Part III – Administrative, Procedural, and Miscellaneous

Interim Guidance Regarding Certain Insurance Related Issues for the Determination of Adjusted Financial Statement Income under Section 56A of the Internal Revenue Code

Notice 2023-20

SECTION 1. OVERVIEW

This notice provides the additional interim guidance described in section 1 of Notice 2023-7, 2023-3 I.R.B. 390, that is intended to help avoid substantial unintended adverse consequences to the insurance industry from the application of the new corporate alternative minimum tax (CAMT), as added to the Internal Revenue Code (Code)[1] by the enactment of § 10101 of Public Law 117-169, 136 Stat. 1818, 1818-1828 (August 16, 2022), commonly referred to as the Inflation Reduction Act of 2022 (IRA). In addition to announcing that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to issue proposed regulations (forthcoming proposed regulations) addressing the application of the CAMT, sections 3 through 7 of Notice 2023-7 provided interim guidance regarding certain time-sensitive CAMT issues that taxpayers may rely on until the issuance of the forthcoming proposed regulations. Notice 2023-7 also stated that the Treasury Department and the IRS intended to issue additional interim

[1] Unless otherwise specified, all "section" or "§" references are to sections of the Code.

guidance expected to address, among other issues, certain issues related to the treatment under the CAMT of life insurance company separate account assets that are marked to market for financial statement purposes, the treatment of certain items reported in other comprehensive income (OCI), and the treatment of embedded derivatives arising from certain reinsurance contracts. Sections 3 through 5 of this notice provide additional interim guidance regarding these and other issues intended to be addressed by the forthcoming proposed regulations. Taxpayers may rely on the guidance provided in sections 3 through 5 of this notice until the issuance of the forthcoming proposed regulations.

Section 2 of this notice provides a summary of relevant law and other information underlying the rules described in sections 3 through 5 of this notice. Section 3 of this notice describes rules that address certain CAMT issues regarding variable contracts and similar contracts. Section 4 of this notice describes rules that address certain CAMT issues regarding funds withheld reinsurance and modified coinsurance agreements. Section 5 of this notice describes rules that address certain issues that arise under the CAMT for certain formerly tax-exempt entities whose exemption from Federal income taxation was repealed by statute and as to which Congress provided special rules for determining the Federal income tax basis in their assets held when the repeal of their exemption became effective. Section 6 of this notice describes the anticipated applicability dates of the forthcoming proposed regulations. Section 7 of this notice requests comments on the issues addressed in this notice. Section 8 of this notice provides drafting and contact information.

SECTION 2. BACKGROUND

.01 CAMT under the Inflation Reduction Act.

(1) Overview. Section 10101 of the IRA amended § 55 to impose the new CAMT based on the "adjusted financial statement income" (AFSI) of an applicable corporation for taxable years beginning after December 31, 2022. In general, a corporation is an applicable corporation subject to the CAMT for a taxable year if it meets an average annual AFSI test for one or more taxable years that (i) are before that taxable year and (ii) end after December 31, 2021. See section 2.01 of Notice 2023-7 for a general description of the CAMT.

(2) AFSI under § 56A.

(a) General definition of AFSI. For purposes of §§ 55 through 59, the term AFSI means, with respect to any corporation for any taxable year, the net income or loss of the taxpayer set forth on the taxpayer's applicable financial statement (AFS) for that taxable year, adjusted as provided in § 56A. See § 56A(a).

(b) General definition of AFS. For purposes of § 56A, the term AFS means, with respect to any taxable year, an AFS, as defined in § 451(b)(3) or as specified by the Secretary of the Treasury or her delegate (Secretary) in regulations or other guidance, that covers that taxable year. See § 56A(b).

(c) General adjustments to AFSI. Section 56A(c) provides general adjustments to be made to AFSI, several of which are described in section 2.01(3)(c) of Notice 2023-7. Section 56A(c)(2) provides special rules that take into account the relationship between entities.

(d) Treatment of dividends and other amounts. Section 56A(c)(2)(C) provides that in the case of a corporation that is not included on a consolidated return with a taxpayer, the taxpayer's AFSI with respect to such other corporation is determined by taking into account only the dividends received from such other corporation (reduced to the extent provided by the Secretary) and other amounts that are includible in gross income or deductible as a loss under chapter 1 of the Code (other than amounts required to be included under §§ 951 and 951A or such other amounts as provided by the Secretary) with respect to such other corporation.

