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March 24, 2025

2024 Passive Foreign Investment Company Tax analysis

This discussion includes Fidelis Insurance Holdings Limited's ("FIHL" or "Fidelis") view of its status as a Passive Foreign Investment Company ("PFIC") for the year ended December 31, 2024.

The U.S. shareholders of Fidelis invest (directly or indirectly) in Fidelis Insurance Holdings Limited. FIHL has determined there are no 10% or greater US shareholders in terms of vote or value ("10% US Shareholders") among its US shareholders that directly or indirectly own or are attributed shares of FIHL pursuant to Section 958 of the Code, and thus no US shareholder is expected to be subject to the Controlled Foreign Corporation ("CFC") regime. With no expected CFC issues, the PFIC regime is the primary concern for US shareholders of Fidelis as it relates to the potential for current or otherwise adverse taxation at the US shareholder-level.

As no shareholder owns greater than 50% of FIHL, the status of the underlying subsidiaries of FIHL as PFICs has no adverse effect on such shareholders if FIHL is not a PFIC (Section 1298(a)(2)). As FIHL owns greater than 25% of the value of each of its subsidiaries, FIHL is treated as owning its proportionate share of the gross assets and gross income of its subsidiaries when determining whether FIHL is a PFIC, e.g., applying the gross asset and gross income tests (Section 1297(c)).

Section 1297(b)(2) provides an exception for the definition of passive income if the income is derived in the active conduct of an insurance business by a qualifying insurance corporation ("QIC"). Per Section 1297(f), a QIC is defined as a foreign corporation which 1) would be subject to subchapter L if such corporation were a domestic corporation and 2) the 'applicable insurance liabilities' of the foreign insurance company must constitute more than 25% of its total assets as reported on the corporation's applicable financial statement for the last year ending with or within the taxable year of the U.S. owner.

If a foreign insurance corporation is not a QIC solely because its applicable insurance liabilities constitute 25% or less of its total assets, an elective alternative test may apply if (1) the corporation's applicable insurance liabilities constitute at least 10% of its total assets; and (2) based on the applicable facts and circumstances, the corporation is predominantly engaged in an insurance business, more than half of the foreign corporation's net written premiums are from insurance coverage against the risk of loss from catastrophic loss events and its failure to qualify under the 25% threshold is due solely to runoff-related or rating-related causes (Section 1297(f)(2)). This election is made by the US shareholder.

Fidelis (with the assistance of its tax advisors) has evaluated its income and assets for PFIC determination purposes and notes the following with respect to a determination that FIHL is not a PFIC (without including QIC considerations):

- PFIC Income test: Less than 75% of the gross consolidated income of FIHL is passive income.
- PFIC Asset Test: The passive assets (cash and investments) of FIHL are below 50% of its total consolidated assets. We note there is limited guidance in relation to certain assets of an insurance company being classified as active or passive for the purposes of this test (e.g., reinsurance balances recoverable, etc.); as such, further information in relation to the QIC test is included below. We recommend you discuss this matter with your tax advisor.

Alternatively, applying the QIC test at the insurance subsidiary-level is also believed to result in FIHL not being considered a PFIC in consideration of Fidelis Insurance Bermuda Limited ("FIBL") which is FIHL's largest subsidiary (FIBL represents more than 50% of the assets and revenues of FIHL):

- Applicable Insurance Liabilities Analysis:
    - Applying the QIC test to FIBL's financial statements results in the applicable insurance liabilities to total assets being greater than 25%. We note that no election by the US shareholder is required if utilizing this position.
    - Alternatively, applying the QIC test to FIBL's financial statements and using 'net reserves' as included in the 2021 Proposed Regulations which discuss the QIC test (Reserves for losses and loss adjustment expenses are reduced by reinsurance balances recoverable on reserves for losses and loss expenses and total assets are also reduced by reinsurance balances recoverable on reserves for losses and loss expenses) is believed to result in the applicable insurance liabilities to total assets being greater than 10% but less than 25%. Based on applicable facts and circumstances, FIBL is predominantly engaged in an insurance business and more than half of FIBL's net written premiums are from insurance coverage against the risk of loss from catastrophic loss events, and its failure to qualify under the 25% threshold on a 'net reserves' basis is due solely to rating-related causes which require a strong balance sheet to support the rating. We note that the Section 1297(f)(2) election by a US shareholder may be required if utilizing this position.

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