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“Documentation regulations” under section 385 are removed; new regulations to be proposed

The U.S. Treasury Department and IRS this afternoon released for publication in the Federal Register a document (T.D. 9880) removing final regulations that set forth documentation requirements for certain related-party interests in a corporation to be treated as indebtedness—that is, the 2016 final regulations under section 385 are withdrawn and removed.

In September 2018, Treasury and the IRS released proposed regulations to remove from the final regulations under section 385, the documentation requirements that ordinarily must be satisfied in order for certain related-party interests in a corporation to be treated as indebtedness for federal tax purposes—referred to as the “documentation regulations.” Comments were requested.

Today’s [release removing the 2016 final regulations](#) [PDF 313 KB] explains that Treasury and the IRS considered the comments received in response to the proposed regulations and “...determined that the burdens imposed on taxpayers by the documentation regulations outweigh the regulations’ intended benefits.” Thus, today’s release adopts the proposed regulations “with no change” as final regulations. The preamble states that Treasury and the IRS “continue to consider the issues” raised by the documentation regulations.

Treasury and the IRS today also released an [advance notice of proposed rulemaking](#) [PDF 261 KB] announcing their intention to issue proposed regulations regarding the treatment of certain interests in corporations as stock or indebtedness. This release requests comments about the contemplated rules. In addition, the advance notice of proposed rulemaking announces that taxpayers may rely on the 2016 proposed regulations until further notice, provided that the taxpayer “consistently applies the rules” in the 2016 proposed regulations in their entirety.

Both the document removing the final regulations and the advance notice of proposed rulemaking are scheduled to appear in the Federal Register on November 4, 2019.

The purpose of this report is to provide text of today’s releases. A more detailed discussion will be provided in a future report from KPMG.

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