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May 23, 2002

Honorable Pamela F. Olson
Acting Assistant Secretary (Tax Policy)
Department of the Treasury
Room 1334 MT
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Honorable Charles O. Rossotti
Commissioner
Internal Revenue Service
Room 3000 IR
1111 Constitution Avenue, N.W.
Washington, DC 20224

Re: Recommendations of the Treasury/IRS Business Plan for 2002-2003

Dear Ms. Olson and Mr. Rossotti:

I am writing in response to Notice 2002-22, in which the Internal Revenue Service and Treasury Department solicited suggestions of items to be included in their Guidance Priority List for 2002-2003. The officers of the Tax Section have received a number of suggestions from individual members for transmittal to the Service and Treasury. These suggestions, which have not been considered or approved by the Section's Executive Committee, are listed below. As noted below, some of these topics have been, or are expected to be, the subject of Tax Section reports.

CORPORATE TRANSACTIONS

1. Guidance on nonplan issues under section 355.
2. Finalize the temporary regulations under section 355(e) (Reg. § 1.355-7T).

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3. Guidance, supplementing or replacing Rev. Rul. 92-17, regarding the application of the active trade or business requirement of section 355(b) to corporations holding interests in partnerships.¹
4. Revise (per the first topic noted below under “International”) and finalize the proposed regulations under section 368 addressing statutory mergers and consolidations involving disregarded entities. Pending finalization, permit reliance on the proposed regulations.
5. Guidance on the treatment of restricted stock in corporate reorganization and spin-off transactions. This guidance should address whether restricted stock subject to section 83 is treated as stock for purposes of the reorganization provisions (including the control, solely for voting stock and continuity of interest requirements) and the spin-off provisions (including the distribution of control requirement), and the effects on the employee/shareholder (including the preservation of the compensation element, basis and holding period).²
6. Guidance regarding the transfer of assets acquired in a tax-free reorganization pursuant to section 368(a)(1)(D) or section 368(a)(1)(F) to a controlled subsidiary.
7. Guidance on the requirements for qualification under section 368(a)(1)(F), clarifying Rev. Rul. 96-29.
8. Guidance on the scope of Rev. Rul. 2001-46 and procedures for electing treatment under section 338(h)(10).
9. Treatment of buyer and seller in taxable asset acquisitions involving contingent liabilities.

INTERNATIONAL

1. Amend and finalize the proposed regulations under section 368 to provide that a statutory merger or consolidation includes a similar combination

¹ Please see NYSBA Tax Section Report 1009 (April 19, 2002), *reprinted in* 2002 TNT 77-15 (April 22, 2002).

² We expect to issue a report on this topic later this year.

effected in whole or in part under foreign law.³ Conforming changes to the regulations under section 367 will be needed.

2. Revise and finalize the proposed regulations regarding reverse hybrid entities under Reg. § 1.894-1(d)(ii)-(iv) to reflect public comments.⁴

3. Revise the PFIC regulations to reflect public comments.⁵

4. Guidance regarding a domestic corporation's entitlement to deemed paid credits with respect to a foreign corporation that is held indirectly through an entity treated as a partnership, provided that the domestic corporation owns indirectly at least as many shares as required to be held under section 902.

5. Propose regulations on withholding with respect to foreign-to-foreign substitute interest or dividend payments in connection with securities lending transactions (Notice 97-66).

6. Finalize proposed regulations under various sections addressing global dealing operations.

7. Finalize proposed regulations under Reg. § 1.864(b)-1 relating to trading in derivatives.⁶

8. Guidance on issues covered by Notice 98-5.

FINANCIAL PRODUCTS

1. Guidance on various issues relating to securitizations (as an alternative to revising the proposed FASIT regulations).⁷

³ Please see NYSBA Tax Section Report 969 (April 6, 2000), *reprinted in* 2000 TNT 82-22 (April 27, 2000); NYSBA Tax Section Report 1010 (May 9, 2002), *reprinted in* 2002 TNT 99-17 (May 22, 2002).

⁴ Please see NYSBA Tax Section Report 1004 (January 14, 2002), *reprinted in* 2002 TNT 10-26 (January 15, 2002).

⁵ Please see NYSBA Tax Section Report 994 (May 22, 2001), *reprinted in* 2001 TNT 108-34 (June 5, 2001).

⁶ We expect to prepare a report later this year on credit derivatives that will discuss, among other things, application of the proposed regulations under Reg. § 1.864(b)-1 to credit derivatives. See the final suggestion below under "Financial Products."

⁷ We expect to issue a report on this topic later this year.

