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Report No. 1375
June 21, 2017

The Honorable Thomas C. West
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The Honorable John Koskinen
Commissioner
Internal Revenue Service
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Washington, DC 20224

The Honorable William M. Paul
Acting Chief Counsel
Internal Revenue Service
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Washington, DC 20224

Re: *Report No. 1375 on the Temporary and Proposed Regulations under Section 901(m)*

Dear Messrs. West, Koskinen, and Paul:

I am pleased to submit the attached report of the Tax Section of the New York State Bar Association providing comments on temporary and proposed regulations issued under section 901(m) on December 7, 2016.

Section 901(m) is intended to prevent U.S. taxpayers from "hyping" U.S. foreign tax credits when engaging in certain specified types of acquisition transactions ("covered asset acquisitions" or "CAAs") that result in a "step up" in asset basis for U.S. tax purposes but not foreign tax purposes. Section 901(m) prevents this result by denying credits for foreign taxes attributable to the resulting difference between the U.S. and foreign income tax bases (for example, caused by reduced foreign tax depreciation of the lower foreign tax basis).

Although they provide helpful guidance to taxpayers, the proposed regulations are highly technical and complex and will be challenging for even highly sophisticated taxpayers to apply. As discussed in detail in the

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attached report, we believe that certain modifications and changes to the proposed regulations would significantly ease compliance burdens and enhance the administrability of the rules without undermining the effectiveness of the regulations in preventing transactions that are likely to allow U.S. taxpayers to "hype" U.S. foreign tax credits.

The following is a brief summary of our principal recommendations:

1. A new type of CAA introduced by the proposed regulations, which includes any asset acquisition for U.S. and foreign purposes that results in a U.S.-foreign basis disparity, should be replaced with one or more specific better-defined transactions, subject to an anti-abuse rule targeting transactions that are structured with a principal purpose of avoiding falling within the definition of CAA in the proposed regulations.

2. The 50% reduction of the *de minimis* thresholds for related party transactions should be eliminated and the thresholds for the cumulative basis difference exemption and the relevant foreign asset class exemption should be increased.

3. The foreign basis election should be made available to taxpayers who consistently apply the proposed regulations to CAAs that have occurred since 2011 with respect to all tax years that remain open.

4. A specific priority rule should be added to provide that where a transaction is both a CAA and a "foreign tax credit splitting event" under section 909, the rules of section 901(m) will apply first.

5. Treasury and the IRS should consider whether it would be appropriate to apply the principles of section 704(c) to situations in which "relevant foreign assets" from a prior CAA are contributed to a new partnership.

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

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