companies can carry back 2 years. The NOL carrybacks attributable to farming losses are subject to the 80% limitation.
 - NOLs arising in tax years ending after December 31, 2017, can carry forward indefinitely, except for losses from insurance companies, other than life insurance companies, which can carry forward 20 years.

Net Operating Loss Deduction Provision 13302(d) – (cont'd)

❖ Implementation:

- Update to line 37 of the Form 1120-PC instructions.
- Update Form 8916, lines 2(a), 4(a)(1), 4(a)(2) and add a line 4(a)(3).
- Update Form 8916 Instructions, line 2(a) and add new instructions for line 4(a).
- Update Form 1139 Instructions, p.1, "General Instructions" and p.2, "Definitions and Special Rules."

Net Operating Loss Deduction Provision 13302(d) – (cont'd)

❖ What Examiners Need to Know:

- The law did not change the NOL operating rules for P&C Insurance companies (i.e., 2 year carryback and 20 year carryforward), but the law changed for life insurance companies.
- Separate tracking of the NOL for each entity type will be required (i.e., P&C and Life insurance companies and non-insurance companies).
- New rules effective for tax years beginning after December 31, 2017.

Global Intangible Low-Taxed Income Inclusion Provision 14201

❖ Prior law under IRC section 951A:

- IRC section 951A is new.
- The TCJA (Pub. L. No. 115-97) added a new IRC section 951A – *Global Intangible Low-Taxed Income Included in Gross Income of United States Shareholders.*

Global Intangible Low-Taxed Income Inclusion Provision 14201 – (cont'd)

❖ Current law under IRC section 951A:

- According to the TCJA (Pub. L. No. 115-97):
 - a U.S. shareholder of any Controlled Foreign Corporation (CFC) must include in gross income for a taxable year its global intangible low-taxed income (GILTI) in a manner generally similar to inclusions of subpart F income.
 - GILTI means, with respect to any U.S. shareholder for the shareholder's taxable year, the excess (if any) of the shareholder's net CFC tested income over the shareholder's net deemed tangible income return.
 - **GILTI = Net CFC Tested Income – Net Deemed Tangible Income Return.** See IRC section 951A(c) and 951A(b)(2)).

Global Intangible Low-Taxed Income Inclusion Provision 14201 – (Cont'd)

❖ Implementation:

- The provision is effective for taxable years of foreign corporations beginning after December 31, 2017, and for taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end.
- Revised line 13 of Form 1120-PC, Schedule C to report the GILTI inclusion amount.
- A new Form 8992 is drafted to calculate the GILTI inclusion amount.
- Updates to Form 1120-PC Instructions are being drafted.

Global Intangible Low-Taxed Income Inclusion Provision 14201 – (cont'd)

❖ What Examiners Need to Know:

- The GILTI Inclusion Amount:
 - Reported on Form 1120-PC, Schedule C, but is not subject to the proration calculation under IRC section 832(b)(5).
 - Reported on Form 1120-PC, Schedule B by insurance companies electing IRC 831(b).
 - Reduced by the IRC section 250 deduction. See Provision 14201 following.

Deduction Applicable to FDII and GILTI Provision 14202

❖ Prior law under IRC section 250:

- IRC section 250 is new.
- The TCJA (Pub. L. No. 115-97) added a new IRC section 250, *Foreign-Derived Intangible Income and Global Intangible Low-Taxed Income*.

Deduction Applicable to FDII and GILTI

Provision 14202 – (cont'd)

❖ Current law under IRC section 250:

- According to the TCJA (Pub. L. No. 115-97):
 - Domestic corporations are taxed at reduced U.S. tax rates on their foreign-derived intangible income (“FDII”) and global intangible low-taxed income (“GILTI”).
 - Domestic corporations for taxable years beginning after December 31, 2017, and before January 1, 2026, are allowed a deduction equal to the sum of 37.5 percent of their FDII and 50 percent of GILTI (if any).”
 - For taxable years beginning after December 31, 2025, the deduction for FDII is reduced to 21.875 percent and the deduction for GILTI is lowered to 37.5 percent.
 - Under a 21-percent corporate tax rate, and as a result of the deduction for FDII and GILTI, the effective U.S. tax rate on FDII is 13.125 percent and the effective U.S. tax rate on GILTI (with respect to domestic corporations) is 10.5 percent for taxable years beginning after December 31, 2017, and before January 1, 2026.
 - The deduction for FDII and GILTI is available only to C corporations that are not Regulated Investment Companies (RICs) and Real Estate Investment Trust (REITs).
 - The deduction for GILTI applies to the amount treated as a dividend received by a domestic corporation under sec.78 that is attributable to the corporation’s GILTI amount under new sec. 951A.”

