

Temporary Regulations under Section 385 on the Treatment of Certain Interests in Corporations as Stock or Indebtedness

Notice 2019-58

On October 21, 2016, the Treasury Department and the IRS published T.D. 9790 in the Federal Register (81 FR 72858), which included final and temporary regulations under section 385 addressing documentation in §1.385-2 and certain debt that is issued to a controlling shareholder in a distribution or in another related-party transaction in §1.385-3. On the same date, the Treasury Department and the IRS also published a notice of proposed rulemaking (REG-130314-16) in the Federal Register (81 FR 72751) (the 2016 Proposed Regulations) by cross-reference to the temporary regulations under section 385, which include §§1.385-3T and 1.385-4T (the Temporary Regulations).

The Temporary Regulations expire on October 13, 2019. See section 7805(e); §1.385-3T(l); §1.385-4T(h). The 2016 Proposed Regulations are proposed to apply to taxable years ending on or after January 19, 2017; in contrast to the Temporary Regulations, the 2016 Proposed Regulations do not expire. A taxpayer may rely on the 2016 Proposed Regulations for periods following the expiration of the Temporary Regulations until further notice is given, provided that the taxpayer consistently applies the rules in the 2016 Proposed Regulations in their entirety.

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