

TAX ALERT

TREASURY REPORT DETAILS EFFORTS TO REDUCE BURDEN OF TAX REGULATIONS BY EDUARDO CHUNG AND TIMOTHY EVANS

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On October 4, 2017, the United States Department of the Treasury released a report entitled, [Second Report to the President on Identifying and Reducing Tax Regulatory Burdens](#), recommending actions to eliminate and/or modify eight regulations previously identified in a June 22, 2017 Treasury report as particularly burdensome for taxpayers (see our [Tax Alert](#) dated July 24, 2017). The report comes in response to Executive Order 13789, which directs the Secretary of the Treasury to identify tax regulations issued on or after January 1, 2016 that impose an undue financial burden, add undue complexity to the federal tax laws, or otherwise exceed the statutory authority of the Internal Revenue Service.

In addition to the eight regulations previously identified, Treasury has indicated that it is still considering possible reforms to several recent regulations not identified, including changes to those promulgated under IRC § 871(m) relating to substitute payments treated as US source dividends. Additionally, Treasury has stated that the Treasury Regulatory Reform Task Force has identified over 200 older regulations that have been earmarked for potential revocation.

Specific Recommendations:

Prop. Regs. Section 2704 - Restrictions on Liquidation of an Interest for Estate, Gift and Generation-Skipping Transfer Taxes.

The goal of these proposed regulations was to reduce the ability to generate supposedly artificial valuation discounts when transferring family-controlled entities. Treasury and the IRS now believe that the proposed regulations' approach to the problem of artificial valuation discounts is unworkable. Treasury recommends that these regulations be withdrawn in their entirety. Treasury and the IRS plan to publish a withdrawal of the proposed regulations.

Prop. Regs. Section 103 - Definition of Political Subdivision.

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Treas. Regs. Section 7602 - Participation of a Person Described in Section 6103(n) in a Summons Interview.

The final regulations under Section 7602 permit the IRS to use private contractors in carrying out the examination of a taxpayer. Treasury is proposing to amend these regulations to provide that the IRS will be prohibited from allowing outside attorneys to question a witness on behalf of the IRS through the summons process, as well as more generally prohibit the participation of outside attorneys in reviewing or consulting with regard to summons.

Regulations Under Section 707 and Section 752 on Treatment of Partnership Liabilities

With respect to the allocation of liabilities in the context of disguised sale treatment, Treasury is considering the revocation of the proposed and temporary regulations and reinstating the prior regulations. In contrast, Treasury is proposing to retain the current proposed and temporary regulations that relate to whether a "bottom-dollar guarantee" meets the criteria for being considered a recourse liability.

Treas. Regs. Section 385 – Treatment of Certain Interests in Corporations as Stock or Indebtedness

Recognizing the substantial burden new documentation requirements will impose on businesses, Treasury announced in Notice 2017-36 that the application of the documentation rules would be delayed until 2019. Subsequent to that announcement, Treasury is now considering revoking the documentation rules as issued, instead developing revised rules in a simplified and streamlined format. Treasury anticipates that broad tax reform will address base erosion and earnings stripping concerns that were the target of the Section 385 distribution rules, ultimately allowing for their revocation. Pending the outcome of tax reform, however, Treasury will not propose to revoke the distribution rules.

Treas. Regs. Section 367 – Treatment of Certain Transfers of Property to Foreign Corporations

Treasury is looking at a modification to the Section 367 regulations that would substantially expand the "active trade or business" exception to include outbound transfers of foreign goodwill and going-concern value attributable to a foreign branch. Proposed regulations are expected in the near term.

Temp. Regs. Section 337(d) – Certain Transfers of Property to Regulated Investment Companies and Real Estate Investment Trusts

Acknowledging that temporary regulations under Section 337(d) may result in too much gain being recognized in certain cases, technical changes to the regulations to narrow the application of the rules are being considered. For example, Treasury is considering a limitation on the potential gain to be recognized through application of the predecessor and successor rule in the context of REIT spin-offs.

Treas. Regs. Section 987 – Income and Currency Gain or Loss with Respect to a Section 987 Qualified Business Unit

Treasury expects to issue guidance permitting taxpayers to defer the application of Regulation Sections 1.987-1 through 1.987-10 relating to translating branch income, calculating



foreign currency gain/loss with respect to a branch's financial assets and liabilities, and the recognition of foreign currency gain/loss in transfers by a branch to its owner until at least 2019.

Additionally, Treasury intends to propose modifications to the regulations that will permit an election to adopt a simplified method of calculating or translating gain or loss under Section 987.

Please contact your Mazars USA professional for additional information.

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