



TaxNewsFlash

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Notice 2018-46: Exception to “United States property” for notional principal contract swaps (section 956)

The IRS today released an advance version of Notice 2018-46 announcing that the IRS and Treasury Department intend to issue regulations to allow taxpayers to continue to rely on the exception to the definition of “United States property” under section 956, as provided in temporary regulations that have a “sunset date” of May 7, 2018.

Notice 2018-46 [PDF 12 KB] states that future regulations will provide, similar to the rule in section 956(c)(2)(J), an exception from the definition of “United States property” for an obligation (without regard to whether the obligation arises in connection with a derivative financial instrument that is, or is not, a notional principal contract) of a United States person to the extent the principal amount of the obligation does not exceed the fair market value of cash and readily marketable securities posted or received as margin or collateral for the obligation in the ordinary course of its business by a United States or foreign person that is a dealer in securities or commodities.

Today’s IRS notice states that until the regulations are issued, taxpayers can rely on Notice 2018-46 (even for obligations arising before May 4, 2018) or on the full margin or cash collateral exception provided in the 2015 regulations (described below).

Background

Temporary regulations (May 2012) established an exception to the definition of “United States property” (as defined under section 96(c)) for obligations of “United States persons” arising from certain upfront payments made by a controlled foreign corporation that is a dealer in securities or commodities with respect to certain contracts that are properly classified as notional principal contracts for U.S. federal income tax purposes and are cleared by a derivative clearing organization or clearing agency. Read [TaxNewsFlash](#) [PDF 390 KB]

Temporary regulations (May 2015) effectively replaced the 2012 regulations concerning the treatment of nonperiodic payments made or received under certain notional principal contracts. In pertinent part, the 2015 regulations amended the definition of “United States property” under section 956 by providing an exception. Read [TaxNewsFlash](#) [PDF 395 KB]

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