

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

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202/463-5620

July 20, 2020

Office of the Associate Chief Counsel (Procedure and Administration)
Attention: Emily M. Lesniak
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

CC:PA:LPD:PR
(Notice 2020-47)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Via Federal eRulemaking Portal

RE: Comments on Notice 2020-47: Priority Guidance Plan

Dear Ms. Lesniak:

The U.S. Chamber of Commerce welcomes the opportunity to provide feedback on Notice 2020-47,¹ recommendations for items that should be included on the 2020-2021 Priority Guidance Plan, as published in the *Internal Revenue Bulletin* on June 29, 2020.

The Chamber appreciates the continuing work of the Internal Revenue Service (IRS) and the Treasury Department in promulgating regulations to implement the Tax Cuts and Jobs Creation Act (TJCA). We encourage the continuation of that work in the most business-friendly manner possible. We also greatly appreciate the IRS' and Treasury's swift work in issuing guidance implementing the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

More specifically, as requested by Notice 2020-47, the Chamber would like to express its support for continued consideration of the current 2019-2020 Priority Guidance Plan projects,

¹ 2020-27 I.R.B. 7 (June 29, 2020).

including, but not limited to, the following (assuming such projects are not completed during the 2019-2020 Priority Guidance Plan year):

- Guidance under §166² on the conclusive presumption of worthlessness for bad debts.
- Final regulations and other guidance concerning the participation exemption system for the taxation of foreign source income under §§245A, 1248(j) and (k), and 91. For instance, guidance under §245A clarifying that the §245A dividends received deduction is applicable to a controlled foreign corporation’s Subpart-F dividend income.
- Updating §301 regulations to reflect statutory changes.
- Regulations under §§367 and 482, including regulations addressing the changes to §§367(d) and 482 under the TCJA.
- Guidance under §897. In Notice 2007-55, Treasury and the IRS announced that regulations would clarify that the application of §897(h)(1) and withholding under §1445(e) is not limited to distributions by qualified investment entities that are subject to §316. The notice further provided that regulations would clarify that the term “distribution,” as used in §§897(h)(1) and 1445(e)(6), includes any distribution included under §§301, 302, 331, and 332, where the distribution is attributable, in whole or in part, to gain from the sale or exchange of a U.S. Real Property Interest (USRPI) by a Qualified Investment Entity (QIE) or other pass-through entity. Treasury and the IRS never issued regulations pursuant to the Notice. The Chamber requests that Notice 2007-55 be withdrawn and replaced with regulations concluding that a liquidating REIT distribution be treated as a sale of the shareholder’s stock in the liquidating corporation for purposes of §§897(h)(1) and 1445(e).
- Final regulations and other guidance on certain foreign tax credit issues arising under the TCJA under §§901 and 960, and related provisions, including §§78, 861, 904, and 905, including regulations regarding the allocation and apportionment of interest expense and certain other expenses and rules for determining foreign branch income.
- Other guidance under §951A regarding the inclusion of global intangible low-taxed income by United States shareholders.
- Regulations under §§959 and 961 concerning previously taxed earnings and profits under subpart F.
- Guidance relating to previously taxed earnings and profits (PTEP). The addition of §§965 and 951A have substantially increased the importance of PTEP to the computation of tax. In Notice 2019-1,³ Treasury and the IRS announced an intent to provide guidance pursuant to §§959 and 961 on issues arising as a result of the enactment of the TCJA and the new categories of previously taxed earnings and profits. The Chamber requests the

² Unless otherwise noted, all section references are to the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

³ 2019-2 I.R.B. 275 (Jan. 7, 2019).

guidance detailed in Notice 2019-1 and, in addition, update guidance under §§959 and 961 with respect to the allocation of PTEP to individual shares of stock.

