Oct. 13, 2017

IRS statement regarding private letter rulings on certain corporate transactions

The Internal Revenue Service is providing this statement to inform taxpayers and their advisers of changes relating to requests for private letter rulings on certain corporate transactions.

The IRS is reconsidering its views regarding certain issues as to which it has provided favorable rulings in the past. The IRS is studying these issues and new guidance may be issued. Pending the outcome of this study, the IRS will process ruling requests in accordance with the following guidelines:

1. In connection with a worthless stock loss under section 165(g)(3)(B), IRS will no longer rule on whether the character of gross receipts received by a consolidated group member in an intercompany transaction may be redetermined by reference to the character of the source funds possessed by the counter party to the intercompany transaction.

2. If, in connection with a section 355 distribution, a distribution of stock, securities or other property to the distributing corporation's shareholders or creditors is substantially delayed, IRS will continue to rule on whether the delayed distribution is tax-free under section 355 or section 361. However, rulings on such issues will not be based solely on the length of the delay. Instead, IRS will rule on this issue only based on substantial scrutiny of the facts and circumstances (including the circumstances of the delay) and full consideration of the legal issues and the effects of a ruling on federal tax administration.

   However, in determining whether a retention of stock or securities is in pursuance of a plan having as one of its principal purposes the avoidance of federal income tax, within the meaning of section 355(a)(1)(D)(ii), IRS will continue to follow the guidelines in Appendix B of Rev. Proc. 96-30, even though Rev. Proc. 2017-52 has superseded Rev. Proc. 96-30. Thus, IRS will continue to rule in accordance with prior practice as to the application of section 355 to the distribution of the stock, or stock and securities, that are not retained.

3. IRS will increase its scrutiny and analysis of "drop-spin-liquidate" and similar transactions. As an example, a corporation may distribute the stock of a subsidiary in a transaction potentially subject to section 355, and as part of the same plan the distributing corporation or the subsidiary may liquidate into a corporate parent or may merge into or otherwise be acquired by its corporate parent or another related corporation. In connection with such a transaction, IRS will rule that the distribution is subject to section 355 only based on substantial scrutiny of the facts and circumstances and full consideration of the legal issues and the effects of a ruling on federal tax administration.

   However, IRS will continue to rule in accordance with prior practice on such transactions (including "Morris Trust" and "reverse Morris Trust" transactions) if the distributing corporation or the controlled corporation, as the case may be, and its successor are not related before the acquisition.

4. IRS will increase its scrutiny and analysis of potential reorganizations that result in transfers of a portion of a subsidiary's assets to its corporate shareholder, if the transfer does not qualify under section 332 or section 355 but is intended to be tax-free. For example, a corporate subsidiary may convert into a non-corporate entity (for example, a limited liability company) that is treated as a disregarded entity owned by its parent. As part of the same plan, the disregarded entity distributes a portion of its assets to the parent and then either elects to be taxed as a corporation or converts back into a corporation (either in the same state as the state of incorporation of the original subsidiary or a different state). IRS will rule on issues relating to such a transaction only based on substantial scrutiny of the facts and circumstances and full consideration of the legal issues and the effects of a ruling on federal tax administration.

Private letter rulings issued previously on these matters are not affected.

The IRS encourages taxpayers and their representatives to contact the office of the Associate Chief Counsel (Corporate) with questions and comments regarding these matters. For further information, contact Lisa Fuller, (202) 317-7700 (not a toll-free number).

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