

**Accounting Principles (E) Working Group
Hearing Agenda
October 24, 2022
11:00 a.m. – Noon (CST) Noon to 1:00 p.m. EST**

ROLL CALL

Dale Bruggeman, Chair	Ohio	Judy Weaver	Michigan
Kevin Clark, Vice Chair	Iowa	Doug Bartlett/ Pat Gosselin	New Hampshire
Sheila Travis	Alabama	Bob Kasinow	New York
Kim Hudson	California	Melissa Greiner/Matt Milford	Pennsylvania
William Arfanis/Michael Estabrook	Connecticut	Jamie Walker	Texas
Rylynn Brown	Delaware	Doug Stolte/David Smith	Virginia
Eric Moser	Illinois	Amy Malm/Elena Vetrina	Wisconsin
Stewart Guerin/Melissa Gibson	Louisiana		

NAIC Support Staff: Julie Gann, Robin Marcotte, Jake Stultz, Jason Farr

Note: This meeting will be recorded for subsequent use.

REVIEW of COMMENTS on EXPOSED ITEMS

The following items received comments during the exposure period that are open for discussion.

1. *INT 22-02: Third Quarter 2022 Reporting of the Inflation Reduction Act - Corporate Alternative Minimum Tax*

Ref #	Title	Attachment #	Agreement with Exposed Document?	Comment Letter Page Number
INT 22-02 (Robin/ Julie)	<i>INT 22-02: Third Quarter 2022 Reporting of the Inflation Reduction Act - Corporate Alternative Minimum Tax</i>	1 – Interpretation	Disclosure clarifications par. 13b	IP-1

Summary:

On October 6, the Working Group exposed *INT 22-02: Third Quarter 2022 Reporting of the Inflation Reduction Act - Corporate Alternative Minimum Tax* to address third quarter 2022 reporting. Key points in the interpretation:

- Description regarding the new corporate alternative minimum tax (CAMT):
 - The CAMT is 15 percent of the corporation’s (or group of entities under common control filing a consolidated tax return) “adjusted financial statement income” for the tax year, reduced by corporate alternative minimum foreign tax credit.
 - The CAMT will only apply to corporations (determined on an affiliated group basis) with average adjusted financial statement income in excess of \$1 billion for the three prior tax years. This threshold is reduced to \$100 million in the case of certain foreign-parented corporations.

- A corporation's adjusted financial statement income is the amount of net income or loss the corporation reports on its applicable financial statement. The applicable financial statement income is based on book value which may be GAAP, IFRS, or regulatory reporting based on a hierarchy.
- The INT identifies that several details are still pending development of guidance from the Treasury.
- The INT ultimately provides exceptions to existing statutory accounting provisions, indicating that financial reporting changes are not required for third quarter 2022 because a reasonable estimate cannot be made (paragraph 13) and to subsequent event reporting (paragraph 14).
- The INT requires disclosure by all reporting entities on whether they anticipate being subject to the CAMT.

The issues and responses in the interpretation are below (Bolding of key areas added for emphasis):

Response: Issue 1 – Consideration of the Act for Third Quarter 2022 Financial Statements

12. Reporting entities that are aware that they will be subject to the CAMT, would normally reflect the effects of the Act on the calculations impacted by the CAMT if reasonably estimable for third quarter 2022. Because of the timing of the adoption of the Act and the considerable number of unknown variables **for September 30, 2022, reporting the Working Group has determined that a reasonable estimate is not determinable for third quarter 2022 interim financial statements for the calculations impacted by the CAMT.**

13. **Because reasonable estimates of calculations impacted by the CAMT are not determinable, reporting entities shall not recognize impacts related to CAMT for third quarter 2022 financial statements, but shall make the following disclosures regarding the CAMT and the Act:**

- a. That the Act was enacted during the reporting period on August 16, 2022.
- b. A statement regarding whether the reporting entity has determined if they expect to be subject to the CAMT in 2023. For example:
 - i. The reporting entity has determined that they do not expect to be subject to the CAMT in 2023.
 - ii. The reporting entity has not determined as of the reporting date if they will be subject to the CAMT in 2023. The third quarter 2022 financial statements do not include the estimated impact of the CAMT, because a reasonable estimate cannot be made.
 - iii. The reporting entity has determined that they expect to be subject to the CAMT in 2023. The third quarter 2022 financial statements do not include an estimate of the impacts of the CAMT, because a reasonable estimate cannot be made.

Response: Issue 2 – Consideration of Subsequent Events for Third Quarter 2022 Financial Statements

14. For third quarter 2022 reporting, CAMT updated estimates or other calculations affected by the Act **determined subsequent to third quarter statutory financial statement or filing date shall not be recognized as Type I subsequent events.** Meaning, amended financial statements are not required to reflect updated estimates subsequent to the third quarter filing date and prior to the filing the third quarter financial statements. With the disclosure required under Issue 1, additional subsequent event disclosure (such as what would be required for Type II event) is not required.