(e) AFSI of partners and partnerships. Section 56A(c)(2)(D)(i) provides that, except as provided by the Secretary, if the taxpayer is a partner in a partnership, the taxpayer's AFSI with respect to such partnership is adjusted to take into account only the taxpayer's distributive share of such partnership's AFSI. Section 56A(c)(2)(D)(ii) provides that, for purposes of §§ 55 through 59, a partnership's AFSI is the partnership's net income or loss set forth on that partnership's AFS (adjusted under rules similar to the rules set forth in § 56A).

(f) Authority of the Secretary to provide necessary adjustments. Section 56A(c)(15) authorizes the Secretary to issue regulations or other guidance to provide for such adjustments to AFSI as the Secretary determines necessary to carry out the purposes of § 56A, including adjustments to AFSI to prevent the omission or duplication of any item.

(g) General authority of the Secretary. Section 56A(e) authorizes the Secretary to provide such regulations and other guidance as necessary to carry out the purposes of § 56A, including regulations and other guidance relating to the effect of the rules of § 56A on partnerships with income taken into account by an applicable corporation.

.02 Variable Contracts under § 817 and Similar Contracts.

(1) Variable contracts accounted for under § 817. Some insurance companies issue variable contracts (as defined in § 817(d)). In general, variable contracts are life insurance and annuity contracts under which the amount of the insurance company's obligation depends, at least in part, on the value of the assets held in a separate account that is segregated from the general asset accounts of the insurance company. Provided certain requirements are met, under § 817(c), an insurance company that issues variable contracts (as defined in § 817(d)) must separately account for the various income, exclusion, deduction, asset, reserve, and other liability items properly attributable to such variable contracts. As a general matter, § 807 provides that increases in the life insurance reserves of a life insurance company are deductible and decreases in the life insurance reserves are includible in income. However, § 817(a) provides that for purposes of determining the net decrease or increase in reserves under § 807(a) or (b), amounts subtracted from or added to separate account reserves by reason of the depreciation or appreciation of separate account assets (whether or not realized) are disregarded. Under § 817(a), deductions for items described in § 805(a)(1) and (6), which include claims and benefits accrued and losses incurred during the taxable year on insurance and annuity contracts, are similarly adjusted for the depreciation or appreciation of separate account assets. Additionally, § 817(b) provides that the basis of each separate account asset is decreased by the amount of depreciation, or increased by the amount of appreciation, of separate account assets (whether or not realized), to

the extent separate account reserves are adjusted for such depreciation or appreciation under § 817(a). Generally, the result is a permanent elimination of any effects on company-level taxable income that would otherwise result from the change in the value of the separate account assets.

(2) Contracts similar to variable contracts. Like variable contracts accounted for under § 817, the value of certain other contracts similarly depends directly, at least in part, on the value of the assets supporting those contracts.

(a) Closed block contracts. When a mutual insurance company engages in a "demutualization" process to convert to a stock insurance company, the company may create a "closed block" for the benefit of holders of certain insurance contracts issued by the mutual insurance company. Generally, when a closed block is created, the company allocates assets to the closed block in an amount such that the assets, together with future revenue from the closed block, are expected to provide sufficient cash flow for future policy benefits, certain expenses, and policyholder dividends determined in a manner consistent with the manner in which they were determined prior to the demutualization. The closed block assets and the revenue from the closed block benefit only holders of the policies in the closed block.

(b) Other similar contracts. A foreign insurance company may issue contracts that are regulated as life insurance or annuity contracts in the jurisdiction in which they are issued and for which the insurance company's obligations to the contract holders (and the company's corresponding reserves) must reflect (in whole or in part) the change in the value of a designated pool of investments supporting the contract.

