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## Treasury Identifies Regulations to Withdraw, Revoke or Revise to Reduce Regulatory Burdens

In response to Executive Order 13789 (<https://www.gpo.gov/fdsys/pkg/FR-2017-04-26/pdf/2017-08586.pdf>), the Treasury Department issued a report ([https://www.treasury.gov/press-center/press-releases/Documents/2018-03004\\_Tax\\_EO\\_report.pdf](https://www.treasury.gov/press-center/press-releases/Documents/2018-03004_Tax_EO_report.pdf)) identifying eight proposed, temporary or final regulations for withdrawal, revocation or modification.

### Proposed Regulations to Be Withdrawn Entirely

- Proposed regulations under Section 2704 would have narrowed exceptions related to the valuation of interests in family-controlled entities for wealth transfer purposes and dramatically expanded the class of restrictions that are disregarded under Section 2704. Treasury and the IRS believe that the proposed regulations' approach to the problem of artificial valuation discounts is unworkable based on a review of comments received in response to the proposed regulations. (Section references are to the Internal Revenue Code of 1986, as amended.)
- Proposed regulations under Section 103 on the definition of political subdivision would have required a political subdivision not only to possess significant sovereign power but also to meet enhanced standards for showing a governmental purpose and governmental control. Treasury and the IRS believe that the proposed regulations have a far-reaching impact on existing legal structures that is not justified.

### Regulations to Consider Revoking in Part

- Final regulations under Section 7602 provide that the IRS may use private contractors to assist the IRS in auditing taxpayers, but the risk of a private attorney taking practical control during an investigation is high. While Treasury and the IRS are considering an amendment to these regulations, the regulations are expected to still allow outside subject-matter experts to participate in summons proceedings.
- Proposed and temporary regulations issued under Sections 707 and 752 that govern how liabilities are allocated for purposes of disguised sale treatment would, according to the report, change the tax treatment of the formation of many partnerships; therefore, Treasury and the IRS will consider whether such regulations should be revoked. However, the regulations relating to bottom-dollar guarantees will be retained.
- Final and temporary regulations under Section 385 on the treatment of certain interests in corporations as stock or indebtedness include documentation rules and distribution regulations. Consistent with Notice 2017-36 that delayed the application of the documentation rules until 2019 (see our prior coverage here), Treasury and the IRS do not believe that taxpayers should have to expend time and resources designing and building systems to comply with rules that may be modified to alleviate undue burdens of compliance; therefore, they are considering revoking the regulations. With respect to the distribution regulations, Treasury is actively working with Congress on fundamental tax reform that is expected to obviate the need for the distribution regulations and make it possible for the regulations to be revoked.

### Regulations to Consider Substantially Revising

- Treasury and the IRS believe exceptions to the final regulations under Section 367 on the treatment of certain transfers of property to foreign corporations may be justified by both the structure of the statute and its legislative history. The Office of Tax Policy and the IRS are working to develop a proposal that would expand the scope of the active trade or business exception to the tax on transfers of property to foreign corporations.
- Temporary regulations under Section 337(d) amend the rules on certain transfers of property by C corporations to REITs and RICs. Treasury and the IRS believe that the

temporary regulations may produce inappropriate results in some cases and are considering rule changes, including limiting the potential taxable gain recognized by application of the predecessor and successor rule.

- Final regulations under Section 987 related to income currency gain or loss with respect to a Section 987 qualified business unit have proved too difficult to apply for many taxpayers. Treasury and the IRS intend to issue guidance that would (a) permit taxpayers to elect to defer the application of Regulation Section 1.987-1 through 1.987-10 until at least 2019, (b) propose modifications to permit taxpayers to elect to adopt a simplified method of calculating Section 987 gain or loss and translating Section 987 gain and loss, and (c) consider alternatives to the transition rules in the final regulations.

### IRS Announces Delayed Effective Date on Section 987 Regulations

In January, Treasury and the IRS released final regulations relating to the determination of the taxable income or loss of a taxpayer with respect to a qualified business unit (QBU) subject to Section 987 and temporary regulations under Section 987 containing rules relating to the recognition and deferral of foreign currency gain or loss under Section 987 in connection with certain QBU terminations and certain other transactions. The final and temporary regulations were effective on Dec. 7, 2016, with various applicability dates. In Notice 2017-57; 2017-42 IRB 1 (<https://www.irs.gov/pub/irs-drop/n-17-57.pdf>), Treasury and the IRS announced their intention to amend certain of the regulations to provide that the regulations will apply to taxable years beginning on or after two years after the first date of the first taxable year following Dec. 7, 2016, but an election to apply the final regulations earlier is available in certain circumstances.

### IRS Updates Countries on Tax Data Exchange List

In the September 2017 supplement to Revenue Procedure 2014-64 (<https://www.irs.gov/pub/irs-drop/rp-17-46.pdf>), the IRS updated the list of countries for which reporting of interest paid to residents of such countries is required under Regulation Sections 1.6049-4(b)(5) and 1.6049-8(a). The supplement also updates the list of countries with which Treasury and the

IRS have determined it is appropriate to have an automatic exchange relationship with respect to information collected under Regulation Sections 1.6049-4(b)(5) and 1.6049-8(a).

### Congressional Research Service Releases Reports Related to Tax Reform

The Congressional Research Service released the following:

- An overview (<http://www.stradley.com/~media/Files/Publications/2017/10/CRS%20NOL.pdf>) of the current tax treatment of NOLs as well as a brief legislative history. The report also explains the mechanics by which losses can be used to receive a refund for taxes paid in the past or to reduce taxes owed in the future. The report reviews several policy options for Congress to consider as they debate tax reform, including extending the carryback period, allowing an immediate tax refund for losses and allowing interest to accrue on losses that are carried forward.
- An analysis (<https://fas.org/sgp/crs/misc/R43012.pdf>) of data to inform the policy debate about reforming itemized tax deductions for individuals.
- An analysis (<https://fas.org/sgp/crs/misc/RL34229.pdf>) of the many concerns expressed about the corporate tax that are not supported by empirical evidence. The report suggests a number of revenue-neutral changes such as base broadening, reducing the benefits of debt finance through inflation indexing, taxing large pass-through firms as corporations and reducing the tax at the firm level offset by an increase at the individual level.

### New York Updates Online Corporate Tax Reform FAQs

The New York Department of Taxation and Finance has updated its online corporate tax reform FAQs ([https://www.tax.ny.gov/bus/ct/corp\\_tax\\_reform\\_faqs.htm](https://www.tax.ny.gov/bus/ct/corp_tax_reform_faqs.htm)) regarding whether nontaxpayer members of a unitary group that meet the ownership requirements under Tax Law section 210-C are required to be included in a combined report, and when an alien corporation that generated income, gain or loss that is effectively connected with the conduct of its trade or business in the United States will be included in a combined report.



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