

Financial Services

Captive Insurance Update

Bermuda

New Annual Statement Filing Requirements for Certain Insurance Companies

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New Filing Requirements for Certain Insurance Companies

The Internal Revenue Service recently finalized regulations (the “Regulations”) which would require entities that are taxed as insurance companies under subchapter L, but were not otherwise regulated as commercial insurance companies (e.g., captive insurance companies or warranty obligor companies), to prepare pro forma annual statements which are in a form which has been approved by the US National Association of Insurance Commissioners (“NAIC”). The regulations are effective for tax years beginning on or after May 30, 2006.

This new filing requirement applies to insurance companies that have not regularly prepared and filed with their income tax returns an annual statement prescribed by the National Association of Insurance Commissioners (“NAIC”), or have an NAIC annual statement available for review if the returns are filed electronically. Historically, domestic captive insurance companies, US warranty companies, foreign insurance companies which had made an election under IRC Section 953(d) to be taxed as domestic insurance companies, or foreign insurance companies which had made an IRC Section 953(c)(3)(C) election were not required to file an NAIC annual statement with any state albeit they were required to file a Form 1120-PC, US Property and Casualty Insurance Company Income Tax Return or a Form 1120-L, US Life Insurance Company Income Tax Return.

Requirements of the Pro Forma Annual Statement

The Regulations provide that the term annual statement means “the form of which has been approved by the National Association of Insurance Commissioners, which is filed by the company for the year covered by such return with the insurance departments of States, Territories, and the District of Columbia”. The term annual statement also includes a “pro forma” annual statement if the insurance company is not otherwise required to file the NAIC statement with a state regulatory body. The Regulations do not provide guidance on what constitutes a pro forma annual statement or what may be sufficient to meet the requirements of the regulation. The Regulations do not specify whether a company should complete an entire NAIC annual statement or merely parts thereof. The Regulations do imply that the pro forma annual statement should include the “underwriting and investment exhibit (or successor thereto)” but no provides no other guidance.

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The Regulations provide that an insurance company is required to file its annual statement with its return, but provide an exception for insurance companies filing their federal income tax returns electronically, if an insurance company files its income tax return electronically, the Regulations state that it should not include its annual statement on or with such return. However, the annual statement must be available “at all times for inspection by authorized Service officers or employees and retained for so long as such statements may be material in the administration of any internal revenue law.”

For additional information, please contact your PricewaterhouseCoopers Tax Professional. In Bermuda: Rick Irvine at 441-299-7136 (richard.e.irvine@bm.pwc.com), Laurie Bailey at 441-299-7104 (laurie.bailey@bm.pwc.com), Bill Bellew at 441-299-7107 (bill.bellew@bm.pwc.com) or Zack Rothman at 441-299-7106 (zack.rothman@bm.pwc.com).

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