(3) U.S. GAAP and IFRS accounting for variable contracts and similar contracts. The contracts described in sections 2.02(1), 2.02(2)(a), and 2.02(2)(b) of this notice generally have the same accounting treatment under U.S. generally accepted accounting principles (U.S. GAAP) and international financial reporting standards (IFRS). For example, under an AFS prepared according to either U.S. GAAP or IFRS, unrealized gain or loss on the supporting assets is included in the net income or loss set forth on the AFS, and there is an offsetting adjustment to certain liabilities to reflect the resulting change in the company's contractual obligations to contract holders, which is also included in the net income or loss set forth on the AFS. However, unrealized gain or loss on some categories of the supporting assets, but not the offsetting adjustment to liabilities, is required to be disregarded under § 56A(c)(2)(C) or (D)(i) for purposes of determining AFSI, resulting in a mismatch that could significantly overstate or understate AFSI relative to taxable income.

.03 Funds Withheld Reinsurance and Modified Coinsurance Agreements.

(1) Overview. Insurance companies regularly engage in reinsurance transactions in which one insurance company transfers all or part of its risk under an insurance contract to another insurance company. The insurance company that issues the underlying insurance contract and transfers the risk is called the ceding company, and the insurance company to which the risk is transferred is called the reinsurer. If the reinsurer in turn transfers all or part of the reinsured risk to another reinsurer, the transaction is called a retrocession.

(2) Funds withheld reinsurance and modified coinsurance agreements. In a conventional reinsurance transaction, the ceding company transfers to the reinsurer both the risk of the reinsured business (represented by the reserves) and the assets supporting the reserves. In funds withheld reinsurance and modified coinsurance agreements, from a legal title and financial accounting perspective, the ceding company retains the supporting assets (Withheld Assets) as security for the reinsurer's obligations under the reinsurance agreement. See Credit for Reinsurance Model Law (MO-785), NAIC Model Laws, Regulations, Guidelines, & Other Resources, § 3 (2019). The ceding company records a liability (Withheld Assets Payable) to the reinsurer to reflect the assets it has retained. Under U.S. GAAP and IFRS, the unrealized gains and losses from certain of the Withheld Assets are generally accounted for as part of the ceding company's OCI. However, any related change in the Withheld Assets Payable, which is generally equal to the unrealized gains and losses included in OCI, is accounted for as part of the net income or loss of the ceding company, as set forth in the ceding company's AFS, and is not offset by the unrealized gains and losses that are included in OCI. The reinsurer has a corresponding asset (Withheld Assets Receivable) and the unrealized gains and losses on the Withheld Assets are generally accounted for as part of the net income or loss of the reinsurer that is set forth on the reinsurer's AFS. Financial accounting guidance states that the ceding company's Withheld Assets Payable and the reinsurer's Withheld Assets Receivable include an embedded derivative. See, for example, FASB ASC paragraphs 815-15-55-107 to 109.

The Treasury Department and the IRS understand that, in some circumstances, each of the ceding company and the reinsurer may be able to make certain types of “fair value” elections for AFS purposes to change the accounting treatment of one or more items relevant to its funds withheld reinsurance or modified coinsurance agreement such that both offsetting items related to the unrealized change in Withheld Assets value run through OCI or both run through the net income or loss set forth on the AFS. For example, under U.S. GAAP, the ceding company may be able to make a “fair value option” election that would move the unrealized gains or losses on certain of the Withheld Assets into the net income or loss set forth on its AFS, which would offset the changes in its Withheld Assets Payable to the reinsurer that are reflected in the net income or loss set forth on the ceding company’s AFS. However, such fair value elections may be made only at the time a relevant asset is acquired or when the reinsurance agreement is entered into and also may be undesirable for business reasons.

.04 Respecting Congressional “Fresh Start” Basis Rules.

(1) Section 177 of the Deficit Reduction Act of 1984 (1984 Act), Public Law 98-369, 98 Stat. 494, 709 (1984), amended § 303(d) of the Federal Home Loan Mortgage Corporation Act (then 12 U.S.C. 1452(d)) to repeal the exemption “from all taxation now or hereafter imposed by the United States” (including taxation under subtitle A of the Code (subtitle A)) for the Federal Home Loan Mortgage Corporation, effective January 1, 1985. Section 177(d)(2)(A) of the 1984 Act provides special rules for determining the adjusted basis of any asset of the Federal Home Loan Mortgage Corporation held on January 1, 1985, for purposes of determining any gain

or loss under subtitle A. Section 177(d)(2)(B) of the 1984 Act provides special rules for determining the adjusted basis of certain tangible depreciable property held by Federal Home Loan Mortgage Corporation on January 1, 1985.