15. Reporting entities shall be working in good faith to complete the accounting for the changes adopted under the Act.

INT 22-02 Status

16. The tentative consensuses in this interpretation were adopted to provide reporting guidance regarding the calculations impacted by the CAMT and provide limited- scope, limited-time exceptions to the valuation allowance and DTA calculations in response to legislation under SSAP No. 101 as well as Type I subsequent event requirements in SSAP No. 9 for September 30, 2022, statutory reporting. As detailed, the exceptions to SSAP No. 101 and SSAP No. 9 are effective for third quarter 2022. **Due to the short-term nature of the SSAP No. 9 exception, this interpretation will be automatically nullified on December 1, 2022**, and will be included as a nullified INT in Appendix H – Superseded SSAPs and Nullified Interpretations in the *As of March 2023 Accounting Practices and Procedures Manual*.

17. Further discussion is planned.

Interested Parties' Comments:

Interested parties support the changes and we look forward to working with the staff on the further updates.

Interested parties appreciate the opportunity to comment on INT 22-02: Third Quarter 2022 Reporting of the Inflation Reduction Act – Corporate Alternative Minimum Tax (CAMT), exposed by the Statutory Accounting Principles Working Group on October 6, 2022. As noted in connection with the exposure, this INT does not require financial reporting changes for third quarter 2022 because a reasonable estimate cannot be made. It requires disclosure and allows a subsequent event exception.

Paragraph 13.b. of the exposure requires a disclosure “regarding whether the reporting entity has determined if they expect to be subject to the CAMT in 2023” and provides three examples. As discussed in interested parties’ letter to the Working Group regarding the CAMT dated September 26, 2022, this determination would first require a determination of “applicable corporation” status, as the CAMT may even potentially apply only to applicable corporations. Our letter stated:

A corporation is an applicable corporation if its rolling average pre-tax [adjusted financial statement income] over three prior years (starting with 2020-2022) is greater than \$1 billion. For a group of related entities (based on greater than 50% ownership), the \$1 billion threshold is determined on a controlled group basis, and the group’s AFS is generally treated as the AFS for all separate taxpayers in the group.¹ Except under limited circumstances that may be the subject of future Treasury guidance, once a corporation is an applicable corporation, it is an applicable corporation in all future years.

Even if a corporation is an applicable corporation, it is not automatically subject to an AMT liability. The corporation’s tentative AMT liability is equal to 15% of its adjusted AFSI, and AMT is payable to the extent the tentative AMT liability exceeds regular corporate income tax.

Accordingly, 1) a reporting entity that is a member of a controlled group of related corporate entities is not an applicable corporation potentially subject to the CAMT unless the controlled group is an applicable corporation, and 2) an applicable corporation that is potentially subject to the CAMT is not actually liable for CAMT unless the consolidated tax return group’s tentative AMT liability exceeds its regular tax liability. A determination that consolidated return group will actually be liable for CAMT in 2023 of course involves events and transactions that will occur throughout 2023.

¹ For a “foreign-parented multinational group,” the \$1 billion threshold is determined on a worldwide basis and the threshold for U.S.-taxpaying members of the group is reduced to \$100 million.

Therefore, interested parties recommends that paragraph 13.b. of INT 22-02 be clarified to read as follows (additions underlined/deletions ~~strikethrough~~):

- b. A statement regarding whether the reporting entity (or the controlled group of corporations of which the reporting entity is a member) has determined if they expect to be ~~subject to the~~ liable for CAMT in 2023. For example:
 - i. The reporting entity (or the controlled group of corporations of which the reporting entity is a member) has determined that they do not expect to be ~~subject to the~~ liable for CAMT in 2023.
 - ii. The reporting entity (or the controlled group of corporations of which the reporting entity is a member) has not determined as of the reporting date if they will be ~~subject to the~~ liable for CAMT in 2023. The third quarter 2022 financial statements do not include ~~the~~ an estimated impact of the CAMT, because a reasonable estimate cannot be made.
 - iii. The reporting entity (or the controlled group of corporations of which the reporting entity is a member) has determined that they expect to be ~~subject to the~~ liable for CAMT in 2023. The third quarter 2022 financial statements do not include ~~an estimate of the impacts~~ estimated impact of the CAMT, because a reasonable estimate cannot be made.

Recommended Action:

NAIC staff recommends that the Working Group adopt the exposed revisions, with the edits to paragraph 13b recommended by interested parties. The proposed edits are more explicit on whether a reporting entity is expected to pay in 2023 and that the CAMT is calculated based on multiple reporting entities if a reporting entity files a consolidate return.

Because this interpretation provides a temporary override to SSAP No. 9, the Working Group would need to adopt this interpretation with a 2/3 super majority vote and must have 67% of members present. (These requirements are detailed in the *NAIC Policy Statement on Maintenance of Statutory Accounting Principles*.)

