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October 2, 2012

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

The Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

The Honorable William J. Wilkins
Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
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Re: Report on Temporary and Proposed "Splitter" Regulations and Final Technical Taxpayer Regulations

Dear Messrs. Mazur, Wilkins and Shulman:

We write to provide comments and recommendations on the recently issued temporary and proposed regulations under Section 909 (the "Splitter Regulations"), as well as on the final "technical taxpayer" regulations under Section 901 (the "Technical Taxpayer Regulations").

By way of background, both the Splitter Regulations and the Technical Taxpayer Regulations may defer the right to claim a foreign tax credit for foreign taxes paid or accrued until the taxpayer has recognized the related foreign income. The Technical Taxpayer Regulations do so by treating all foreign taxes of a combined foreign group as paid or accrued by its members in proportion to each member's relative share of the income of the group (regardless of which member actually pays or is legally liable for the tax). The Splitter Regulations do so by suspending the foreign tax credit for any foreign taxes paid or accrued in connection with a "splitter arrangement" until the taxpayer has recognized the related foreign income.

We strongly support the approach of the Splitter Regulations. We expect they will achieve their intended purpose of deterring future efforts to split foreign taxes by eliminating the benefit, while at the same time providing much needed guidance to taxpayers for identifying pre-effective date splitters that will be subject to suspension under the statute.

In particular, we support the policy decision of Treasury and the IRS (i) to limit the definition of a "splitting arrangement" to an exclusive list of transactions; (ii) to apply any expanded definition on a prospective basis; (iii) to ignore timing and base differences in the determination of foreign income; and (iv) to allow the transferee in Section 381 and similar transactions to succeed to the "related income" of the transferor. Given the types of transactions and other arrangements potentially within the ambit of Section 909, the Splitter Regulations respond to many concerns of taxpayers and their advisors regarding the uncertain scope of the statute, and do so in a manner that we believe is consistent with the purposes of the statute.

We also support the government's decision to finalize the Technical Taxpayer Regulations. By effectively treating each member of a combined foreign group that might otherwise have been a "covered person" under Section 909 as legally liable for its allocable share of the group taxes, these regulations achieve the same objective of the Splitter Regulations without any of the attendant complexities, in particular the difficulty of tracking a brand new category of foreign source income from prior periods for purposes of determining when (and to what extent) any future dividend or other repatriation is deemed to "reunite" the related income with the split tax.

The attached report includes a limited number of recommendations, including the following:

- that Treasury and the IRS should clarify the specific mechanics in the final splitter regulations for tracking distributions of related income under the proposed "pro rata" rule, including how related income should be recovered when intervening losses of a covered person reduce or eliminate its earnings and profits;
- that Treasury and the IRS consider whether the final splitter regulations should allow taxpayers to apply any reasonable methodology not inconsistent with the "pro rata" rule for purposes of making such determinations, in particular with respect to split taxes paid or incurred well before the effective date of the statute;
- that the final splitter regulations should allow a basis or earnings and profits adjustment for any split taxes not taken into account on or before a disposition or other transaction that terminates the covered person relationship, including certain sales and inbound liquidations;
- that the final splitter regulations should clarify the meaning of "useable shared loss", in particular whether it includes taxable years for which a previously surrendered loss could have been carried back or forward by the surrendering entity to reduce the foreign taxes of a U.S. combined income group; and
- that the final splitter regulations should expand the definition of "covered person" for certain types of hybrid instruments.

We appreciate your consideration of our report and its recommendations.

Respectfully submitted,

Andrew W. Needham
Chair

Enclosure

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