(2) Section 1012(a) of the Tax Reform Act of 1986 (1986 Act), Public Law 99-514, 100 Stat. 2085, 2390-94 (1986), added § 501(m) to the Code, which generally provides that an organization described in § 501(c)(3) or (4) is exempt under § 501(a) from taxation under subtitle A only if no substantial part of its activities consists of providing "commercial-type insurance" (as defined in § 501(m)(3)). As a result of § 1012(a), "existing Blue Cross or Blue Shield organizations" (as defined in § 833(c)(2)) lost their Federal income tax exemption (subtitle A exemption). Section 1012(c)(1) provides that the amendments made by § 1012 of the 1986 Act were effective for taxable years beginning after December 31, 1986. In the case of any existing Blue Cross or Blue Shield organization, § 1012(c)(3) of the 1986 Act provided that for purposes of determining gain or loss under subtitle A, the adjusted basis of any asset held on the first day of its first taxable year beginning after December 31, 1986, was treated as equal to the asset's fair market value on such day.

In addition, § 1012(c)(4)(A) and (B) of the 1986 Act provided that the amendments made by § 1012 of the 1986 Act did not apply to repeal the subtitle A exemption with respect to the pension businesses of Mutual of America and the Teachers Insurance Annuity Association-College Retirement Equities Fund (pension business entities). For this purpose, "pension business" was defined as the administration of any plan described in § 401(a) that includes a trust exempt from tax under § 501(a), any plan under which amounts are contributed by an individual's employer for an annuity contract described in § 403(b), any individual retirement plan described in § 408, and any eligible deferred compensation plan to which § 457(a) applies.

(3) Section 1042(a) of the Taxpayer Relief Act of 1997 (1997 Act), Public Law 105-34, 111 Stat. 788, 939 (1997), terminated the subtitle A exemption provided under § 1012(c)(4)(A) and (B) of the 1986 Act for the pension business of each pension business entity for any taxable year beginning after December 31, 1997. In the case of a pension business entity that, under § 501(m), became subject to taxation under subtitle A solely by reason of § 1042(a) of the 1997 Act, § 1042(b)(2) of the 1997 Act provided that for purposes of determining gain or loss under subtitle A, the adjusted basis of any asset held on the first day of its first taxable year beginning after December 31, 1997, was treated as equal to its fair market value on such day.

.05 Additional Defined Terms. For purposes of this notice:

(1) Covered Insurance Company. The term Covered Insurance Company means (i) a company subject to tax under subchapter L of the Code or (ii) a foreign company that is subject to regulation as an insurance (or reinsurance) company by its home country and is licensed, authorized, or regulated by the applicable insurance regulatory body for its home country to sell insurance, reinsurance or annuity contracts.

(2) Covered Variable Contract. The term Covered Variable Contract means a contract described in section 2.02(1), section 2.02(2)(a), or section 2.02(2)(b) of this

notice.

(3) Covered Investment Pool. The term Covered Investment Pool means a pool of investment assets designated to support one or more Covered Variable Contracts.

(4) Covered Obligations. The term Covered Obligations means the financial accounting liabilities, including contract reserves and claims or benefits payable, that reflect a Covered Insurance Company's obligations under one or more Covered Variable Contracts and are taken into account in determining Net Income.

(5) Covered Reinsurance Agreement. The term Covered Reinsurance Agreement means a funds withheld reinsurance or modified coinsurance agreement described in section 2.03(2) of this notice and any retrocession of all or part of the risk under such agreement.

(6) Fresh Start Entity. The term Fresh Start Entity means any formerly tax-exempt entity the repeal of whose subtitle A exemption is described in section 2.04(1) through (3) of this notice.

(7) Net Income. The term Net Income means the net income or loss as set forth on the AFS.

SECTION 3. AFSI ADJUSTMENTS FOR COVERED VARIABLE CONTRACTS

.01 Purpose. The Treasury Department and the IRS anticipate that the forthcoming proposed regulations will be consistent with the guidance provided in this section 3. The Treasury Department and the IRS are providing this interim guidance to assist taxpayers in determining AFSI with respect to Covered Variable Contracts prior to the issuance of the forthcoming proposed regulations.

.02 Covered Variable Contracts.