For the related interpretation, *INT 22-03: Inflation Reduction Act - Corporate Alternative Minimum Tax*, which is currently exposed, there is a similar disclosure to paragraph 13b. NAIC staff requests Working Group direction on if the disclosure in the exposed INT 22-03 should be expanded to separately capture applicable corporation (an entity whose adjusted financial statement income is above the threshold and therefore is subject to the calculation that compares CAMT to normal tax) and liable corporation (entity that expects to pay the CAMT for 2023). If the Working Group supports this clarification, NAIC will work with industry to draft the revisions.

The comment letters are included in Attachment 2 (2 pages).

[https://naiconline.sharepoint.com/teams/frsstatutoryaccounting/national meetings/a. national meeting materials/2022/10-24-22 int 22-02 ira/0 - 10-24-2022 - sapwg hearing agenda.docx](https://naiconline.sharepoint.com/teams/frsstatutoryaccounting/national%20meetings/a.national%20meeting%20materials/2022/10-24-22%20int%2022-02%20ira/0-10-24-2022-sapwg%20hearing%20agenda.docx)

Interpretation of the Statutory Accounting Principles (E) Working Group

INT 22-02: Third Quarter 2022 Reporting of the Inflation Reduction Act - Corporate Alternative Minimum Tax

INT 22-02 Dates Discussed

October 6, 2022

INT 22-02 References

Current:

SSAP No. 9—Subsequent Events

SSAP No. 101—Income Taxes

INT 22-02 Issue

Key Provisions of the Inflation Reduction Act

1. The Inflation Reduction Act (Act) was enacted on August 16, 2022, and included a new corporate alternative minimum tax (CAMT). The Act and the CAMT go into effect for tax years beginning after 2022. Reporting entities shall refer to the Act, and the resulting regulations and other tax guidance to determine application, but a non-authoritative high-level summary based on information at the time of initial INT discussion regarding the CAMT is as follows:

- a. The CAMT is 15 percent of the corporation's "adjusted financial statement income" for the tax year, reduced by corporate alternative minimum foreign tax credit.
- b. The CAMT will only apply to corporations (determined on an affiliated group basis) with average adjusted financial statement income in excess of \$1 billion for the three prior tax years. This threshold is reduced to \$100 million in the case of certain foreign-parented corporations. When a corporation becomes subject to the CAMT, it remains an applicable to the CAMT, even if its average adjusted financial statement income is less than \$1 billion, unless an exception applies.
- c. A corporation's adjusted financial statement income is the amount of net income or loss the corporation reports on its applicable financial statement. The income is adjusted for various purposes including certain adjustments in the case of consolidated returns or for foreign income.
- d. The Act includes references to the tax codes which provides a hierarchy for determining the "applicable financial statement." At a high level, the first choice is U.S. generally accepted accounting principles (GAAP) financial statements; the second choice is international financial reporting standards (IFRS) financial statements. If GAAP and IFRS financial statements are not available, the financial statements filed by the taxpayer with any other regulatory or government body is acceptable. If the taxpayer is part of an affiliated group of corporations filing a consolidated return the adjustable financial statement income for the group considers the group's applicable financial statement.
- e. To determine its U.S. federal income tax liability, a corporation will need to compute taxes under both systems—the regular tax system and the CAMT system. The CAMT is payable to the extent the tentative CAMT exceeds the regular corporate income tax. Any CAMT

paid is available indefinitely as a credit carryover that could reduce future regular tax in future years if the regular tax liability is in excess of CAMT tax liability.

- f. The Act directs the Treasury to issue regulations and other guidance relate to implementing the CAMT, so several issues are pending detailed clarifications including clarifying the definition of an applicable corporation, and providing guidance on the starting point for, and adjustments to, adjusted financial statement income, as well as handling of separate company tax returns when required under current tax law that are unique to the insurance industry.

Interpretation Issues

2. This interpretation is focused on addressing third quarter 2022 transition accounting and reporting aspects of the new corporate alternative minimum tax (CAMT). While most insurers will not be subject to the CAMT, for those that know that they are subject, and those that could be subject to the CAMT there are a variety of reporting uncertainties, particularly regarding reporting for third quarter 2022.

3. The CAMT is effective for the tax years on or after 2023.

4. Both statutory accounting principles and U.S. GAAP require the effects of tax changes on deferred taxes, including the valuation allowance (future realizability of existing DTAs) in the period in which the legislation is enacted (third quarter 2022). *SSAP No. 101—Income Taxes*, paragraph 7.e. requires the statutory valuation allowance adjustment as a direct reduction in the gross DTA if based on the weight of available evidence it is more likely than not that some or all of the gross DTAs will not be realized. Gross DTA, less the statutory valuation allowance results in adjusted gross DTAs. The statutory valuation allowance adjustment is not reported as a separate line in the statutory financial statements (it is an off-balance sheet item that reduces the gross DTAs). The statutory valuation allowance is disclosed.

5. The statutory accounting calculation for admissible DTAs is determined using adjusted gross DTAs (gross DTAs reduced by the valuation allowance). For statutory accounting, admittance of adjusted gross DTAs in *SSAP No. 101* depends on a three-component calculation, for which the second step limits admittance of adjusted gross DTAs to those that are expected to be realized in a timeframe that does not exceed 3 years. The actual number of years permitted depends on specifics for each reporting entity (type and other information about the reporting entity), but the maximum timeframe is 3 years. The last step admits DTAs which can be offset by DTLs.

