

TAX ALERT

REGULATORY FREEZE PENDING REVIEW

BY RICHARD BLOOM AND STEPHEN BRECHER

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The White House, Office of Press Secretary, released a Memorandum (that does not appear to have the legal effect of either an executive order or presidential memorandum) for the Heads of Executive Departments and Agencies (“Memorandum”) from Reince Priebus, Assistant to the President and Chief of Staff on January 20, 2017 with a three pronged approach:

- No regulation is to be sent to the Office of the Federal Register (the “OFR”) until a department or agency head appointed by or designated by the President after noon on January 20, 2017 reviews and approves the regulation. This is subject to any exceptions the Director or Acting Director of the Office of Management and Budget (the “OMB Director”) may allow for certain emergency situations relating to such issues as health, safety, financial, or national security matters;
- If a regulation has been sent to OFR but has not yet been published in the Federal Register, it is to be withdrawn immediately from the OFR for review and approval as described above. The New Centralized Partnership Audit Regime proposed regulations released on January 18, 2017 fall under this mandate as they had not yet been published in the Federal Register. The 277 pages of the proposed regulations are the Treasury’s and IRS’ attempt to clarify the Bipartisan Budget Act of 2015 (“BBA”) that is to become effective January 1, 2018. Other matters sent to the Federal Register not yet published by January 20, 2017 include:
 - The Treatment of Certain Interests in Corporations as Stock or Indebtedness; Correction (a Technical Corrections provision);
 - Qualifying Income from Activities of Publicly Traded Partnerships with Respect to Minerals or Natural Resources; and Dividend Equivalents from Sources within the United States.

These latter two items were scheduled for publication on January 24, 2017 with an effective date of January 19, 2017. With the approval of OMB, these two matters are effective within the guidelines of the first point above.

- Regulations that have already been published in the Federal Register but are not yet in effect are to be postponed 60 days from January 20, 2017, subject to the exception noted above to allow for a review of questions of fact, law and policy. Two items published on January 18 and 19 respectively and not effective on January 20, 2017 are the Rules Regarding Inversions and Related Transactions and the Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations and Definition of Dependent. The Memorandum suggests that a delay beyond the 60 days be proposed to allow for notice and comment. When the delay period has matured, no further action is required for regulations that raise no substantial questions of law or policy. If

questions of law or policy arise, the agencies are to notify the OMB Director and take any further action in consultation with the OMB Director.

Regulations subject to statutory or judicial deadlines are to be identified as such to the OMB Director and excluded from the above. The heads of executive departments and agencies should notify the OMB Director of exclusions from the directives that fall under the exceptions above.

Please contact your Mazars USA professional for additional information.

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