(1) AFSI adjustments for Covered Variable Contracts. For purposes of determining AFSI of a Covered Insurance Company issuing Covered Variable Contracts, to the extent (i) a change in the value of the Covered Investment Pool for such Covered Variable Contract(s) results in a change to the amount of the Covered Insurance Company's obligations to the holders of such Covered Variable Contract(s) by reason of law, regulation, or the terms of one or more such Covered Variable Contracts, and (ii) such change in the amount of the obligation is reflected in the Covered Obligations, then such change in the amount of the Covered Obligations for a taxable year is disregarded to the extent of the § 56A(c)(2) exclusion amount for that taxable year. For purposes of the preceding sentence, the § 56A(c)(2) exclusion amount for Covered Obligations for a taxable year is equal to the amount of financial accounting gains and losses in the Covered Investment Pool for the Covered Variable Contract(s) to which the Covered Obligations relate that is (i) taken into account in Net Income of the Covered Insurance Company for the taxable year and (ii) disregarded under § 56A(c)(2)(C) or (D)(i) for purposes of determining AFSI of the Covered Insurance Company for that taxable year.

(2) Example. The following example illustrates the rule set forth in section 3.02(1) of this notice.

(a) Facts. A is a life insurance company subject to tax under subchapter L of the Code and has a taxable year and accounting period that is based on the calendar year. A uses U.S. GAAP to prepare its AFS. On January 1 of Year 1, A issues a variable life insurance contract (as described in § 817) to an individual, X. A owns assets that support A's contractual obligation to X and holds those assets in a separate account that is segregated from the general asset accounts of A. A accounts for its contractual obligations to X in its Net Income. The separate account assets are stock in unrelated corporations. At the end of Year 1, no assets that support X's variable contract have been sold, and the fair market value of such assets has increased by $10x. Pursuant to the terms of the variable life insurance contract, the increase in the value of the assets supporting X's variable contract caused A's contractual obligation to X to increase by $10x. On A's AFS, the $10x increase in the value of the assets supporting the variable contract is included in Net Income and offsets the $10x increase in A's contractual obligation to X (which reduces A's Net Income).

(b) Analysis. A is a Covered Insurance Company as defined in section 2.05(1) of this notice, and the variable life insurance contract that A issued to X is a Covered Variable Contract described in section 2.05(2) of this notice. The assets in the separate account that A holds to support its contractual obligations to X constitute a Covered Investment Pool as described in section 2.05(3) of this notice, and A's contractual obligation to X is reflected in A's Covered Obligations as defined in section 2.05(4) of this notice. Pursuant to § 56A(c)(2)(C), although the $10x unrealized gain in the Covered Investment Pool is taken into account in Net Income on A's AFS, it is not included in A's AFSI because it is not a dividend from another corporation and is not includible in the gross income of A under chapter 1 of the Code. The $10x increase in the Covered Obligations is taken into account in Net Income on A's AFS. Pursuant to section 3.02(1) of this notice, for purposes of determining A's AFSI, the change in the amount of the Covered Obligations for the taxable year is disregarded to the extent of the § 56A(c)(2) exclusion amount for the taxable year. The relevant § 56A(c)(2) exclusion amount for the taxable year is equal to the $10x unrealized gain in the Covered Investment Pool because such $10x unrealized gain is taken into account in A's Net Income for the taxable year and is disregarded under § 56A(c)(2)(C) for purposes of determining A's AFSI for that taxable year. Accordingly, the $10x increase in the Covered Obligations is also disregarded in determining A's AFSI for the taxable year. Thus, both the unrealized gain and offsetting change in the Covered Obligations are disregarded for purposes of determining A's AFSI, which eliminates what would otherwise be a difference between A's AFSI and A's life insurance company taxable income.

SECTION 4. AFSI ADJUSTMENTS FOR COVERED REINSURANCE AGREEMENTS

.01 Purpose. The Treasury Department and the IRS anticipate that the forthcoming proposed regulations will be consistent with the guidance provided in this section 4. The Treasury Department and the IRS are providing this interim guidance to assist taxpayers in determining AFSI with respect to Covered Reinsurance Agreements prior to the issuance of the forthcoming proposed regulations.

.02 Covered Reinsurance Agreements.

