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United States

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Notice 2017-57: Deferred effective date, foreign currency regulations under section 987

The IRS today released an advance version of Notice 2017-57 announcing that, pursuant to an executive order, the IRS and Treasury Department intend to amend final and temporary regulations (issued in late 2016) under section 987, which governs currency gains and losses with respect to the operations of a “qualified business unit” (QBU) with a different functional currency than the taxpayer. The effective date would be deferred under the amended regulations by one year.

[Notice 2017-57](#) also states that the IRS and Treasury Department 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.

Background

Final and related temporary regulations were issued in December 2016 concerning the taxable income or loss of a taxpayer with respect to a “qualified business unit” (QBU) subject to section 987. Read [TaxNewsFlash-United States](#)

President Trump on April 21, 2017, signed an [executive order](#) (Executive Order 13789) directing U.S. Treasury to examine recent tax regulations to determine whether any of the regulatory projects: (1) imposed an undue financial burden on U.S. taxpayers; (2) added undue complexity to the federal tax laws; or (3) exceeded the statutory authority of the IRS. Treasury was directed to review “significant tax regulations” issued on or after January 1, 2016, and to issue an interim report no later than 60 days after April 21.

According to the executive order, Treasury was to take “appropriate steps” to delay or suspend the effective date of the identified regulations, and to modify or rescind the regulations, through notice and comment rulemaking.

The IRS in July 2017 released Notice 2017-38 that provided a list of eight tax regulations that were identified as either imposing an undue financial burden on taxpayers, or adding excessive complexity to the tax system. This list was in response to the April 2017 executive order, and included the final regulations under section 987 as “significant tax regulations” requiring additional review pursuant to Executive Order 13789. Read [TaxNewsFlash-United States](#)

Notice 2017-57

Today’s notice states that the IRS and Treasury Department intend to amend the section 987 regulations, to provide that the final regulations and the related temporary regulations will apply to tax years beginning on or after two years after the first date of the first tax year following December 7, 2016. Thus, for a taxpayer whose first tax year after December 7, 2016, begins on January 1, 2017, the final regulations and the related temporary regulations will apply for the tax year beginning on January 1, 2019.

The IRS notice also provides that a taxpayer may elect under Reg. section 1.987-11(b) to apply the final regulations and the related temporary regulations to tax years beginning after December 7, 2016 (subject to the conditions in Reg. section 1.987-11(b)), including tax years beginning on or after one year after the first day of the first tax year following December 7, 2016 (the original applicability date in Reg. section 1.987-11(a)).

Notice 2017-57 indicates that the future changes to the regulations will not affect the applicability date of the temporary regulations other than the related temporary regulations. The IRS notice also notes that taxpayers may rely on today’s guidance the proposed amendments to the regulations.

KPMG observation

The executive order included a timeline for release of reports on actions to be taken with respect to the identified regulations. A final report was due by September 18, 2017. A final report has yet to be issued. Today’s notice is the first release after the interim report of July 2017.

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