6. Guidance in *SSAP No. 9—Subsequent Events* requires consideration of Type I and Type II¹ subsequent events through the date of the statutory financial statements and the date of issuance of the audited financial statements, or the date in which audited financial statements are available to be issued. For subsequent events identified after the statutory financial statements are filed (ex. March 1), but before the audited financial statements are issued (ex. June 1), reporting entities are generally required by their domestic state to amend their filed statutory financial statements to ensure that the statutory financial statements and the audited financial statements are consistent. Under this guidance, as additional information is made available on the impact of the Act, or information becomes available to update estimates and assessments, under existing statutory accounting guidance in *SSAP No. 9*, reporting entities would need to identify updated estimates as a Type I subsequent event in the audited financial statements.

¹ A Type I subsequent event relates to an event or transaction that provides additional evidence with respect to conditions that existed at the date of the balance sheet, including the estimates inherent in the process of preparing financial statements. Under *SSAP No. 9*, entities shall recognize in the financial statements the effects of all material Type I subsequent events. A Type II subsequent event pertains to events or transactions that provide evidence to conditions that did not exist at the balance sheet date but arose after that date. Type II events are disclosed in the financial statements.

Issue 1 – Consideration of the Act for Third Quarter 2022 Financial Statements

7. During the period of enactment (third quarter 2022) reporting entities filing statutory financial statements would normally have to consider the applicability of the CAMT and if applicable, determine the impact on the statutory valuation allowance as well as assess DTAs for admissibility (e.g., realization timeframe). These elements will be collectively referred to as “calculations impacted by the Act” or “calculations impacted by the CAMT.”

8. This interpretation will address the issue for what reporting entities are required to report or disclose regarding the calculations impacted by the CAMT for September 30, 2022, financial statements.

Issue 2 – Consideration of Subsequent Events for Third Quarter 2022 Financial Statements

9. SSAP No. 9 requires consideration of subsequent events through the date of the statutory financial statements and the date of issuance of the audited financial statements, or the date in which audited financial statements are available to be issued.

10. For reporting entities that materially revise or establish calculations impacted by the CAMT subsequent to September 30, 2022, (including the statutory valuation allowance, the timing of determination of net admitted DTAs, and the determination of the applicability of the CAMT), this interpretation will address the extent a Type I or Type II subsequent event assessment is required for third quarter 2022 financial reporting.

INT 22-02 Discussion

11. The Statutory Accounting Principles (E) Working Group tentative consensuses to the noted issues are included below.

Response: Issue 1 – Consideration of the Act for Third Quarter 2022 Financial Statements

12. Reporting entities that are aware that they will be subject to the CAMT, would normally reflect the effects of the Act on the calculations impacted by the CAMT if reasonably estimable for third quarter 2022. Because of the timing of the adoption of the Act and the considerable number of unknown variables for September 30, 2022, reporting the Working Group has determined that a reasonable estimate is not determinable for third quarter 2022 interim financial statements for the calculations impacted by the CAMT.

13. Because reasonable estimates of calculations impacted by the CAMT are not determinable, reporting entities shall not recognize impacts related to CAMT for third quarter 2022 financial statements, but shall make the following disclosures regarding the CAMT and the Act:

- a. That the Act was enacted during the reporting period on August 16, 2022.
- b. A statement regarding whether the reporting entity has determined if they expect to be subject to the CAMT in 2023. For example:
 - i. The reporting entity has determined that they do not expect to be subject to the CAMT in 2023.
 - ii. The reporting entity has not determined as of the reporting date if they will be subject to the CAMT in 2023. The third quarter 2022 financial statements do not

include the estimated impact of the CAMT, because a reasonable estimate cannot be made.

- iii. The reporting entity has determined that they expect to be subject to the CAMT in 2023. The third quarter 2022 financial statements do not include an estimate of the impacts of the CAMT, because a reasonable estimate cannot be made.

Response: Issue 2 – Consideration of Subsequent Events for Third Quarter 2022 Financial Statements

14. For third quarter 2022 reporting, CAMT updated estimates or other calculations affected by the Act determined subsequent to third quarter statutory financial statement or filing date shall not be recognized as Type I subsequent events. Meaning, amended financial statements are not required to reflect updated estimates subsequent to the third quarter filing date and prior to the filing the third quarter financial statements. With the disclosure required under Issue 1, additional subsequent event disclosure (such as what would be required for Type II event) is not required.