(1) Generally. For a Covered Insurance Company that is a party to a Covered Reinsurance Agreement, the following changes accounted for separately in the AFS with respect to each such agreement are excluded from AFSI:

(a) For the ceding company holding the Withheld Assets, changes in Net Income as a result of changes in the amount of the Withheld Assets Payable to the reinsurer that correspond to the unrealized gains and losses in the Withheld Assets to the extent such unrealized gains and losses are not included in AFSI.

(b) For the reinsurer, changes in Net Income as a result of changes in the amount of the Withheld Assets Receivable from the ceding company that correspond to the unrealized gains and losses in the Withheld Assets; provided, however, that such exclusion will be reduced to the extent the reinsurer's Withheld Assets Receivable is offset and the changes in its Net Income are reduced as a result of accounting for a retrocession of the reinsured risk.

(2) Fair value election. The exclusion provided in section 4.02(1) of this notice will not apply to the extent that: (a) the Covered Insurance Company elects to account for one or more items relevant to the Covered Reinsurance Agreement (offsetting item) at fair value on its AFS and (b) the election results in changes in the fair value of the Withheld Assets Payable (for the ceding company) or the Withheld Assets Receivable (for the reinsuring company) and changes in the fair value of the offsetting item both being accounted for either through Net Income or through OCI on the AFS of the Covered Insurance Company.

(3) Example. The following example illustrates the rules set forth in section 4.02(1) of this notice.

(a) Example – Funds Withheld Reinsurance--(i) Facts. Each of A and B is a life insurance company subject to tax under subchapter L of the Code and has a taxable and accounting year that is based on the calendar year. Each of A and B uses U.S. GAAP for purposes of preparing its AFS. On January 1 of Year 1, A, the ceding company, enters into a funds withheld reinsurance agreement with B, the reinsurer. B does not retrocede any risk covered by the funds withheld reinsurance agreement.

Pursuant to the terms of the agreement, from a legal title and financial accounting perspective, A retains the assets supporting the reinsured contracts (the Withheld Assets). A has a liability to B with respect to the Withheld Assets (the Withheld Assets Payable). A reflects all the unrealized gains and losses in the Withheld Assets in OCI on its AFS, and A accounts for the corresponding changes in the Withheld Assets Payable as part of its Net Income. B records an asset that corresponds to A's Withheld Assets Payable (the Withheld Assets Receivable), and B accounts for changes in the Withheld Assets Receivable as part of its Net Income.

At the end of Year 1, no Withheld Assets have been sold, and the fair market value of the Withheld Assets has increased by $10x. On A's AFS, it includes the $10x unrealized gain in OCI and records the effect of the $10x increase in its Withheld Assets Payable in its Net Income. B records the effect of a corresponding $10x increase in its Withheld Assets Receivable in its Net Income.

(ii) Analysis. Each of A and B is a Covered Insurance Company as defined in section 2.05(1) of this notice. The funds withheld reinsurance contract is a Covered Reinsurance Agreement as defined in section 2.05(5) of this notice. The $10x of unrealized gain in the Withheld Assets is included in OCI on A's AFS. Pursuant to section 4.02(1)(a) of this notice, to the extent the $10x of unrealized gain is not included in A's AFSI, the amount included in A's Net Income as a result of the $10x increase in A's Withheld Assets Payable is excluded from A's AFSI.

The amount included in B's Net Income as a result of the $10x increase in B's Withheld Assets Receivable corresponds to the unrealized gain in the Withheld Assets. Pursuant to section 4.02(1)(b) of this notice, this $10x increase is excluded from B's

AFSI.

SECTION 5. AFSI DETERMINATION RESPECTS CONGRESSIONAL "FRESH START"

.01 Purpose. The Treasury Department and the IRS anticipate that the forthcoming proposed regulations will be consistent with the guidance provided in this section 5. The Treasury Department and the IRS are providing this interim guidance to assist the Fresh Start Entities in applying the CAMT to certain transactions occurring prior to the issuance of the forthcoming proposed regulations.

.02 Respecting Congressional "Fresh Start" for Determining AFSI.

(1) For purposes of determining AFSI of a Fresh Start Entity described in section 2.04(1) of this notice (and any successor(s) under § 381), the adjusted basis rules provided in § 177(d)(2) of the 1984 Act apply with respect to any asset held by the Fresh Start Entity since January 1, 1985.

