



May 9, 2017

VIA EMAIL

Secretary Steven T. Mnuchin
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Secretary Mnuchin,

On April 21, 2017, the President issued an executive order calling for immediate review of all significant tax regulations issued by the Department of the Treasury on or after January 1, 2016. The executive order asks the Treasury Department to identify all significant regulations that: impose an undue financial burden on United States taxpayers; add undue complexity to the Federal tax laws; or exceed the statutory authority of the Internal Revenue Code. USCIB¹ supports this review and has identified below regulations that we believe are significant regulations and that satisfy one or more of the criteria set forth in the executive order. These regulations, therefore, ought to be subject to scrutiny under this review process.

Treasury regulations under section 987

Recently issued final and temporary regulations under section 987 impose undue complexity and onerous compliance and financial recordkeeping burdens relative to the policy objectives which could be addressed by a much simpler compliance approach. These rules require taxpayers to retroactively create US tax reporting records for each individual foreign asset or liability (often from the date of creation of that business or the date of acquisition of the asset or liability) and to track historical exchange rates for each relevant foreign transaction that impacts the historical assets and liabilities of each foreign business unit. These records would be required for potentially hundreds of entities in a company's legal structure. Ongoing compliance would require taxpayers to incur significant costs to invest in a separate tax and accounting system for each entity, impacting financial statements each quarter for inevitable currency fluctuations.

We request that the temporary and final section 987 regulations [as well as the 2006 proposed regulations] be revoked. If Treasury wishes to revisit regulations under section 987 they should carefully consider: the statutory authority and legislative history, taxpayer practices that have developed in the absence of regulatory

¹ USCIB promotes open markets, competitiveness and innovation, sustainable development and corporate responsibility, supported by international engagement and prudent regulation. Its members include top U.S.-based global companies and professional services firms from every sector of our economy, with operations in every region of the world. With a unique global network encompassing leading international business organizations, USCIB provides business views to policy makers and regulatory authorities worldwide, and works to facilitate international trade and investment.

guidance over the past 30 years, taxpayer compliance costs and IRS audit costs compared to the actual size of the issue, and taxpayer input on any new proposed regulations.

Treasury regulations under section 367

Recently finalized regulations under section 367 result in U.S. taxation of foreign goodwill and going concern value, notwithstanding legislative history and case law to the contrary. A [USCIB comment letter](#) provides detailed comments on the proposed regulations (which were finalized substantially as proposed). In the view of our members, the regulations impose an undue financial burden on US taxpayers, exceed the government's statutory authority and, therefore, should be reviewed and revised to address the concerns set forth in our letter.

Treasury regulations under section 482

When Treasury released the proposed version of the recently finalized section 367 regulations in late 2015, it also issued companion regulations under section 482, in temporary and final form (T.D. 9738). The [USCIB comment letter](#) noted above also provides detailed comments on these regulations. These regulations purport to impose broad, vague, and controversial aggregation and "all value" requirements in the pricing of intercompany transactions, and do so with immediate effect as supposed "clarifications" of prior regulations, despite the fact that the courts have consistently rejected efforts by the IRS to assert these theories as litigation positions (e.g., in the *Veritas* case prior to the issuance of the regulations, and now more recently in the *Medtronic* and *Amazon* cases, the latter of which rejected IRS attempts to discredit and distinguish *Veritas*). Although these regulations were issued prior to January 1, 2016, they should be reviewed and revised in connection with the executive order because they are a key component of the regulatory package that includes the new final regulations under section 367—they were issued together, they interrelate substantively, and they should be reviewed and revised together. Had the section 482 regulations been properly issued first in proposed form, they presumably would have been finalized in 2016 along with the companion section 367 regulations.

Treasury regulations under section 385

These regulations fundamentally redefine debt and equity for purposes of the Internal Revenue Code. USCIB (and many others) submitted detailed [comments](#) on the proposed regulations. Although the IRS and Treasury made significant changes in response to those comments, significant burdens and complexity remain.

In particular, complying with the documentation requirements requires taxpayers to incur significant costs to design new tracking and reporting systems and failure to comply may result in the conversion of debt into equity. These costs are being incurred now as taxpayers hurry to meet a January 1, 2018 effective date for the documentation rules. Further, those documentation rules have dubious statutory authority. For example, treating a routine trade payable as equity because of a documentation error is not a reasonable interpretation of section 385's grant of regulatory authority.

Treasury regulations under section 901(m)

The proposed regulations under section 901(m) are widely viewed as far too complex and out of proportion to the arcane transactions the section polices. USCIB shares this view. The proposed regulations are for the most part taxpayer unfriendly. Section 901(m) harms the competitiveness of U.S. companies by stripping foreign tax credits needed to level the playing field with foreign competitors operating under territorial systems. By adding rules that expand the scope of section 901(m), the proposed regulations increase the financial burdens imposed on U.S companies by the statute in two ways: by eliminating foreign tax credits and by instituting a byzantine regulatory regime.

We request that Treasury remove the taxpayer unfriendly portions of the regulations. In addition, we ask that Treasury add a related-party exception to the proposed rules. Under section 901(m) U.S. companies which restructure and pay taxes up front on a transaction in exchange for a step up in tax basis can nevertheless also lose foreign tax credits from the same transaction under section 901(m). Without an exception, taxpayers pay for the transaction with taxable income yet still lose foreign tax credits, and this outcome results in double taxation and a disadvantage to foreign competitors who bear no such burdens from internal restructurings.

The Treasury should review these regulations to either eliminate or substantially revise them. In the interim, we urge Treasury to immediately delay effective dates so that taxpayers are not compelled to incur significant costs to comply with regulations that should be ultimately withdrawn or substantially rewritten. U.S. companies are dealing with these regulations now, either in complying with them or preparing to, and each day that passes with onerous, overly complicated regulations in place expends resources better spent competing in the global economy.

Sincerely,



William J. Sample
Chair, Taxation Committee
United States Council for International Business (USCIB)

Cc: Thomas West, Acting Assistant Secretary, Tax Policy, U.S. Department of the Treasury

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