15. Reporting entities shall be working in good faith to complete the accounting for the changes adopted under the Act.

INT 22-02 Status

16. The tentative consensuses in this interpretation were adopted to provide reporting guidance regarding the calculations impacted by the CAMT and provide limited- scope, limited-time exceptions to the valuation allowance and DTA calculations in response to legislation under SSAP No. 101 as well as Type I subsequent event requirements in SSAP No. 9 for September 30, 2022, statutory reporting. As detailed, the exceptions to SSAP No. 101 and SSAP No. 9 are effective for third quarter 2022. Due to the short-term nature of the SSAP No. 9 exception, this interpretation will be automatically nullified on December 1, 2022, and will be included as a nullified INT in Appendix H – Superseded SSAPs and Nullified Interpretations in the *As of March 2023 Accounting Practices and Procedures Manual*.

17. Further discussion is planned.

<https://naiconline.sharepoint.com/teams/FRSStatutoryAccounting/Maintenance/Active Form A's/2022/INT 22-02 -3rd qtr Inflation Reduction Act.docx>

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October 14, 2022

Mr. Dale Bruggeman, Chairman
Statutory Accounting Principles Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

RE: Interested Parties Comments on INT 22-02: Third Quarter 2022 Reporting of the
Inflation Reduction Act – Corporate Alternative Minimum Tax

Dear Mr. Bruggeman:

Interested parties appreciates the opportunity to comment on INT 22-02: Third Quarter 2022 Reporting of the Inflation Reduction Act – Corporate Alternative Minimum Tax (CAMT), exposed by the Statutory Accounting Principles Working Group on October 6, 2022. As noted in connection with the exposure, this INT does not require financial reporting changes for third quarter 2022 because a reasonable estimate cannot be made. It requires disclosure and allows a subsequent event exception.

Paragraph 13.b. of the exposure requires a disclosure “regarding whether the reporting entity has determined if they expect to be subject to the CAMT in 2023” and provides three examples. As discussed in interested parties’ letter to the Working Group regarding the CAMT dated September 26, 2022, this determination would first require a determination of “applicable corporation” status, as the CAMT may even potentially apply only to applicable corporations. Our letter stated:

A corporation is an applicable corporation if its rolling average pre-tax [adjusted financial statement income] over three prior years (starting with 2020-2022) is greater than \$1 billion. For a group of related entities (based on greater than 50% ownership), the \$1 billion threshold is determined on a controlled group basis, and the group’s AFS is generally treated as the AFS for all separate taxpayers in the group.¹ Except under

¹ For a “foreign-parented multinational group,” the \$1 billion threshold is determined on a worldwide basis and the threshold for U.S.-taxpaying members of the group is reduced to \$100 million.

Statutory Accounting Principles Working Group
 October 14, 2022
 Page 2

limited circumstances that may be the subject of future Treasury guidance, once a corporation is an applicable corporation, it is an applicable corporation in all future years.

Even if a corporation is an applicable corporation, it is not automatically subject to an AMT liability. The corporation's tentative AMT liability is equal to 15% of its adjusted AFSI, and AMT is payable to the extent the tentative AMT liability exceeds regular corporate income tax.

Accordingly, 1) a reporting entity that is a member of a controlled group of related corporate entities is not an applicable corporation potentially subject to the CAMT unless the controlled group is an applicable corporation, and 2) an applicable corporation that is potentially subject to the CAMT is not actually liable for CAMT unless the consolidated tax return group's tentative AMT liability exceeds its regular tax liability. A determination that consolidated return group will actually be liable for CAMT in 2023 of course involves events and transactions that will occur throughout 2023.

Therefore, interested parties recommends that paragraph 13.b. of INT 22-02 be clarified to read as follows (additions underlined/deletions ~~striketrough~~):

- b. A statement regarding whether the reporting entity (or the controlled group of corporations of which the reporting entity is a member) has determined if they expect to be subject to the liable for CAMT in 2023. For example:
 - i. The reporting entity (or the controlled group of corporations of which the reporting entity is a member) has determined that they do not expect to be ~~subject to the~~ liable for CAMT in 2023.
 - ii. The reporting entity (or the controlled group of corporations of which the reporting entity is a member) has not determined as of the reporting date if they will be ~~subject to the~~ liable for CAMT in 2023. The third quarter 2022 financial statements do not include ~~the an~~ an estimated impact of the CAMT, because a reasonable estimate cannot be made.
 - iii. The reporting entity (or the controlled group of corporations of which the reporting entity is a member) has determined that they expect to be ~~subject to the~~ liable for CAMT in 2023. The third quarter 2022 financial statements do not include ~~an estimate of the impacts~~ estimated impact of the CAMT, because a reasonable estimate cannot be made.

Thank you for considering our comments. Please feel free to contact wither one of us with any questions you may have.

Sincerely,

D. Keith Bell

Rose Albrizio

C: Interested parties NAIC staff

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September 26, 2022

Mr. Dale Bruggeman, Chairman
Statutory Accounting Principles Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

RE: Interested Parties Request for Deferral of Recognition of Tax Accounting Effects of the Corporate Alternative Minimum Tax

Dear Mr. Bruggeman:

Interested parties respectfully request that the Statutory Accounting Principles Working Group (SAPWG) permit insurance companies to defer recognition of any tax accounting effects of the recently enacted Federal corporate alternative minimum tax (AMT) on statutory financial statements until no earlier than the due date for filing the quarterly statement for the first quarter of 2023. By that time, there may be more certainty as to which companies will be subject to the new tax, and the U.S. Treasury Department (Treasury) may have provided some indication of the direction it intends to take with guidance needed to implement the AMT. Such a deferral also would provide time for due deliberation of issues — such as those described below — relating to the proper income tax accounting of the AMT in the separate company financial statements filed by insurance companies. Accordingly, our requested deferral will protect against disparate interpretations of the law and the statutory accounting guidance by insurance companies and their auditors that could lead to substantial inconsistencies in how the tax is reflected on statutory financial statements.

