



TaxNewsFlash

United States



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Notice 2021-59: Deferred applicability dates for foreign currency guidance under section 987

The IRS today released an advance version of Notice 2021-59 that announces that the IRS and Treasury Department intend to amend the regulations under section 987 to defer—again—the applicability date of certain final regulations under section 987 and certain related final regulations by one additional year.

Read [Notice 2021-59](#) [PDF 111 KB]

Background

In December 2016, Treasury and the IRS released final regulations (“2016 final regulations”) along with temporary and proposed regulations (“2016 temporary regulations” and “2016 proposed regulations”) concerning the taxable income or loss of a taxpayer with respect to a “qualified business unit” (QBU) subject to section 987.

In May 2019, Treasury and the IRS revised and adopted Reg. sections 1.987-2T(c)(9), 1.987-4T(c)(2) and (f) (relating to combinations and separations of QBUs), and 1.987-12T (requiring the deferral of foreign currency gain or loss with respect to certain transactions) of the 2016 temporary regulations as final regulations (the “related 2019 final regulations”) and withdrew Reg. section 1.987-7T (providing a liquidation value methodology for allocating assets and liabilities of certain partnerships).

In December 2019, the IRS issued Notice 2019-65 announcing that future guidance would defer the applicability date of the 2016 final regulations and the related 2019 final regulations by one additional year to tax years beginning after December 7, 2020.

In September 2020, the IRS issued Notice 2020-73 announcing a further extension of the applicability date of the regulations so that the 2016 final regulations and the related 2019 final regulations would apply to tax years beginning after December 7, 2021. Read [TaxNewsFlash](#)

Notice 2021-59

Today's notice announces a further extension of the applicability date of the regulations so that the 2016 final regulations and the related 2019 final regulations will apply to tax years beginning after December 7, 2022.

For calendar-year taxpayers, the 2016 final regulations and the related 2019 final regulations will apply to the tax year beginning on January 1, 2023.

Notice 2021-59 includes a statement that the IRS and Treasury do not intend to amend the applicability date of Reg. section 1.987-12, which applies to transactions occurring on or after January 6, 2017.

As provided by the prior IRS notices deferring the applicability date, Notice 2021-59 provides:

- A taxpayer may choose to apply the 2016 final regulations, the 2016 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 tax years beginning after December 7, 2016, and before the amended applicability date provided that the taxpayer consistently applies those regulations to such tax 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% 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 Reg. section 1.987-7T of the related temporary regulations to any part of a tax year ending on or after May 13, 2019. For example, a calendar-year taxpayer applying the regulations is not required to apply Reg. section 1.987-7T to the period beginning on January 1, 2019, and ending on May 13, 2019 (when Reg. section 1.987-7T was removed).

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