

Deferred Applicability Dates for Foreign Currency Guidance

Notice 2022-34

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 2016 final regulations and the related 2019 final regulations (as defined below) by one additional year.

On December 8, 2016, the Treasury Department and the IRS published Treasury Decision 9794 (81 Fed. Reg. 88806), which contained final regulations under section 987 and amendments to existing regulations under sections 861, 985, 988, and 989. See §§1.861-9T(g)(2)(ii)(A)(1) and (g)(2)(vi); 1.985-5; 1.987-0 through 1.987-11; 1.988-0; 1.988-1(a)(4), (a)(10)(ii), and (i); 1.988-4(b)(2); and 1.989(a)-1(b)(2)(i), (b)(4), (d)(3), and (d)(4) (the “2016 final regulations”) for the rules contained in Treasury Decision 9794. The same day, the Treasury Department and the IRS also published Treasury Decision 9795 (81 Fed. Reg. 88854), which contained temporary regulations under sections 987 and 988 (the “temporary regulations”), and concurrently published a notice of proposed rulemaking by cross-reference to the temporary regulations (REG-128276-12, 81 Fed. Reg. 88882) (the “proposed regulations”).

On May 13, 2019, the Treasury Department and the IRS published Treasury Decision 9857 (84 Fed. Reg. 20790), which adopted in final form §§1.987-2T(c)(9), 1.987-4T(c)(2) and (f), and 1.987-12T and withdrew §1.987-7T. The other temporary

regulations expired on December 6, 2019. The proposed regulations that were not finalized in 2019 remain outstanding.

Earlier notices deferred the applicability dates of the 2016 final regulations, §§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, 1.988-1T, and 1.988-2T(i) of the temporary regulations (the “related temporary regulations”), and §§1.987-2(c)(9) and 1.987-4(c)(2) and (f) of the 2019 final regulations (the “related 2019 final regulations”). Most recently, on October 25, 2021, Notice 2021-59, 2021-43 I.R.B. 664, announced that future guidance would defer the applicability date of the 2016 final regulations and the related 2019 final regulations by one additional year to taxable years beginning after December 7, 2022. Regulations deferring these applicability dates have not yet been issued.

SECTION 2. AMENDED APPLICABILITY DATE

The Treasury Department and the IRS intend to amend the applicability dates in §§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 related 2019 final regulations to provide that the 2016 final regulations and the related 2019 final regulations apply to taxable years beginning after December 7, 2023 (the “amended applicability date”). See §§1.861-9T(g)(2)(vi); 1.985-5(g); 1.987-2(e)(2); 1.987-4(h)(2); 1.987-11(a); 1.988-1(i); 1.988-4(b)(2)(ii); 1.989(a)-1(b)(4); 1.989(a)-1(d)(4). Thus, following the amendments described in this Notice, the 2016 final regulations and the related 2019 final regulations would apply to the taxable year beginning on January 1, 2024, for calendar-year taxpayers. The Treasury Department and the IRS do not intend to amend the applicability date of §1.987-12. See §1.987-12(j).

A taxpayer may choose to apply the 2016 final regulations, the related temporary regulations (until they were revoked on May 13, 2019, or expired on December 6, 2019, as applicable), and the related 2019 final regulations (beginning on May 13, 2019) to taxable years 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) (collectively, “related parties”). A taxpayer and its related parties are not, however, required to apply §1.987-7T of the related temporary regulations to any part of a taxable year ending on or after May 13, 2019. For example, a calendar-year taxpayer applying the regulations in accordance with this paragraph is not required to apply §1.987-7T to the period beginning on January 1, 2019 and ending on May 13, 2019 (when §1.987-7T was revoked).

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). Therefore, if a taxpayer chooses to apply §§1.987-1 through 1.987-10 to a taxable year beginning before the amended applicability date, the transition date is the first day of the first taxable year in which the taxpayer chooses to apply §§1.987-1 through 1.987-10.

For periods following the expiration of the temporary regulations, a taxpayer may rely on §§1.987-1 (other than §§1.987-1(g)(2)(i)(B) and (g)(3)(i)(H)), 1.987-3, 1.987-6, 1.988-1, and 1.988-2(i) of the proposed regulations, provided that the taxpayer and its related parties consistently follow those proposed regulations in their entirety and apply the 2016 final regulations and the related 2019 final regulations for the same taxable year. In addition, a taxpayer may rely on §§1.987-1(g)(2)(i)(B) and (g)(3)(i)(H) and 1.987-8 of the proposed regulations, provided that the taxpayer and its related parties consistently follow those proposed regulations in their entirety. A taxpayer may rely on §1.987-7 or 1.988-2(b)(16) of the proposed regulations, provided that the taxpayer and its related parties consistently follow each section of those proposed regulations on which it relies.

SECTION 3. TAXPAYER RELIANCE

Before the regulations under section 987 are amended as described in section 2 of this Notice, taxpayers may rely on the provisions of this Notice.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Notice 2021-59, 2021-43 I.R.B. 664; Notice 2020-73, 2020-41 I.R.B. 886; Notice 2019-65, 2019-52 I.R.B. 1507; Notice 2018-57, 2018-26 I.R.B. 774; and Notice 2017-57, 2017-42 I.R.B. 325 are modified, and as so modified, are hereby superseded.

SECTION 5. DRAFTING INFORMATION

The principal author of this Notice is Jack Zhou of the Office of Associate Chief Counsel (International). For further information regarding this Notice, contact Jack Zhou at (202) 317-5467 (not a toll-free number).