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Report No. [1386]
January [22], 2018

The Honorable David Kautter
Assistant Secretary (Tax Policy)
Department of the Treasury
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The Honorable David Kautter
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

The Honorable William M. Paul
Principal Deputy Chief Counsel and
Deputy Chief Counsel (Technical)
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: *Report No. [1386] on Notice 2017-57: Alternative Rules for
Determining Section 987 Gain or Loss*

Dear Messrs. Kautter and Paul:

I am pleased to submit the attached report of the Tax Section of the New York State Bar Association. The report provides comments in response to Notice 2017-57, which stated that Treasury and the IRS are considering changes to the regulations under section 987 that would allow taxpayers to elect to apply alternative rules for determining section 987 gain or loss as well as alternative rules for transitioning from one method of applying section 987 to another.

We are in favor of changes that would allow one or more alternative, less burdensome sets of rules for determining current taxable income from, and unrealized section 987 gain or loss with respect to, a QBU. In our view, the most appropriate approach would be to allow taxpayers to apply a "profit and loss" method along the lines of that

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described in the 1991 Notice of Proposed Rulemaking (the “**1991 Proposed Regulations**”),¹ with certain adjustments. With respect to the timing of section 987 loss realization and recognition, we understand Treasury and the IRS have concerns with allowing realization and recognition of section 987 loss to be determined solely by reference to distributions of assets from the QBU to its owner (“**remittances**”) and therefore are considering exercising their authority under section 989(c)(2) to limit the recognition of losses in certain cases. We recommend a “lookback” loss deferral rule under which section 987 loss realized upon a remittance would be recognized currently only to the extent of prior realized section 987 gains from the same QBU. Finally, we are in favor of a change to the existing transition rule to ensure that items of economic gain or loss remain in the US federal income tax base and are not lost via the transition.

We appreciate your consideration of our comments. Please let us know if you would like to discuss these matters further or if we can assist you in any other way.

Respectfully submitted,

Michael Farber
Chair

Attachment

cc: Dana L. Trier
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¹ 56 Fed. Reg. 48457 (Sept. 25, 1991).

Hon. David Kautter
Hon. William M. Paul

January [22], 2018

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