Treasury issues anti-inversion guidance

The Treasury Department and Internal Revenue Service on April 4 released temporary regulations under Internal Revenue Code sections 304, 367, 956, 7701(l) and 7874 to address certain inversion and post-inversion transactions, and proposed regulations under section 385 to address a broader range of transactions, including certain financing transactions arising in the context of inversion and post-inversion transactions.

The temporary regulations include rules previously described in Notice 2014-52 and Notice 2015-79. The temporary regulations also provide: (1) rules for identifying a foreign acquiring corporation when a domestic entity acquisition involves multiple steps; (2) rules that disregard stock of the foreign acquiring corporation that is attributable to certain prior domestic entity acquisitions; (3) rules that require a controlled foreign corporation (CFC) to recognize all realized gain upon certain transfers of assets described in section 351 that shift the ownership of those assets to a related foreign person that is not a CFC; and (4) rules clarifying the definition of group income for purposes of the substantial business activities test.

The broadly applicable proposed regulations under section 385 would: (1) authorize the IRS to treat certain related-party interests as part stock and part debt for federal tax purposes; (2) establish contemporaneous documentation requirements that must be satisfied for certain related-party debt to be respected for federal tax purposes; and (3) treat certain related-party debt as stock for all purposes of the code when issued in connection with certain distributions and acquisitions. The proposed regulations have complex effective date provisions.

International Tax Alerts available

Detailed discussions of the temporary regulations and the proposed regulations are available in separate International Tax Alerts from Deloitte Tax LLP’s International Tax Group.
URL: http://newsletters.usdbriefs.com/2016/Tax/TNV/160408_1suppA.pdf
URL: http://newsletters.usdbriefs.com/2016/Tax/TNV/160408_1suppB.pdf

Congressional reaction

On Capitol Hill, Republican leaders of the two congressional taxwriting committees responded to the release of the new guidance by reiterating their position that the issue of inversions should be addressed through legislation – that is, through tax reform – rather than administrative rulemaking.

House Ways and Means Committee Chairman Kevin Brady, R-Texas, stated in an April 4 press release that although he was “pleased that President Obama acknowledged how our broken tax code continues to hurt our economy, it’s clear that his new regulations won’t solve the problem. Americans will continue to watch their jobs move overseas until Washington works together on comprehensive, pro-growth tax reform.”

Senate Finance Committee Chairman Orrin Hatch, R-Utah, likewise commented that “[t]he administration continues to tinker along the regulatory edges with unilateral proposals to address the symptoms of inversions, but not the disease. ….A comprehensive tax overhaul that reduces the rate, transitions to a territorial tax system with base erosion protections, and
addresses earnings stripping will equip American businesses with the certainty they need to invest in a future here at home.”

Additional administrative guidance possible

For his part, Treasury Secretary Jack Lew said in an April 4 conference call with reporters that the Obama administration “will continue to explore additional ways to limit inversions”; but he agreed that “the best way would be to enact business tax reform with specific anti-inversion provisions.” Lew noted that in conjunction with the new regulations the administration released an updated corporate tax reform framework that “includes a comprehensive approach to reforming the international tax system that stops inversions and makes the US business tax system fairer and more pro-growth.” (Specifically, the updated framework adds details to the broad outlines of the call for international tax reform in the original 2012 version by citing the proposed 19 percent minimum tax on foreign earnings, the one-time 14 percent “deemed repatriation” tax, provisions to curb earnings stripping and inversions, and base erosion provisions that were included in the fiscal year 2016 budget proposal the administration sent to Congress in February of 2015. See separate coverage in this issue for additional discussion of the updated framework and the current state of play on tax reform.)


But Lew also repeated the administration’s position that Congress should pursue targeted anti-inversion legislation now while it prepares for a larger tax code overhaul.

“Only congressional action can fully address inversion transactions, and I urge Congress to act this year,” he said.

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