AMENDMENT TO RULES COMMITTEE PRINT 115-39

OFFERED BY MR. BUDD OF NORTH CAROLINA

Add at the end the following:

TITLE VI—PREVENTION OF AVOIDANCE OF TAX THROUGH REINSURANCE WITH NON-TAXED AFFILIATES

SEC. 6001. PREVENTION OF AVOIDANCE OF TAX THROUGH REINSURANCE WITH NON-TAXED AFFILIATES.

(a) IN GENERAL.—Part III of subchapter L of chapter 1 is amended by adding at the end the following new section:

“SEC. 849. SPECIAL RULES FOR REINSURANCE OF NON-LIFE CONTRACTS WITH NON-TAXED AFFILIATES.

“(a) IN GENERAL.—The taxable income under section 831(a) or the life insurance company taxable income under section 801(b) (as the case may be) of an insurance company shall be determined by not taking into account—

“(1) any non-taxed reinsurance premium,

“(2) any additional amount paid by such insurance company with respect to the reinsurance for
which such non-taxed reinsurance premium is paid, to the extent such additional amount is properly allocable to such non-taxed reinsurance premium, and "(3) any return premium, ceding commission, reinsurance recovered, or other amount received by such insurance company with respect to the reinsurance for which such non-taxed reinsurance premium is paid, to the extent such return premium, ceding commission, reinsurance recovered, or other amount is properly allocable to such non-taxed reinsurance premium.

"(b) NON-TAXED REINSURANCE PREMIUMS.—For purposes of this section—

"(1) IN GENERAL.—The term ‘non-taxed reinsurance premium’ means any reinsurance premium paid directly or indirectly to an affiliated corporation with respect to reinsurance of risks (other than excepted risks), to the extent that the income attributable to the premium is not subject to tax under this subtitle (either as the income of the affiliated corporation or as amounts included in gross income by a United States shareholder under section 951).

"(2) EXCEPTED RISKS.—The term ‘excepted risks’ means any risk with respect to which reserves described in section 816(b)(1) are established.
“(c) AFFILIATED CORPORATIONS.—For purposes of this section, a corporation shall be treated as affiliated with an insurance company if both corporations would be members of the same controlled group of corporations (as defined in section 1563(a)) if section 1563 were applied—

“(1) by substituting ‘at least 50 percent’ for ‘at least 80 percent’ each place it appears in subsection (a)(1), and

“(2) without regard to subsections (a)(4), (b)(2)(C), (b)(2)(D), and (e)(3)(C).

“(d) ELECTION TO TREAT REINSURANCE INCOME AS EFFECTIVELY CONNECTED.—

“(1) IN GENERAL.—A specified affiliated corporation may elect for any taxable year to treat specified reinsurance income as—

“(A) income effectively connected with the conduct of a trade or business in the United States, and

“(B) for purposes of any treaty between the United States and any foreign country, income attributable to a permanent establishment in the United States.

“(2) EFFECT OF ELECTION.—In the case of any specified reinsurance income with respect to which the election under this subsection applies—
“(A) Deduction allowed for reinsurance premiums.—For exemption from subsection (a), see definition of non-taxed reinsurance premiums in subsection (b).

“(B) Exception from excise tax.—The tax imposed by section 4371 shall not apply with respect to any income treated as effectively connected with the conduct of a trade or business in the United States under paragraph (1).

“(C) Taxation under this subchapter.—Such income shall be subject to tax under this subchapter to the same extent and in the same manner as if such income were the income of a domestic insurance company.

“(D) Coordination with foreign tax credit provisions.—For purposes of subpart A of part III of subchapter N and sections 78 and 960—

“(i) such specified reinsurance income shall be treated as derived from sources without the United States, and

“(ii) subsections (a), (b), and (c) of section 904, and section 960, shall be applied separately with respect to each item of such income.
The Secretary may issue regulations or other guidance which provide that related items of specified reinsurance income may be aggregated for purposes of applying clause (ii).

“(3) SPECIFIED AFFILIATED CORPORATION.—For purposes of this subsection, the term ‘specified affiliated corporation’ means any affiliated corporation which is a foreign corporation and which meets such requirements as the Secretary shall prescribe to ensure that tax on the specified reinsurance income of such corporation is properly determined and paid.

“(4) SPECIFIED REINSURANCE INCOME.—For purposes of this paragraph, the term ‘specified reinsurance income’ means all income of a specified affiliated corporation which is attributable to reinsurance with respect to which subsection (a) would (but for the election under this subsection) apply.

“(5) RULES RELATED TO ELECTION.—Any election under paragraph (1) shall—

“(A) be made at such time and in such form and manner as the Secretary may provide,

and

“(B) apply for the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.
“(e) Exception for Amounts Subject to Foreign Tax.—An amount shall not be treated as described in paragraph (1), (2), or (3) of subsection (a) if the taxpayer demonstrates to the satisfaction of the Secretary that such amount was subject to an effective rate of income tax imposed by a foreign country which is not less than 100 percent of the maximum rate of tax specified in section 11.

“(f) Regulations.—The Secretary shall prescribe such regulations or other guidance as may be appropriate to carry out, or to prevent the avoidance of the purposes of, this section, including regulations or other guidance which provide for the application of this section to alternative reinsurance transactions, fronting transactions, conduit and reciprocal transactions, and any economically equivalent transactions.”.

(b) Clerical Amendment.—The table of sections for part III of subchapter L of chapter 1 is amended by adding at the end the following new item:”.

(c) Effective Date.—The amendment made by this section shall apply to taxable years beginning after December 31, 2017.