- Guidance under §987. In Notice 2018-57,⁴ Treasury and the IRS announced an intent to amend the §987 regulations to allow taxpayers to elect alternative rules for transitioning to the final regulations and alternative rules for determining §987 gain or loss. The proposed 2016 §987 regulations are extraordinarily complex and difficult to administer. The Chamber requests that the proposed 2016 regulations be withdrawn and replaced with regulations substantially similar to those proposed in 1991.
- Final regulations under §1001 on the elimination of interbank offered rates.
- Regulations under §§1295, 1297, and 1298, including regulations addressing when foreign insurance income is excluded from passive income under §1297(f).
- Final regulations under §1502 and §1.1502-21(b) and §1.1502-47 regarding absorption of consolidated net operating losses and consolidated group computations under multiple TCJA provisions.
- Regulations under §1502 removing obsolete rules and updating regulations to reflect statutory changes.
- Guidance under §4052. Finalizing the March 31, 2016 proposed regulations on excise taxes on tractors, trailers, trucks, and tires (81 Fed. Reg. 18544) as currently drafted would produce significant and unnecessary new and increased compliance burdens on taxpayers. Treasury and the IRS should instead finalize the existing temporary regulations (26 CFR §145.4052-1), which are not only well-established, but function well for taxpayers and for the IRS. In lieu of such finalization, Treasury and the IRS should formally withdraw the proposed rule.
- Final regulations under §4960, as added by §13602 of the TCJA.
- Guidance on corrective actions for tax-advantaged bonds.
- Regulations on check the box rules for REITs and RICs.
- Final regulations addressing adjustments to bases and capital accounts and the tax and book basis of partnership property.

Additionally, the Chamber would like to express its support for consideration of new additions to the 2020-2021 Priority Guidance Plan, including, but not limited to:

- Regulations under §41 to clarify and align the parameters of qualifying expenses for “pilot models” with the §174 regulations.
- Guidance on the ordering rules and interaction of Code sections that refer to taxable income, including §§163(j), 250(a)(2), and 172 (including the temporary relief under §172(a)(2)(B)(ii)(I)).
- Additional guidance under §165(i) regarding the treatment of COVID-19 related losses.

⁴ 2018-26 IRB 774 (June 25, 2019).

- Guidance under §§267 and 707 regarding the sale of electricity from a joint venture to a utility where the utility immediately sells the electricity to an unrelated third party. The sale of electricity in a transaction in which a related party has flash title is not the kind of transaction that Congress intended to fall within the scope of §§267(b)(10) and 707(b) and therefore any losses generated should not be disallowed under those provisions. Notice 2008-60 provides that the requirement of a sale to an unrelated person under §45 will be treated as satisfied if the producer sells the electricity to a related person for resale by the related person to a person that is not related to the producer. The statutory requirements for whether a person is related to a partnership are the same under §§45 and 45J and §§707(b) and 267(b)(10). Accordingly, the IRS should apply the same principles under §§267(b)(10) and 707(b) for testing relatedness (i.e., look to the ultimate purchaser) for sales of electricity from a joint venture to a utility.
- Guidance under §1059 requesting relief for certain transactions. The application of §1059 to transactions eligible for §245A dividends substantially expands the reach of §1059, yet very little guidance has been provided. In particular, §1059 now applies to transactions between wholly-owned affiliates with long-term holding periods. This was not the case prior to TCJA for companies electing to be treated as a consolidated group. Applying §1059 in these fact patterns serves no policy purpose and, as such, the Chamber requests relief for these transactions.
- Additional relaxation of rules and guidance under §§1400Z-1 and 1400Z-2 concerning Opportunity Zones for COVID-19 related delays.
- Extension of relief under Rev. Proc. 2020-20 (§7701(b)), Rev. Proc. 2020-27 (§911), and Rev. Proc. 2020-30 (§1503), for workers stranded across borders due to travel disruptions caused by COVID-19.
- Guidance on the sourcing of derivatives. Taxpayers in the business of marketing commodities enter into derivatives to manage their exposure to fluctuations in the sales price of those commodities. For many determinations under the Code (e.g., character, timing of income recognition, subpart F characterization), gain or loss from such qualified hedging transactions are treated the same as the gain or loss from the commodities. This matching principle should be extended to the sourcing of gain or loss from the hedge by integrating the income from the hedge into that of the physical commodity before sourcing based on the rules for inventory.

The Chamber appreciates the opportunity to provide this feedback on Notice 2020-47. We thank you for working closely with the business community to implement the recent tax changes in a manner to ensure as little disruption as possible to normal business operations and that this law encourages the U.S. economy to achieve its true growth potential. The Chamber looks forward to working with you to address these and other issues as we work to implement our new, pro-growth tax code. Thank you for your time and attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Caroline L. Harris". The signature is fluid and cursive, with a prominent initial "C" and a long, sweeping underline.

Caroline L. Harris

Cc: Charles P. Rettig, Commissioner, Office of the Commissioner, Internal Revenue Service,
U.S. Department of the Treasury

David J. Kautter, Assistant Secretary, Office of Tax Policy, U.S. Department of the
Treasury

Michael J. Desmond, Chief Counsel, Office of the Chief Counsel, Internal Revenue
Service, U.S. Department of the Treasury