

Foreign Currency Guidance under Section 987

Notice 2019-65

SECTION 1. 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 related final and temporary regulations, by one additional 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 as discussed in the Second Report to the President on Identifying and Reducing Tax Regulatory Burdens published on October 16, 2017 (82 Fed. Reg. 48013).

SECTION 2. BACKGROUND

.01 Final and Temporary Regulations.

(1) The 2016 Final Regulations and the Temporary Regulations.

On December 8, 2016, the Treasury Department and the IRS published Treasury Decision 9794 (81 Fed. Reg. 88806), 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 amendments to existing regulations under sections 861, 985, 988 and 989 (the 2016 final regulations). On that same date, the Treasury Department and the IRS also published Treasury Decision 9795 (81 Fed. Reg. 88854), 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 section 987 aggregate partnerships (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). The Treasury Department and the IRS concurrently published a notice of proposed rulemaking by cross-reference to the temporary regulations. See REG-128276-12, 81 Fed. Reg. 88882 (December 8, 2016).

(2) *Deferral Notices.*

On October 16, 2017, the Treasury Department and the IRS published Notice 2017-57, 2017-42 I.R.B. 325 (October 16, 2017), announcing that future guidance would defer the applicability date of the 2016 final regulations and certain of the temporary regulations by one year. On June 25, 2018, the Treasury Department and the IRS published Notice 2018-57, 2018-26 I.R.B. 774 (June 25, 2018), announcing that future guidance would defer the applicability date of the 2016 final regulations and certain of the temporary regulations by one additional year.

(3) The 2019 Final Regulations.

On May 13, 2019, the Treasury Department and the IRS published Treasury Decision 9857 (84 Fed. Reg. 20790), which finalized the temporary regulations dealing with combinations and separations of section 987 QBUs and the recognition and deferral of foreign currency gain or loss under section 987 in connection with certain QBU terminations and certain other transactions (the 2019 final regulations). Treasury Decision 9857 also withdrew temporary regulations under §1.987-7T regarding the allocation of assets and liabilities of certain partnerships. All other portions of the temporary regulations remain outstanding.

.02 Applicability Dates.

(1) The 2016 Final Regulations.

The 2016 final regulations were effective on December 7, 2016. Dates of applicability for §§1.987-1 through 1.987-10 are provided in §1.987-11(a). 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). Following the amendments to such regulations described in Notice 2017-57 and Notice 2018-57, the 2016 final regulations would apply to taxable years beginning on or after the first day of the first taxable year following December 7, 2019.

(2) The Temporary Regulations.

Similarly, §§1.987-1T (other than §§1.987-1T(g)(2)(i)(B) and (g)(3)(i)(H)), 1.987-3T, 1.987-6T, 1.988-1T, and 1.988-2T(i) (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); 1.987-3T(f); 1.987-6T(d); 1.988-1T(j); 1.988-2T(j). Following the amendments described in Notice 2017-57 and Notice 2018-57, the related temporary regulations and the portions of the notice of proposed rulemaking that cross-referenced the related temporary regulations (the related proposed regulations) would apply to taxable years beginning on or after the first day of the first taxable year following December 7, 2019. All other provisions in the temporary 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); 1.988-2T(j).

(3) The 2019 Final Regulations.

The 2019 final regulations were effective on May 13, 2019. Dates of applicability for the 2019 final regulations are provided in §§1.987-2(e), 1.987-4(h), and 1.987-12(j). Specifically, §§1.987-2(e)(2) and 1.987-4(h)(2) provide that §§1.987-2(c)(9), 1.987-4(c)(2), and 1.987-4(f) apply to taxable years beginning on or after the day that is three

years after the first day of the first taxable year following December 7, 2016. Thus, §§1.987-2(c)(9), 1.987-4(c)(2), and 1.987-4(f) of the 2019 final regulations would also apply to taxable years beginning on or after the first day of the first taxable year following December 7, 2019.

Section 1.987-12(j) generally provides that, subject to certain exceptions, §1.987-12 applies to any deferral event or outbound loss event that occurs on or after January 6, 2017 and to any deferral event or outbound loss event that occurs as a result of an entity classification election made under §301.7701-3 filed on or after January 6, 2017, and that is effective before January 6, 2017.

(4) Early Application.

A taxpayer may apply the 2016 final regulations, the related temporary regulations, the related proposed regulations, and §§1.987-2(c)(9), 1.987-4(c)(2), and 1.987-4(f) of the 2019 final 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). See §§1.861-9T(g)(2)(vi); 1.985-5(g); 1.987-1T(h); 1.987-2(e)(2); 1.987-3T(f); 1.987-4(h)(2); 1.987-6T(d); 1.987-11(b); 1.988-1(i); 1.988-1T(j); 1.988-2T(j); 1.988-4(b)(2)(ii); 1.989(a)-1(b)(4); 1.989(a)-1(d)(4).

The transition date is the first day of the first taxable year to which §§1.987-1 through 1.987-10 are applicable with respect to a taxpayer under §1.987-11. Section 1.987-11(c).

SECTION 3. AMENDED APPLICABILITY DATE

The Treasury Department and the IRS intend to amend §§1.861-9T, 1.985-5, 1.987-11, 1.988-1, 1.988-4, and 1.989(a)-1 of the 2016 final regulations and §§1.987-2 and 1.987-4 of the 2019 final regulations to apply to taxable years beginning on or after the first day of the first taxable year following December 7, 2020 (the amended applicability date). Thus, following the amendments described in this notice, for a taxpayer whose first taxable year after December 7, 2020, begins on January 1, 2021, the 2016 final regulations and §§1.987-2(c)(9), 1.987-4(c)(2), and 1.987-4(f) of the 2019 final regulations would apply for the taxable year beginning on January 1, 2021.

The related temporary regulations, which expire on December 6, 2019, will not become applicable. After the related temporary regulations expire, the amended applicability date will apply for purposes of the related proposed regulations.

A taxpayer may choose to apply the 2016 final regulations, the related temporary regulations (if applicable), the related proposed regulations, and §§1.987-2(c)(9), 1.987-4(c)(2), and 1.987-4(f) of the 2019 final regulations to a taxable year beginning after December 7, 2016 and before the amended applicability date 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).

SECTION 4. TAXPAYER RELIANCE

Before the issuance of the amendments to the regulations described in section 3 of this Notice, taxpayers may rely on the provisions of this Notice regarding those proposed amendments.

SECTION 5. DRAFTING INFORMATION

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