Background

The recently enacted law commonly referred to as the “Inflation Reduction Act of 2022” includes an AMT effective in 2023 that is based on an applicable corporation’s adjusted financial statement income (AFSI) set forth on its applicable financial statement (AFS). A corporation is an applicable corporation if its rolling average pre-tax AFSI over three prior years (starting with 2020-2022) is greater than \$1 billion. For a group of related entities (based on greater than 50% ownership), the \$1 billion threshold is determined on a controlled group basis, and the group’s

AFS is generally treated as the AFS for all separate taxpayers in the group.¹ Except under limited circumstances that may be the subject of future Treasury guidance, once a corporation is an applicable corporation, it is an applicable corporation in all future years.

Even if a corporation is an applicable corporation, it is not automatically subject to an AMT liability. The corporation's tentative AMT liability is equal to 15% of its adjusted AFSI, and AMT is payable to the extent the tentative AMT liability exceeds regular corporate income tax. However, any AMT paid would be indefinitely available as a credit carryover that could reduce future regular tax in excess of AMT.

Uncertainty as to Applicable Corporation Status and Future Treasury Guidance

Significant uncertainty as to which groups with insurance company members will be applicable corporations, and which of these applicable corporations will owe the AMT, will likely continue until mid-2023 at the earliest. It is likely that a number of insurance groups, including both life and property and casualty insurers, will be considered applicable corporations. However, whether a corporation is an applicable corporation will not be definitively determinable until early 2023. This is because the new AMT is effective in 2023, and 2022 financial statements are needed to determine applicable corporation status. Even then, questions might exist about whether adjustments are necessary to AFSI to determine whether the \$1 billion threshold is met. Accordingly, a deferral of recognition of the new AMT's effects on statutory financial statements would provide additional time to properly determine if an insurance company group is an applicable corporation.

Additionally, even if an insurance group is an applicable corporation, there is substantial uncertainty as to how the government will interpret the new law and further guidance from Treasury is needed before companies can calculate any potential tax owed. The AMT provisions not only broadly require Treasury to provide guidance to carry out the purposes of the AMT, but also include approximately 20 more specific instances in which Treasury is either directed to issue guidance to implement the new law or is granted authority to issue guidance or regulations clarifying the law. It is unlikely that Treasury will be able to provide much of this guidance until sometime in 2023.

One of the instances in which guidance from Treasury may alter application of the AMT is in determining the financial statement that is the AFS for purposes of determining whether the AMT applies. In the statute, the AFS is defined under a hierarchy that gives first precedence to GAAP statements, then to IFRS statements, and then to other financial statements — such as statutory financials filed with state insurance regulators. Accordingly, depending on their form of organization and ownership, insurance groups potentially subject to the AMT could base the tax on GAAP, on IFRS, or on statutory income. Furthermore, some companies with 3-year average income close to the \$1 billion threshold will not be able to reliably determine if they are an

¹ For a “foreign-parented multinational group,” the \$1 billion threshold is determined on a worldwide basis and the threshold for U.S.-taxpaying members of the group is reduced to \$100 million.

applicable corporation until Treasury indicates whether it will issue additional guidance on this topic.

Some of the other notable areas in which Treasury is directed to or authorized to issue guidance are:

- Adjustments to AFSI necessary to avoid duplication or omission
- When a corporation that was previously an applicable corporation should no longer be an applicable corporation
- The distributive share of partnership income that is allocable to a taxpayer's AFSI
- Treatment of current and deferred taxes of foreign countries and U.S. possessions for purposes of determining AFSI
- The portion of dividends received from corporations that are not included in a taxpayer's consolidated return that are included in an applicable corporation's AFSI
- Issues related to the tax law's life-nonlife consolidated return rules

In addition, Treasury will be asked to address the treatment of financial statement accounting issues specifically related to the insurance business. Concurrently with the writing of this letter, insurance company trade associations are preparing submissions alerting Treasury to material insurance accounting issues (e.g., GAAP accounting for embedded derivatives in modco and funds withheld reinsurance transactions) that will impact determination of the AMT and for which guidance will be necessary. Any such guidance also is unlikely to occur until well into 2023.

