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March 14, 2014

The Honorable Mark Mazur
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The Honorable John Koskinen
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1111 Constitution Avenue, NW
Washington, DC 20224

The Honorable William J. Wilkins
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1111 Constitution Avenue, NW
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Re: Report on the Proposed Anti-Loss Importation Regulations Under Sections 362(e)(1) and 334(b)(1)(B)

Dear Messrs. Mazur, Koskinen and Wilkins:

I am pleased to submit to you this report on selected topics related to the recently proposed anti-loss importation regulations that were issued under Sections 362(e)(1) and 334(b)(1)(B) (the "Proposed Regulations").

The Proposed Regulations provide a comprehensive framework for determining which transfers of property to corporations are treated as importing built-in loss into the U.S. tax system. A crucial element of this framework is to determine whether a transferor is not subject to U.S. tax on gain or loss from a hypothetical sale of the transferred property (a "Non-US Taxpayer"). The Proposed Regulations provide a special test (the "Look-Through Rule") for transferors that are flow-through entities such as partnerships, S corporations and grantor trusts. Pursuant to the Look-Through Rule, the tax status of the partners or beneficial owners of the flow-through entity must be determined as either (i) Non-US Taxpayers or (ii) persons who would be subject to U.S. tax on gain or loss with respect to the disposition of the transferred property ("US Taxpayers"), and the transferred property is tentatively divided into separate portions in proportion to the amount of gain or loss recognized from the hypothetical sale of such property that would be allocated to each partner or beneficial owner of the flow-through entity.

We believe the Look-Through Rule would present a significant challenge for large partnerships and their corporate transferees. Accordingly, we urge the Internal Revenue Service and Treasury to consider whether applying the Look-Through Rule is necessary with respect to widely held or publicly traded

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March 14, 2014

partnerships, in particular where the partnership holds a small percentage (e.g., less than 5%) of stock of the transferee immediately after the transaction or where stock of the transferee represents a modest portion of the partnership's assets. In addition, to the extent the Look-Through Rule applies, we believe widely held or publicly traded partnerships should be permitted to use simplifying methodologies to identify their partners and their tax status.

We also recommend that debt-financed property transferred by a transferor that is a tax-exempt entity under Section 501(a) (a "Tax-Exempt") be tentatively divided (similar to property transferred by a partnership that is subject to the Look-Through Rule) such that the transferor is notionally split into two transferors—a US Taxpayer and a Non-US Taxpayer—based on the portions of gain or loss from the property that would (and would not) be subject to U.S. tax if the property were sold by the Tax-Exempt immediately prior to the transfer.

The Proposed Regulations requested comments on what effect a basis reduction required under Section 334(b)(1)(B) or Section 362(e)(1) may have on earnings and profits ("E&P") and any inclusion required under Treas. Reg. section 1.367(b)-3. We note that a liquidation of a foreign subsidiary or an inter-group inbound asset reorganization may simultaneously give rise to an "all E&P" inclusion under Section 367(b) and a net asset basis step-down under Section 334(b)(1)(B) or Section 362(e)(1). We recommend promulgating Regulations under Section 367(b) that reduce the basis step-down in this case, so as to allow the transferee corporation to preserve an amount of built-in loss equal to the "all E&P" inclusion that is triggered by the transaction.

In addition to the recommendations noted above, the report also makes a number of other recommendations.

We very much appreciate your consideration of our recommendations and would be happy to discuss them with you or provide additional assistance.

Respectfully submitted,



David H. Schnabel
Chair

Enclosure

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