

Foreign Currency Guidance under Section 987

Notice 2017-57

I. PURPOSE

This Notice announces that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to amend the regulations under section 987 to defer the applicability date of the final regulations under section 987, as well as certain provisions of the temporary regulations under section 987, by one year.

The final regulations under section 987 were identified in Notice 2017-38, 2017-30 I.R.B. 147 (July 24, 2017), as significant tax regulations requiring additional review pursuant to Executive Order 13789. As part of that review, the Treasury Department and the IRS are considering changes to the final regulations that would allow taxpayers to elect to apply alternative rules for transitioning to the final regulations and alternative rules for determining section 987 gain or loss.

II. BACKGROUND

A. FINAL AND TEMPORARY REGULATIONS

On January 9, 2017, the Treasury Department and the IRS published Treasury Decision 9794, which contains 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 (a section 987 QBU); the timing, amount, character, and source of any section 987 gain or loss; and other regulations (the final regulations). On that same date, the Treasury Department and the IRS also published Treasury Decision 9795, which contains temporary regulations under section

987, including the following: 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; an annual deemed termination election for a section 987 QBU; an elective method, available to taxpayers that make the annual deemed termination election, for translating all items of income or loss with respect to a section 987 QBU at the yearly average exchange rate; rules regarding the treatment of section 988 transactions of a section 987 QBU; rules regarding QBUs with the U.S. dollar as their functional currency; rules regarding combinations and separations of section 987 QBUs; rules regarding the translation of income used to pay creditable foreign income taxes; and rules regarding the allocation of assets and liabilities of aggregate partnerships for purposes of section 987 (the temporary section 987 regulations). Treasury Decision 9795 also contains temporary regulations under section 988 requiring the deferral of certain section 988 loss that arises with respect to related-party loans (the temporary section 988 regulations, and with the temporary section 987 regulations, the temporary regulations).

B. APPLICABILITY DATES

The final and temporary regulations were effective on December 7, 2016. Dates of applicability for §§1.987-1 through 1.987-10 are provided in §1.987-11. Specifically, §1.987-11(a) states that, except as otherwise provided in §1.987-11, §§1.987-1 through 1.987-10 apply to taxable years beginning on or after one year after the first day of the first taxable year following December 7, 2016. Corresponding provisions under sections 861, 985, 988, and 989 also apply to taxable years beginning on or after one year after the first day of the first taxable year following December 7, 2016. See §§1.861-9T(g)(2)(vi); 1.985-5(g); 1.988-1(i); 1.988-4(b)(2)(ii); 1.989(a)-1(b)(4); 1.989(a)-1(d)(4).

Similarly, §§1.987-1T (other than §§1.987-1T(g)(2)(i)(B) and (g)(3)(i)(H)) through 1.987-4T, 1.987-6T, 1.987-7T, and 1.988-1T (the related temporary regulations) apply to taxable years

beginning on or after one year after the first day of the first taxable year following December 7, 2016. See §§1.987-1T(h); 1.987-2T(e); 1.987-3T(f); 1.987-4T(h); 1.987-6T(d); 1.987-7T(d); 1.988-1T(j). All other provisions in the temporary regulations, including the provisions relating to the deferral of section 987 gain or loss and the temporary section 988 regulations, are subject to different applicability dates. See §§1.987-1T(h) (concerning §§1.987-1T(g)(2)(i)(B) and (g)(3)(i)(H)); 1.987-8T(g); 1.987-12T(j); 1.988-2T(j).

A taxpayer may apply the final regulations and the related temporary regulations to taxable years beginning after December 7, 2016, provided the taxpayer consistently applies those regulations to such taxable years with respect to all section 987 QBUs directly or indirectly owned by the taxpayer on the transition date as well as all section 987 QBUs directly or indirectly owned on the transition date by members that file a consolidated return with the taxpayer or by any controlled foreign corporation, as defined in section 957, in which a member owns more than 50 percent of the voting power or stock value, as determined under section 958(a). Sections 1.987-11(b); 1.987-1T(h); 1.987-2T(e); 1.987-3T(f); 1.987-4T(h); 1.987-6T(d); 1.987-7T(d). The transition date is the first day of the first taxable year to which the §§1.987-1 through 1.987-10 are applicable with respect to a taxpayer under §1.987-11. Section 1.987-11(c).

III. AMENDED APPLICABILITY DATE

The Treasury Department and the IRS intend to amend §§1.861-9T, 1.985-5, 1.987-11, 1.987-1T through 1.987-4T, 1.987-6T, 1.987-7T, 1.988-1, 1.988-1T, 1.988-4, and 1.989(a)-1 to provide that the final regulations and the related temporary regulations will apply to taxable years beginning on or after two years after the first date of the first taxable year following December 7, 2016. Thus, for a taxpayer whose first taxable year after December 7, 2016, begins on January 1, 2017, the final regulations and the related temporary regulations will apply for the taxable year beginning on January 1, 2019.

A taxpayer may, however, elect under §1.987-11(b) to apply the final regulations and the related temporary regulations to taxable years beginning after December 7, 2016 (subject to the conditions in §1.987-11(b)), including taxable years beginning on or after one year after the first day of the first taxable year following December 7, 2016 (the original applicability date in §1.987-11(a)).

The intended amendments would not affect the applicability date of the temporary regulations other than the related temporary regulations.

IV. TAXPAYER RELIANCE

Before the issuance of the amendments to the final regulations and the related temporary regulations described in section III of this Notice, taxpayers may rely on the provisions of this Notice regarding those proposed amendments.

V. DRAFTING INFORMATION

The principal author of this Notice is Anthony J. Marra of the Office of Associate Chief Counsel (International). For further information regarding this Notice, contact Anthony J. Marra at (202) 317-6938 (not a toll-free call).