GAAP Guidance and Statutory Accounting Issues

Subsequent to enactment of the so-called Tax Cuts and Jobs Act (TCJA) on December 22, 2017, both SEC staff and Financial Accounting Standards Board (FASB) staff issued income tax accounting guidance on issues related to various TCJA provisions and their enactment very late in the year for calendar year reporting entities. Specifically, SEC Staff Accounting Bulletin No. 118 (SAB 118) addressed situations in which the accounting for certain income tax effects of TCJA were incomplete by the time financial statements were issued for the reporting period that included December 22, 2017. In general, SAB 118 provided for reporting of provisional amounts for certain income tax effects of TCJA where necessary information was not available, prepared, or analyzed in reasonable detail to determine a reasonable estimate for those effects.

Additionally, SAB 118 provided that changes in subsequent reporting periods reflecting adjustments to such provisional amounts — up to one year from the date of TCJA's enactment — should be included in income from continuing operations. Further, SAB 118 required certain disclosures about the material financial reporting impacts of TCJA for which the tax accounting was incomplete.

Also, in January 2018, FASB staff issued Q&As on tax accounting for two tax provisions enacted by TCJA:

- FASB Staff Q&A - Topic 740, No. 4: Accounting for the Base Erosion Anti-Abuse Tax (BEAT) — which considered whether deferred tax assets and liabilities (DTAs and DTLs)

should be measured at the statutory tax rate of the regular tax system or the low BEAT tax rate if the taxpayer expects to be subject to BEAT.

- In brief, relying on the AMT guidance in Topic 740, FASB staff concluded that the incremental effect of BEAT should be recognized in the year the BEAT is incurred, and that an entity would not need to evaluate the effect of potentially paying the BEAT in future years on the realizations of DTAs.
- FASB Staff Q&A - Topic 740, No. 5: Accounting for Global Intangible Low-Taxed Income (GILTI) — which considered whether deferred taxes should be recognized for temporary basis differences expected to reverse as GILTI in future years or whether the tax on GILTI should be included in tax expense in the year incurred.
 - Here, FASB staff concluded that either interpretation was acceptable as an accounting policy election.

Also in early 2018, SAPWG addressed the statutory income tax accounting issues relating to enactment of the TCJA and issued guidance in INT 18-03 that essentially paralleled SAB 118 and the FASB Staff Q&As.

At the present time, indications are that neither SEC nor FASB staff will provide additional guidance relating to the 2022 Act's effects on GAAP income tax accounting. First, the 2022 Act does not include the same type of substantial changes to the tax law (e.g., decrease in corporate tax rate, enactment of significant changes in taxation of international operations) as the TCJA did. Nor does the 2022 Act raise the same time pressures on financial reporting that the TCJA's enactment late in calendar year 2017 presented.

Furthermore, GAAP income tax accounting guidance in ASC 740 does not need to be revisited with respect to enactment of the new corporate AMT. While the prior-law U.S. AMT was repealed for post-2017 tax years, the GAAP guidance on accounting for the AMT was left intact to cover situations where an AMT applies in jurisdictions outside the U.S. In brief, the GAAP guidance in ASC 740-10-30-10/11 and ASC 740-10-55-15 and -31/32 provides that:

- Deferred taxes should be measured using the regular tax rate, not the AMT rate, even if the company anticipates being subject to the AMT in the foreseeable future.
- AMT should be recognized as a current period tax expense in the period incurred.
- A deferred tax asset should be recognized for any AMT credit carryforward, subject to a valuation allowance, if necessary, to reduce the net deferred tax asset to the amount that is more likely than not to be recognized.

Accordingly, the new AMT generally should not impact GAAP statements until 2023.

The new AMT differs in marked respects from the corporate AMT that was in effect prior to 2018, under which AMT income was based on a corporation's taxable income and AMT liability was potentially applicable to all corporations. Under the new AMT, potential applicability of the tax (the \$1 billion average-AFSI threshold) and potential liability for the tax are both based on the consolidated income or loss as reported in the consolidated financial statements of the

consolidated financial reporting group. The AMT generally will not be based on any separate company financial statements of a member of the group.

As a result of this consolidated financial statement income approach to applicability of and determination of the AMT, substantive questions exist as to the proper income tax accounting for the AMT in the regulatory-basis separate company financial statements of an insurance company that is a member of an affiliated group subject to the tax. For many such groups, the potential liability for the AMT will be determined on a different basis of accounting (e.g., GAAP or IFRS) than is used for regulatory reporting purposes. Insurance companies generally do not issue their own separate company GAAP or IFRS financial statements, and separate insurance company GAAP or IFRS income may not even be available from internal records because GAAP/IFRS adjustments are generally determined on a line of business or an aggregate basis, rather than on a legal entity basis. Additionally, many intercompany tax sharing agreements provide for separate company tax allocations rather than allocation of consolidated tax liability. These and other such issues warranting consideration by and guidance from SAPWG underlie our request for delay.

Interested parties are concerned that, without a delay in statutory reporting for the AMT, insurers with varying forms of organization and/or ownership, as well as their different audit firms, may take different positions as to the treatment of the AMT in statutory financial statements. Without SAPWG guidance, inconsistent treatment is likely to result, as it did following enactment of the TCJA, even given the post-TCJA accounting guidance discussed above.

