

# Captive insurance update



## ITB 09-68:H.R. 3399: Proposal to allow life insurance companies to consolidate with other companies

August 18, 2009

### Alert 09-05

House Ways and Means Committee member, John B. Larson (D-CT), recently introduced legislation (H.R. 3399). If passed, the bill would permit life insurance companies to fully consolidate with non-life companies and offset income with losses to the same extent as other corporations.

Specifically, the bill would do the following:

- Allow affiliated life and non-life insurance companies to file consolidated tax returns;
- Phase in the full application of losses of affiliated non-life insurance companies against the taxable income of an affiliated life insurance company; and
- Automatically waive the five-year waiting period applicable to affiliated non-life insurance companies for offset of their losses against life insurance company income.

Under the proposed legislation, if an affiliated group includes members which are and which are not taxed under section 801, all items of the members of such group which are not taxed under section 801 shall not be taken into account in determining the amount of the tentative LICTI of members of such group, taxed under section 801.

The proposed legislation also provides that if an affiliated group includes one or more domestic insurance companies subject to tax under section 801, and the consolidated taxable income of the members of the group not taxed under such section 801 results in a consolidated net operating loss for the taxable year, then the amount of such loss, which cannot be absorbed in the applicable carryback periods against the taxable income of its members not taxed under section 801, shall be taken into account in determining the consolidated taxable income of the affiliated group, with certain limitations. The unused portion of the loss will be available as a carryover, subject to the same limitations, in applicable carryover years. To the extent that a consolidated net operating loss is allowed or increased by reason of amendments made by the Act, the loss (or increase in such loss) may not be carried back to a taxable year beginning before the first taxable year of the affiliated group to which the amendments apply.

### PwC Observations

This bill, in one form or another, has been introduced many times before, with no success.

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