

CC:PA:LPD:PR (REG-208270-86)
Internal Revenue Service
PO Box 7604
Ben Franklin Station
Washington, DC 20044

February 6, 2007

Dear Ladies and Gentlemen,

On September 7, 2006, the Internal Revenue Service ("IRS") issued a withdrawal of notice of proposed rulemaking, a notice of proposed rulemaking and proposed regulations, regarding the timing, amount, character, source and determination of items of income or loss of a qualified business unit ("QBU") under section 987 of the Internal Revenue Code of 1986 as amended (the "Code"). The IRS requested that interested parties submit comments on the proposals. The Securities Industry and Financial Markets Association ("SIFMA")¹ welcomes the opportunity to respond to this request for comments. This comment recommends amending the proposed regulations to allow taxpayers to make an election to fully recognize the section 987 gain or loss each year. Such election would accomplish annual recognition by an election to treat a QBU as if terminated at the end of each year.

Background

Generally, the proposed regulations provide that the amount of section 987 gain or loss recognized in a taxable year equals the net unrecognized section 987 gain or loss of the QBU as of the last day of the taxable year, multiplied by the owner's remittance proportion. The owner's remittance proportion equals the excess of the total transfers from the QBU to the owner over the total transfers from the owner to the QBU determined on an annual basis. In the case of a termination of a QBU, the remittance proportion equals one.

¹ The Securities Industry and Financial Markets Association brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

Termination Election

SIFMA supports amending the proposed regulations to allow for taxpayers to make a one-time election to treat a QBU as deemed terminated at the end of each year. Such an election would require owners to recognize all section 987 gains or losses with respect to the QBU on an annual basis for the tax year of the election and all subsequent years. The election would be revocable only upon the Commissioner's consent. To effect such an election, a new section would be inserted following section 1.987-5(c)(3):

1.987-5(c)(4) Termination Election

The owner may elect to apply sections 1.987-5(c)(3) and 1.987-8(d), effective as of the last day of the owner's tax year. Such election may be revoked only upon permission of the Commissioner. Such an election is treated as a termination of the QBU followed by a contribution of the remittance to the QBU.

Reasoning

The IRS and Treasury Department specifically note that there may be a significant number of transfers to and from the owner and the QBU in an active business. The annual netting rule was introduced to help reduce this complexity and administrative burden for taxpayers and the IRS. The proposed termination election would allow taxpayers to eliminate this administrative burden and complexity because taxpayers making the termination election would not be required to track transactions between an owner and its QBU. Additionally, taxpayers making the termination election would not be required to track unrecognized section 987 gains and losses carried over from previous years. Thus, this election would allow taxpayers to considerably reduce the administrative cost and complexity of complying with section 987.²

Finally, this election should not result in cost or reduction of tax over time to the US government. Taxpayers making the election would be required to recognize gains as well as losses. Taxpayers would not be able manipulate elections to defer gains or accelerate losses, as the election would be revocable only with the consent of the Commissioner. This election would be akin to the mark-to-market accounting method for dealers in securities under section 475.

We would welcome the opportunity to discuss these issues or other related issues with you or your staff at your convenience. Please do not hesitate

² Also, it may be useful to note that the proposed termination election is not inconsistent with the US GAAP treatment of translation adjustments for financial statement purposes as described in the Financial Accounting Standards Board, in Statement of Financial Accounting Standards No. 52 reproduced at <http://www.fasb.org/pdf/fas52.pdf>.

to contact me (at 202-216-2031 or pmcclanahan@sifma.org) if SIFMA can be of assistance in any way as you consider our recommendation.

Sincerely,

Patti McClanahan
Vice President and Director,
Tax Policy