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Report No. 1377
August 9, 2017

The Honorable David Kautter
Assistant Secretary (Tax Policy)
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

The Honorable William M. Paul
Acting Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: *Report No. 1377 on Notice 2016-73*

Dear Messrs. Kautter, Koskinen, and Paul:

I am pleased to submit the attached report of the Tax Section offering comments and recommendations on Notice 2016-73, released on December 2, 2016.

Notice 2016-73 (the "Notice") announced the intention of the Treasury Department ("Treasury") and the Internal Revenue Service (the "Service") to issue regulations that would modify the rules under section 367 of the Internal Revenue Code regarding cross-border triangular reorganizations followed by certain inbound nonrecognition transactions. As announced in the Notice, these regulations generally will be effective for transactions entered into after the date of the Notice.

The Notice was motivated by a concern that taxpayers were engaging in certain cross-border triangular reorganizations with foreign target companies ("Applicable Triangular Reorganizations") followed by inbound nonrecognition transactions that have the result of repatriating value from foreign subsidiaries to their U.S. parents without the parent group incurring federal income taxes, notwithstanding existing regulations

that are generally intended to avoid this outcome. In order to address these concerns, the Notice announces the intention of Treasury and the Service to amend the regulations to require the U.S. parent to recognize income upon the relevant repatriation and also to require the shareholders of a foreign target engaged in an Applicable Triangular Reorganization to recognize gain on the exchange of their stock in the target company in the relevant transaction.

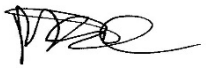
While we support Treasury and the Service in their efforts to discourage taxpayers from engaging in these transactions, we believe that some of the provisions announced in the Notice will significantly increase complexity, in an already highly complex area of tax law, and will be difficult to implement and to comply with. As discussed in detail in the attached report, we believe that certain modifications to the rules announced in the Notice would significantly reduce their complexity without undermining their effectiveness.

The following is a brief summary of our principal recommendations:

1. We support the changes to the priority rules, according to which the deemed distribution under Treasury Regulations section 1.367(b)-10 would always apply to Applicable Triangular Reorganizations. We further support the treatment of nonqualified preferred stock as property for purposes of these Treasury Regulations.
2. We do not believe that it is necessary to require the shareholders of target companies engaged in Applicable Triangular Reorganizations to recognize gain on the exchange of their stock in the target company.
3. We believe that the new excess asset basis rules under the Notice should be limited only to taxpayers that have already completed Applicable Triangular Reorganizations prior to the effective date of the Notice.
4. Treasury and the Service should also consider limiting the excess asset basis to the tax-basis imbalance that is created by an Applicable Triangular Reorganizations.
5. Treasury and the Service should consider a simplifying rule that disregards the outside basis of small shareholders (and the related share of the inside basis, liabilities and earnings and profits) for purposes of determining excess asset basis.
6. We see no reason to change the timing of the deemed distribution under the Triangular Regulations; it would be helpful if Treasury and the Service could clarify what reason they see to do so.

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 S. Farber
Chair

Attachment

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