Treasury Details Efforts to Reduce Burden of Tax Regulations

October 31, 2017

WASHINGTON – The Treasury Department, under the leadership of Secretary Steven T. Mnuchin, today released a report on planned upcoming actions that it believes would reduce the burden of eight tax regulations identified earlier this year. Treasury also announced today that it continues to work to identify additional regulations for modification or repeal by evaluating significant regulations issued recently and initiating a comprehensive review of all regulations, regardless of when they were issued. The comprehensive review has already identified over 200 regulations that Treasury believes should be repealed, which will begin in the fourth quarter of 2017.

"This is only the beginning of our efforts to reduce the burden of tax regulations," said Secretary Mnuchin. "Our tax code has been broken for too long, and this retrospective review, along with our efforts on tax reform, will ensure that we have a tax system that fosters economic growth."

In the report released today, Treasury plans to withdraw proposed regulations under Section 2704 that would have hurt family-owned and operated businesses by limiting valuation discounts. The regulations would have made it difficult and costly for a family to transfer their businesses to the next generation. Commenters warned that the valuation requirements of the proposed regulations were unclear and could not be meaningfully applied.

Treasury also plans to withdraw proposed Section 103 regulations on the definition of political subdivision. The proposed regulations would have added new requirements to be considered a "political subdivision" for purposes of issuing tax-exempt municipal bonds. The new requirements would have imposed enhanced standards to show a governmental purpose and governmental control. The changes proposed by the regulations would have been costly and burdensome.

Treasury also plans to propose revoking the Section 385 documentation regulations and replacing them with streamlined documentation rules. The proposed rule should include an effective date that would allow sufficient time for comments and compliance. The proposed streamlined documentation rules are expected to modify the requirements related to a reasonable expectation of ability to pay indebtedness and treatment of ordinary trade payables.

Treasury continues to work with Congress on fundamental tax reform, and Treasury is hopeful that these efforts will address base erosion and earnings stripping while removing tax incentives for foreign takeovers of U.S. companies or for U.S. companies to invert. Treasury plans to retain the distribution regulations under Section 385 pending enactment of tax reform. Treasury believes that these regulations are necessary to safeguard against earnings stripping. Tax reform is expected to eliminate the need for the distribution regulations. However, Treasury currently believes that it would be irresponsible to revoke these regulations before enactment of tax reform. Additionally, Treasury is also considering ways to simplify the distribution regulations and ease compliance if tax reform does not eliminate the need for these regulations.

The Treasury report identifies the following regulations to consider for partial revocation:

• **Final Regulations under Section 7602 on the Participation of a Person Described in Section 6103(n) in a Summons Interview.** Under the proposed changes to this regulation that Treasury is considering, attorneys who are private contractors would be prohibited from assisting the IRS in the auditing of taxpayers, including in the interview process. A revised regulation would continue to allow outside subject-matter experts to participate in summons proceedings.

• **Regulations under Section 752 on Liabilities Recognized as Recourse Partnership Liabilities.** Treasury and the IRS currently believe that the temporary regulations relating to disguised sales should be proposed for revocation and the prior regulations reinstated. Treasury and IRS will continue to study the issue and consider comments related to bottom-dollar guarantees.

The Treasury report identified the following regulations to consider for substantial revision:

• **Temporary Regulations under Section 337(d) on Certain Transfers of Property to Regulated Investment Companies and Real Estate Investment Trusts**. Treasury and the IRS plan to propose to replace the temporary regulations with revised regulations designed to narrow their application.

• **Final Regulations under Section 367 on the Treatment of Certain Transfers of Property to Foreign Corporations.** These regulations, which eliminate the ability to transfer certain property to foreign corporations without immediate or future U.S. tax, address issues that could also be addressed as Treasury continues to work with Congress on fundamental tax reform. In order to protect the U.S. tax base in the meantime, Treasury plans to continue to implement these regulations. However, Treasury and the IRS also plan to develop exceptions to the regulations.

• **Final Regulations under Section 987 on Income and Currency Gain or Loss With Respect to a Section 987 Qualified Business Unit**. These regulations pertain to foreign currency translations and other foreign currency transactions, and Treasury plans to propose substantial revisions. Treasury plans to immediately announce relief allowing taxpayers to postpone the application of these rules. Treasury plans to propose changes to further simplify the regulation, and also plans to consider more fundamental changes that might be implemented to address taxpayer concerns.

Identifying and Reducing Tax Regulatory Burdens.

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