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October 13, 2016

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Re: *Report No. 1355 on Temporary and Proposed Regulations under Section 337(d) and Section 732(f)*

Dear Messrs. Mazur, Koskinen and Wilkins:

I am pleased to submit the attached report of the Tax Section commenting on (i) temporary regulations and proposed regulations under Section 337(d) of the Internal Revenue Code (the "**337(d) Regulations**"), and (ii) proposed regulations under Section 732(f) of the Internal Revenue Code (the "**732(f) Regulations**") that were each published by the Treasury Department and the Internal Revenue Service (the "**IRS**") on June 12, 2015. The 337(d) Regulations replace proposed regulations that were issued under Section 337(d) in 1992 (the "**Prior Regulations**") and apply to transactions occurring on or after June 12, 2015.

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The 337(d) Regulations address the use of partnerships to avoid the repeal of the General Utilities doctrine and would prevent a corporate partner from avoiding corporate-level gain through transactions with a partnership involving equity interests of the partner. The 337(d) Regulations retain the same purpose as the Prior Regulations and some of the same rules. However, the 337(d) Regulations also make some key changes described in the report.

The 732(f) Regulations, like the 337(d) Regulations, are aimed at preventing a corporate partner from avoiding corporate-level gain on appreciated property through partnership transactions involving the distribution of stock to a corporate partner. These regulations are proposed to be effective for distributions and transactions occurring on or after the date final regulations are published.

The Report makes the following principal recommendations:

1. In defining the term “stock of the corporate partner” for purposes of the 337(d) Regulations, an interest in an entity that is not controlled by the corporate partner should not be treated as stock of the corporate partner if less than 20 percent of the assets of that entity consists of stock of the corporate partner.
2. In cases where the deemed redemption rule does not apply because of the definition of “control,” the 337(d) Regulations should be clarified to provide that certain subsequent transactions would trigger gain recognition by treating each of those transactions as a “Section 337(d) transaction.”
3. The affiliated group exception to the definition of stock of a corporate partner should not be extended to partnerships owned by controlled foreign corporations that are owned entirely by a single affiliated group. However, the 337(d) Regulations should be clarified to provide that the exception applies to lower-tier partnerships that are owned by one or more upper-tier partnerships if the partnerships are ultimately owned entirely by a single affiliated group that includes the corporate partner.
4. An example should be included in the 337(d) Regulations of an acquisition by the partnership of stock of the corporate partner that is not treated as a “Section 337(d) transaction.”
5. The 337(d) Regulations should include an aggregation rule in which the interests of all members of an affiliated group in corporate stock and appreciated property are taken into account in determining whether the corporate partner has exchanged its interest in appreciated property for its stock.

6. The 337(d) Regulations could be coordinated with the provisions of Section 732(f) by providing a rule that reduces the amount of the basis step-down under Section 732(f) by the amount of gain recognized under the 337(d) Regulations.
7. We encourage the Treasury Department and the IRS to study further the special basis rule that applies for purposes of determining the partnership's basis in the stock of the corporate partner distributed to the corporate partner in a Section 337(d) distribution and, in particular, whether this rule should apply solely to the corporate partner.
8. The inadvertence exception in the 337(d) Regulations should explicitly provide that the conduct does not need to have been inadvertent to satisfy the exception. Additionally, the second requirement of this exception should be retained.
9. Further examples should be added regarding tiered partnerships for purposes of both the 337(d) Regulations and the 732(f) Regulations.
10. The basis aggregation rule under the 732(f) Regulations should be extended to include a distributed corporation (including a controlled foreign corporation) that is owned by members of the distributee partners' consolidated group following the distribution.

We appreciate your consideration of our recommendations. If you have any questions or comments regarding this report, please feel free to contact us and we will be glad to discuss or assist in any way.

Respectfully submitted,



Stephen B. Land
Chair

cc: Emily S. McMahon
Deputy Assistant Secretary
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October 13, 2016

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