(2) For purposes of determining AFSI of a Fresh Start Entity described in section 2.04(2) or (3) of this notice (and any successor(s) under § 381), the gain or loss (but not depreciation, amortization, or other amounts) for any asset held by the Fresh Start Entity since the first day of its first taxable year beginning after the testing date is determined using its adjusted tax basis for such asset. For purposes of the previous sentence, the term testing date means December 31, 1986, in the case of a Fresh Start Entity described in section 2.04(2) of this notice, and December 31, 1997, in the case of a Fresh Start Entity described in section 2.04(3) of this notice.

SECTION 6. APPLICABILITY DATES

It is anticipated that the forthcoming proposed regulations will provide that rules consistent with the rules described in sections 3 through 5 of this notice apply for taxable years beginning after December 31, 2022. Prior to the issuance of the forthcoming proposed regulations, taxpayers may rely on the rules in sections 3 through 5 of this notice.

SECTION 7. REQUEST FOR COMMENTS

.01 Comments Regarding Guidance Provided in this Notice. The Treasury Department and the IRS request comments on any questions arising from the interim guidance set forth in this notice. Commenters are encouraged to specify the issues on which additional guidance (including additional interim guidance) is needed most quickly, as well as the most important issues on which guidance is needed. In addition to general comments regarding the provisions of this notice, the Treasury Department and the IRS request comments to address the following specific questions:

(1) AFSI adjustments for variable contracts and similar contracts (section 3 of the notice).

(a) Should a rule similar to that in section 3.02 of this notice apply to any contracts other than those described in sections 2.02(1), 2.02(2)(a), and 2.02(2)(b) of this notice?

(b) Can the result of the rule in section 3.02(1) of this notice be achieved in a more easily administered manner?

(c) In what situations and for what reasons would assets be transferred between a Covered Investment Pool and a Covered Insurance Company's general account? Should there be additional adjustments beyond those described in this notice with respect to such assets?

(2) AFSI adjustments for covered reinsurance agreements (section 4 of the notice).

(a) Does the notice accurately describe the financial accounting for funds withheld reinsurance and modified coinsurance agreements? Does the rule described in section 4.02(1) of this notice adequately address the issue?

(b) Should the definition of Covered Reinsurance Agreement in section 2.05(5) of this notice be revised or expanded?

(c) Would it be useful to more specifically describe the fair value elections available under U.S. GAAP and IFRS? If so, how should the elections be described?

(d) Does the rule in section 4.02(2) of this notice appropriately adjust the rule in section 4.02(1) of this notice when fair value elections are made?

(e) Should the rule in section 4.02(1) of this notice reference the "embedded derivative"? If so, how should such rule reference the embedded derivative, and how should "embedded derivative" be defined?

(3) Respecting "fresh start" for determining AFSI (section 5 of the notice).

(a) Are there other formerly tax-exempt entities the repeal of whose subtitle A exemption was associated with special statutory "fresh start" basis rules similar to those applicable to any Fresh Start Entity?

(b) Should a rule similar to that in section 5.02 of this notice apply to any other entities?

.02 Procedures for Submitting Comments.

(1) Deadline. Written comments should be submitted by April 3, 2023. Consideration will be given, however, to any written comment submitted after April 3, 2023, if such consideration will not delay the issuance of the forthcoming proposed regulations.

(2) Form and manner. The subject line for the comments should include a reference to Notice 2023-20. All commenters are strongly encouraged to submit comments electronically. However, comments may be submitted in one of two ways:

(a) Electronically via the Federal eRulemaking Portal at www.regulations.gov (type IRS-2023-0005 in the search field on the regulations.gov homepage to find this notice and submit comments); or

(b) By mail to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2023-20), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, D.C., 20044.

(3) Publication of comments. The Treasury Department and the IRS will publish for public availability any comment submitted electronically and on paper to its public docket on regulations.gov.

SECTION 8. DRAFTING AND CONTACT INFORMATION

The principal author of this notice is Ian Follansbee of the Office of the Associate Chief Counsel (Financial Institutions and Products). Other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice, please contact Mr. Follansbee at 312-368-8238 (not a toll-free number).