Deduction Applicable to FDII and GILTI Provision 14202 – (cont'd)

❖ Implementation:

- The provision is effective for taxable years beginning after December 31, 2017.
- A new line 28 is added to Form 1120-PC, Schedule C to report the deduction.
- A new Form 8993 is drafted to calculate the deduction.
- Updates to Form 1120-PC Instructions will be needed.

Deduction Applicable to FDII and GILTI Provision 14202 – (cont'd)

❖ What Examiners Need to Know:

- Section 250 Deduction is:
 - Reported on Form 1120-PC, Schedule C, but is not subject to the proration calculation under IRC section 832(b)(5).
 - Reported on Form 1120-PC, Schedule B by insurance companies electing IRC 831(b).
 - Not allowed in the computation of the NOL.

Foreign Source DRD – TCJA Provision 14101

Treatment of Deferred Foreign Income – TCJA Provision 14103

Base Erosion & Anti-abuse Tax – TCJA Provision 14401

**Subject Matter Expert (SME)
Non-Life Insurance Practice Network**



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Foreign Source DRD Provision 14101

❖ Prior law under IRC section 245A:

- IRC section 245A is new.
- ❖ The TCJA (Pub. L. No. 115-97) added a new section 245A, *Deduction for Foreign Source-Portion of Dividends Received by Domestic Corporations from Specified 10-percent Owned Foreign Corporations*.

Foreign Source DRD

Provision 14101 – (cont'd)

❖ Current law under IRC section 245A:

- The TCJA (Pub. L. No. 115-97):
 - Provides a 100-percent deduction for foreign-source portion of dividends received from specified 10-percent owned foreign corporations by domestic corporations that are United States shareholders (referred to here, as “DRD”).
 - To be eligible for the DRD, the U.S. shareholder of the specified 10-percent owned foreign corporation must satisfy the holding period requirements of section 246(c)(5).
 - The term “dividend received” is intended to be interpreted broadly, and will be defined in forthcoming regulations.
 - The DRD is available only to C corporations that are not RICs or REITs. Dividends from Passive Foreign Investment Company (PFICs) are not eligible for the deduction.
 - No foreign tax credit or deduction is allowed for any taxes paid or accrued with respect to any dividend qualifying for a DRD under section 245A.
 - The DRD is not available for any dividend received by a U.S. shareholder from a controlled foreign corporation if the dividend is a hybrid dividend, as defined in section 245(e)(4) and the corresponding forthcoming regulations.



Foreign Source DRD

Provision 14101 – (cont'd)

❖ Implementation:

- The provision applies to distributions made after December 31, 2017.
- Revised line 10 of Form 1120-PC, Schedule C to report the 100% deduction for foreign-source portion of dividends received by U.S. shareholder.
- Renumbered line 25, changed to line 30 of Form 1120-PC, Schedule C to report the DRD.
- Updates to Form 1120-PC Instructions are being drafted.

Foreign Source DRD

Provision 14101 – (cont'd)

❖ What Examiners Need to Know:

- DRD Under IRC section 245A is:
 - Reported on Form 1120-PC, Schedule C, but is not subject to the proration calculation under IRC section 832(b)(5).
 - Reportable on Form 1120-PC, Schedule B by insurance companies electing IRC 831(b).

Treatment of Deferred Foreign Income Provision 14103

❖ Prior law under IRC section 965:

- Prior to the enactment of the TCJA, IRC section 965 was titled *Temporary Dividends Received Deduction*.
 - It allowed for a deduction equal to 85 percent of the cash dividends received from a controlled foreign corporation (CFC).
- The TCJA substantially amended Section 965; its title now reads as follows: *Treatment of Deferred Foreign Income Upon Transition to Participation Exemption System of Taxation*.

