



# TaxNewsFlash

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## Proposed regulations: Built-in gains and losses under section 382(h) (text of regulations)

The U.S. Treasury Department and IRS today released for publication in the Federal Register proposed regulations (REG-125710-18) as guidance concerning the treatment of built-in gains and losses under section 382(h).

These [proposed regulations](#) [PDF 364 KB] (19 pages as published in the Federal Register) reflect changes made by the 2017 U.S. tax law (Pub. L. No. 115-97)—the legislation that is often referred to as the “Tax Cuts and Jobs Act” (TCJA).

As explained in the preamble to today’s proposed regulations, the TCJA introduced substantial changes to the Code that:

*...have generated significant, additional uncertainty regarding the application of section 382 in general . . . [and] the changes to various provisions of the Code made by the TCJA have exacerbated longstanding, unresolved issues regarding the application of section 382(h) and created new areas of complexity and ambiguity for taxpayers and the IRS. In particular, the Treasury Department and the IRS have identified numerous issues that would arise from the interaction of the 338 approach with various provisions of the Code following the TCJA’s enactment.*

Accordingly, Treasury and the IRS issued these proposed regulations to provide “clearer and more comprehensive guidance” for taxpayers in applying section 382(h). The proposed regulations aim to:

- Simplify the application of section 382
- Provide more certainty to taxpayers in determining built-in gains and losses for section 382(h) purposes
- Determine that difficult questions regarding the application of the TCJA do not further complicate the application of section 382(h)

The purpose of this report is to provide text of these just released proposed regulations. A more detailed discussion of the proposed regulations will be provided in a future report from KPMG.

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