



TaxNewsFlash

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Final regulations: Income, currency gain or loss of “qualified business unit” (section 987)

The U.S. Treasury Department and IRS today released for publication in the Federal Register final regulations (T.D. 9857) concerning the taxable income or loss of a taxpayer with respect to a “qualified business unit” (QBU) subject to section 987.

Today’s [final regulations](#) [PDF 358 KB] revise and adopt as final regulation, 2016 temporary regulations under Reg. sections 1.987-2T and 1.987-4T (relating to combinations and separations of QBUs) and Reg. section 1.987-12T (which requires the deferral of foreign currency gain or loss with respect to certain transactions), and withdraw Reg. section 1.987-7T (which provides a liquidation value methodology for allocating assets and liabilities of certain partnerships).

Background

In December 2016, Treasury and the IRS released three sets of regulations—final, temporary, and proposed regulations—concerning the taxable income or loss of a taxpayer with respect to a “qualified business unit” (QBU) subject to section 987. The temporary regulations addressed the recognition and deferral of foreign currency gain or loss under section 987 with respect to a QBU in connection with certain QBU terminations and other transactions involving partnerships. The temporary regulations also contained numerous rules providing relief with respect to some of the administrative complexities of regulations proposed in 2006. Read [TaxNewsFlash](#)

Subsequent to the release of the temporary regulations, the IRS released a number of notices:

- Notice 2017-07 announced that certain rules under Reg. section 1.987-12T would be modified to prevent potential abuse by taxpayers making retroactive check-the-box elections.
- Notice 2017-54 and Notice 2018-57 both announced that future guidance would defer the applicability dates of Reg. sections 1.987-2T, 1.987-4T, and 1.987-7T. Read [TaxNewsFlash](#)
- Notice 2017-38 identified the regulations under section 987 as “significant tax regulations” requiring additional review pursuant to Executive Order 13789. As part of that review, Treasury and

the IRS considered 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. Read [TaxNewsFlash](#)

Final regulations

The preamble to today's final regulations explains that the IRS and Treasury Department received one comment regarding the temporary regulations and several comments in response to Notice 2017-38 pertaining to the temporary regulations. The comments generally indicated that the 2016 final and temporary regulations "are unduly complex and present significant financial and compliance burdens for taxpayers subject to the 2016 final regulations."

The preamble also states that finalizing the rules covered by today's final regulations—while simultaneously deferring the applicability date of the 2016 final regulations and developing guidance to mitigate the complexity and administrative challenges associated with the 2016 final regulations—"appropriately balances taxpayers' burdens with the need to prevent abuse under the 2016 final regulations or under another method of complying with section 987" before the 2016 final regulations are applicable. As noted in the preamble:

After consideration of all the comments, the regulations under §§1.987-2T, 1.987-4T, and 1.987-12T, as revised by this Treasury decision, are adopted as final regulations. In addition, the regulations under §1.987-7T are withdrawn.

The final regulations retain the applicability dates of the temporary regulations, as modified by Notice 2017-07, Notice 2017-57, and Notice 2018-57. The preamble states that delaying the applicability dates would have incentivized taxpayers to engage in selective recognition of section 987 losses.

The preamble explains that Reg. section 1.987-7T is withdrawn because a more flexible approach is warranted on the interaction of those rules with the applicable rules in subchapter K; and in certain situations, the liquidation value percentage methodology in Reg. section 1.987-7T may be interpreted as applying in a way that inappropriately distorts the computation of section 987 gain or loss.

The preamble further notes that the IRS and Treasury are continuing to study the other provisions of the temporary regulations that are not specifically addressed by today's final regulations—and specifically concerning comments that were received and that relate to rules in the 2016 final regulations. According to today's release, comments received concerning the 2016 final regulations, and provisions of the temporary regulations that are not specifically addressed by these final regulations, are "beyond the scope of this rulemaking." It is stated in the preamble that Treasury and the IRS will consider these comments in connection with any future guidance projects that concern the issues as discussed in the comments.

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