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Rev. Proc. 2017-52: New policy for letter rulings, transactions under section 355

The IRS today released an advance version of Rev. Proc. 2017-52 to introduce an 18-month pilot program expanding the scope of letter rulings on the tax consequences of a distribution of stock (or stock and securities) of a controlled corporation under section 355.

Rev. Proc. 2017-52 [PDF 149 KB] sets forth procedures for taxpayers requesting these letter rulings—in general, these are the procedures under Rev. Proc. 2017-1, in addition to certain specific actions and representations that are listed in an appendix to today's revenue procedure—and clarifies the procedures for taxpayers requesting letter rulings on significant issues related to such transactions under section 355.

The pilot program will expire on March 21, 2019. The IRS will then evaluate the program and consider whether to extend it. The IRS has requested comments about all aspects of today's revenue procedure. Comments are due no later than December 31, 2017.

Background

Rev. Proc. 2013-32, issued by the IRS in June 2013, revised the IRS's letter ruling policy concerning spin-offs, reorganizations, and other corporate nonrecognition transactions—including distributions intended to qualify under section 355.

Under that revised "no ruling" policy, the IRS stated that it would no longer rule on whether certain corporate transactions generally qualify for tax-free treatment, but that it would issue a letter ruling on "significant issues" presented with respect to the transaction—that is, the "significant issue ruling" policy.

Rev. Proc. 2017-52

Today's revenue procedure explains that the IRS has reviewed its letter ruling policy, and has determined that it warrants expansion with a pilot program.

The letter ruling policy under the pilot program of Rev. Proc. 2017-52 provides that a taxpayer may request a "transactional ruling for a covered transaction." For these purposes, a "transactional ruling" is a letter ruling that addresses the federal tax consequences of a "covered transactions"—meaning a transaction intended to qualify under sections 368(a)(1)(D) and 355, or a distribution intended to qualify under section 355(a) and (c).

Rev. Proc. 2017-52 explains that if a taxpayer's plan includes multiple "covered transactions," then the taxpayer may request a transactional ruling, a significant issue ruling, or no ruling for each of the other covered transactions.

Today's release does not alter the IRS's policy that limits rulings with regards to the device prohibition, the business purpose requirement, and whether a distribution is pursuant to a plan under section 355(e). Also, a transactional ruling may include the tax consequences of a covered transaction under various Code provisions and the relevant consolidated return regulations. It also provides that the IRS may decline to rule on the tax consequences of other Code sections.

Rev. Proc. 2017-52 states that it does not affect the list of areas under the jurisdiction of the IRS Associate Chief Counsel (International) relating to matters on which the IRS will not issue a letter ruling (that is, the "no rulings" area for international rulings). Therefore, "routine or comfort rulings" will not ordinarily be issued under the international provisions of the Code (such as section 367).

In addition to setting out this new policy, Rev. Proc. 2017-52 includes a list of procedures for taxpayers to follow in requesting a "transactional ruling" and notes that certain documentation requirements must be satisfied as well as factual information, legal analysis, and a statement regarding representations. This information is included in the appendix to Rev. Proc. 2017-52.

KPMG observation

The list of procedures captures the essence of many past revenue procedures—that are now superseded by Rev. Proc. 2017-52.

Direct comments, including requests for subscriptions, to Washington National Tax. For more information, contact KPMG's Federal Tax Legislative and Regulatory Services Group at + 1 202.533.4366, 1801 K Street NW, Washington, DC 20006-1301.

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