Treatment of Deferred Foreign Income

Provision 14103 – (cont'd)

❖ Current law under IRC section 965:

- The TCJA (Pub. L. No. 115-97):
 - Requires that for the last taxable year of a specified foreign corporation beginning before January 1, 2018, any U.S. shareholder of a specified foreign corporation must include in income its pro rata share of the accumulated post-1986 deferred foreign income of the corporation.
 - Income inclusion is intended to be taxed at a 15.5% rate on accumulated post-1986 foreign earnings held in the form of cash or cash equivalents, and at a 8% rate on all other earnings for calendar year domestic corporations. The reduced rate of tax results from a deduction for a portion of the pro rata share of foreign earnings held in cash or other earnings.
 - The provision applies to all CFCs and foreign corporations (other than PFICs), in which a U.S. corporation owns directly, indirectly, or constructively, a 10-percent voting interest, rather than only CFCs and those corporations described in section 902.
 - In addition to the foreign tax credit rules provided in section 965, the separate foreign tax credit limitation rules of present law section 904 apply with respect to foreign taxes deemed paid with respect to section 965 inclusions, as well as coordinating rules.
 - The increased tax liability generally may be elected to be paid over an eight-year period. Special rules and elections are provided for S corporation shareholders and REITs.

Treatment of Deferred Foreign Income Provision 14103 – (cont'd)

❖ Implementation:

- A new line 15 is added to Form 1120-PC, Schedule C to report the IRC section 965(a) income inclusion.
- A new line 29 is added to Form 1120-PC, Schedule C to report the IRC section 965(c) participation exemption.
- Updates to Form 1120-PC instructions are being drafted.
- A new Form 965-B is drafted to report the Net 965 Tax Liability and Net 965 Tax Liability paid.
- Revised line 14 and 15d, on Form 1120-PC, page 1, to report the Net 965 Tax Liability paid and Net 965 Tax Liability, respectively.
- The IRS and Treasury issued proposed regulations on Section 965 on August 1, 2018.

Treatment of Deferred Foreign Income Provision 14103 – (cont'd)

❖ What Examiners Need to Know:

- Section 965 Inclusion and Deduction are:
 - Reported on Form 1120-PC, Schedule C.
 - Reported on Form 1120-PC, Schedule B by insurance companies electing IRC 831(b).
- The new tax applies to the last taxable year of specified foreign corporations beginning before January 1, 2018, and the inclusion is made for the U.S. shareholder's tax year in which or with which the specified foreign corporation's year ends. Example to follow.

Treatment of Deferred Foreign Income Provision 14103 – (cont'd)

❖ What Examiners Need to Know (cont'd):

- **Example** - When to include Section 965(a) income for U.S. Shareholders?
 - You must look to the foreign corporation's last tax year that began before January 1, 2018.
 - If that year ends in 2017, the calendar year U.S. shareholders must report their section 965 inclusion in 2017.
 - Foreign Corporation (FC) fiscal year end: 1/1/2017 to 12/31/2017
 - If that year ends in 2018, the calendar year U.S. shareholders must report their section 965 inclusion in 2018.
 - FC fiscal year end: 12/1/2017 to 11/30/2018

Base Erosion and Anti-Abuse Tax Provision 14401

❖ Prior law under IRC section 59A:

- IRC section 59A is new.
- The TCJA (Pub. L. No. 115-97) added a new section 59A, *Tax on Base Erosion Payments of Taxpayers with Substantial Gross Receipts*.

Base Erosion and Anti-Abuse Tax Provision 14401- (cont'd)

❖ Current law under IRC section 59A:

- An applicable taxpayer is required to pay a minimum base erosion anti-abuse tax (BEAT) for the taxable year.
- BEAT is the excess of 10 percent of the modified taxable income of the taxpayer for the taxable year, computed without taking into account certain deductible base erosion payments and NOLs attributable to such payments, over an amount equal to the regular tax liability (defined in sec. 26(b)) of the taxpayer reduced by certain tax credits. Sec. 59A(b). BEAT is an alternative minimum tax.
- Applicable taxpayer is a taxpayer: (A) which is a corporation other than a RIC, REIT, or S corporation; (B) the average annual gross receipts of the corporation for the three-taxable-year period ending with the preceding taxable year are at least \$500 million, and (C) the base erosion percentage (as defined in sec. 59A(c)(4)) of the corporation for the taxable year is 3 percent or higher.
- The applicable taxpayer is required to pay the greater of its regular tax liability or its BEAT.

Base Erosion and Anti-Abuse Tax Provision 14401- (cont'd)

❖ Implementation:

- Revised line 6 of Form 1120-PC, page one to report the base erosion minimum tax.
- A new Form 8991 is drafted to calculate the base erosion minimum tax amount.
- Updates to the Form 1120-PC Instructions are being drafted.

Base Erosion and Anti-Abuse Tax Provision 14401- (cont'd)

❖ What Examiners need to Know:

- Base Erosion Payments include reinsurance payments for any premium or other consideration paid or accrued by the taxpayer to a foreign person which is a related party of the taxpayer under sec. 832(b)(4)(A).
- Effective for taxable years beginning after December 31, 2017.