A delay in the recognition of the effects of the new AMT until at least the filing of first quarter 2023 statutory financial statements² would provide additional time to evaluate any AMT guidance from Treasury, or at least glean an understanding of the direction Treasury is likely to take with guidance. By that time, companies should have more information to help determine whether they will be applicable corporations under the new law. Additionally, the industry could submit more detailed discussions of the tax accounting issues for SAPWG's consideration. This will promote consistency in the amounts reported on quarterly and annual statements and avoid disparate interpretations of the new law by audit firms and insurance companies.

In conjunction with the delay, appropriate factual disclosures should still be made in Statutory Footnote 9 "Income Taxes". Suggested disclosure language for an insurance company included in a consolidated tax group is included as Attachment A. This would be in addition to the disclosure already required by paragraph 28 of SSAP No. 101.³ The proposed disclosure would:

- Include a brief summary of the new AMT provisions
- State whether the group to which the insurance company reporting entity belongs anticipates that it will or will not be an applicable corporation for 2023 and therefore potentially subject to the AMT

² With appropriate disclosures in interim periods and leaving open the possibility of further deferral if circumstances have not been sufficiently clarified at that time.

³ Paragraph 28 of SSAP No. 101 requires that a reporting entity included in a consolidated Federal income tax return must disclose a list of the members of the consolidated return group and the substance of the group's written tax sharing agreement.

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- If the group anticipates that it likely will not be an applicable corporation for 2023, state that no provision for AMT has been made in its tax accounts at the reporting date
- In either case, note that guidance on application of the AMT will be forthcoming in 2023, which could alter the group's determination, and disclose any particularly relevant guidance that has already been provided
- If the group anticipates that it likely will be an applicable corporation for 2023:
 - State the accounting basis on which the group expects AFSI to be determined for 2023
 - Note that the group's 2023 tax payments will take account of potential AMT liability
 - States that no provision for AMT has been made in the reporting entity's tax accounts at the reporting date (based on the requested delay)

These disclosures, of course, could easily be adapted to take account of other circumstances, such as the filing of a separate tax return.

Thank you for considering our request. Please feel free to contact either one of us with any questions you may have.

Sincerely,

D. Keith Bell

Rose Albrizio

ATTACHMENT A
Sample Disclosure re AMT for 3Q22 and 4Q22

In August 2022, the Inflation Reduction Act of 2022 (Act) was passed by the US Congress and signed into law by President Biden. The Act includes a new Federal alternative minimum tax (AMT), effective in 2023, that is based on the adjusted financial statement income (AFSI) set forth on the applicable financial statement (AFS) of an applicable corporation. A corporation is an applicable corporation if its rolling average pre-tax AFSI over three prior years (starting with 2020-2022) is greater than \$1 billion. For a group of related entities, the \$1 billion threshold is determined on a group basis, and the group's AFS is generally treated as the AFS for all separate taxpayers in the group. Except under limited circumstances, once a corporation is an applicable corporation, it is an applicable corporation in all future years.

An applicable corporation is not automatically subject to an AMT liability. The corporation's tentative AMT liability is equal to 15% of its adjusted AFSI, and AMT is payable to the extent the tentative AMT liability exceeds regular corporate income tax. However, any AMT paid would be indefinitely available as a credit carryover that could reduce future regular tax in excess of AMT.

[If the group has determined that it likely will not be an applicable corporation for 2023, include the following language]:

The controlled group of corporations of which the Company is a member has determined that it likely will not be an applicable corporation in 2023. In making such determination, the group has made certain interpretations of, and assumptions regarding, the AMT provisions of the Act. The US Treasury Department is expected to issue guidance throughout 2023 that may differ from the group's interpretations and assumptions and that could alter the group's determination. *[Disclose here any particularly relevant guidance that already has been issued]*. No provision for the AMT has been made in the Company's current or deferred tax accounts as of *[September 30, 2022/December 31, 2022]*.

[If the group has determined that it likely will be an applicable corporation for 2023, include the following language]:

The controlled group of corporations of which the Company is a member has determined that it likely will be an applicable corporation in 2023 and that 2023 AFSI will be based on its *[GAAP/IFRS/statutory]* financial statements. In making such determination, the group has made certain interpretations of, and assumptions regarding, the AMT provisions of the Act. The US Treasury Department is expected to issue guidance throughout 2023 that may differ from the group's interpretations and assumptions and that could alter the group's determination. *[Disclose here any particularly relevant guidance that already has been issued]*.

In accordance with its determination, the group will take potential 2023 AMT liability into account in making its Federal tax payments for the 2023 taxable year. 2023 Federal tax payments due before the filing of the group's 2023 Federal income tax return will be based on projections of financial statement and taxable income and will be subject to change throughout

the year. Whether AMT is actually owed for 2023 will not be finally determined until 2024, when the group's 2023 financial statements are finalized and its 2023 tax return is filed.

In accordance with INT 22-XX, no provision for the AMT has been made in the Company's current or deferred tax accounts as of [*September 30, 2022/December 31, 2022*].