2. Revise and finalize (or repropose) proposed regulations on capitalization under section 263(g).⁸
3. Guidance under section 1092(c)(2)(B) as to applicability of the straddle rules and section 263(g) to “unbalanced straddles”.⁹
4. Propose regulations under section 1259(c)(1)(E).
5. Propose regulations under section 446 regarding the timing of income inclusions and deductions from notional principal contracts that call for contingent payments (follow-up to Notice 2001-44).¹⁰
6. Guidance regarding the time-value-of-money element of prepaid forward contracts and “deep-in-the-money” options.¹¹
7. Guidance under section 1091 regarding application of the wash sale rules to short sales, options, equity swaps, and other derivatives transactions.¹²
8. Guidance on questions raised in Notice 2002-36 regarding the proper tax treatment for “contingent” and “regular” convertible debt instruments.¹³
9. Guidance under section 163(l)(3)(C).
10. Guidance regarding the application of section 249(a) to cash-settled “convertibles.”
11. Guidance under section 1001 regarding modifications of various derivative financial instruments (e.g., options, collars and forward contracts).

⁸ Please see NYSBA Tax Section Report 997 (September 5, 2001), *reprinted in* 2001 TNT 173-17 (September 6, 2001).

⁹ Please see NYSBA Tax Section Report 965 (May 5, 2000), *reprinted in* 87 Tax Notes 323 (May 8, 2000).

¹⁰ Please see NYSBA Tax Section Report 1001 (November 14, 2001), *reprinted in* 2001 TNT 221-39 (November 15, 2001).

¹¹ Please see NYSBA Tax Section Report 990 (March 26, 2001), *reprinted in* 93 Tax Notes 1761 (December 24, 2001).

¹² We expect to issue a report on this topic later this year.

¹³ We expect to issue a report on this topic later this year.

12. Guidance on who is a dealer in securities futures contracts.

13. Guidance regarding the treatment of credit derivatives.¹⁴

BANKRUPTCY AND WORKOUTS

1. Guidance on built-in items under section 382(h)(6).¹⁵

2. Guidance clarifying whether, and if so, to what extent, a consolidated group must reduce its consolidated attributes (such as NOLs and capital losses) on account of discharge of indebtedness of a member that is excluded under section 108.

3. Guidance under section 108 regarding the treatment of contingent liabilities for purposes of measuring insolvency.

4. Guidance, where debt is retired for consideration insufficient to satisfy the principal balance, regarding allocation of the consideration between principal and interest.

5. Propose regulations conforming the treatment of interest and OID in the case of "doubtful collectibility" (and better defining such term).

CONSOLIDATED GROUPS

1. Finalize regulations on consolidated return loss disallowance under Reg. § 1.337(d)-2T,¹⁶ and propose regulations on consolidated return loss duplication as discussed in Notice 2002-18.

PARTNERSHIPS

1. Guidance regarding the taxation of partnership options and convertible securities.¹⁷

¹⁴ We expect to issue a report on this topic later this year.

¹⁵ We expect to issue a report on this topic later this year.

¹⁶ We expect to issue a report on this topic later this year.

¹⁷ Please see NYSBA Tax Section Report 1005 (January 29, 2002), *reprinted in* 2002 TNT 21-24 (January 31, 2002).

EMPLOYEE BENEFITS

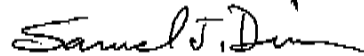
1. Clarify the section 419 & 419A regulations regarding the permitted reserve for post-retirement medical and life insurance benefits.
2. Revise and finalize recently repropoed regulations under section 280G dealing with golden parachute payments.¹⁸
3. Guidance regarding section 411(d)(6).¹⁹

TAX ACCOUNTING

1. Propose regulations following up on the notice of proposed rulemaking on the capitalization of intangibles.²⁰
2. Guidance regarding newly enacted sections 168(k) and 1400L.²¹

Please call me if we can be of assistance to you in your consideration of any of the foregoing suggestions.

Respectfully submitted,



Samuel J. Dimon
Chair

cc: Honorable B. John Williams, Jr.
Brenda Wilson
Eric Solomon
Robert P. Hanson
Barbara Angus
William F. Sweetnam, Jr.

¹⁸ We expect to issue a report on the proposed regulations shortly.

¹⁹ Please see NYSBA Tax Section Report 1006 (February 27, 2002), *reprinted in* 2002 TNT 40-20 (February 28, 2002).

²⁰ We expect to issue a report on the proposed regulations shortly.

²¹ We expect to issue a report on the proposed regulations later this year.