

Treasury and IRS remove Section 385 documentation requirements; announce proposal for debt or equity treatment

October 31, 2019

In brief

Today, Treasury and the IRS [removed final regulations](#) setting forth minimum documentation requirements that ordinarily must be satisfied in order for certain related-party interests in a corporation to be treated as indebtedness for Federal tax purposes. Treasury and IRS also filed an [advanced notice of proposed rulemaking](#) on the treatment of certain interests in corporations as stock or indebtedness. Both documents are scheduled to be published in the Federal Register on November 4.

Previously, on October 21, 2016, Treasury and the IRS issued final and temporary regulations under Section 385 on the treatment of certain interests in corporations as stock or indebtedness. On the same date, Treasury and the IRS also published a notice of proposed rulemaking (the Proposed Regulations) by cross-reference to temporary regulations under Section 385. The text of the Proposed Regulations is the same as the text of the Temporary Regulations.

The Temporary Regulations provided guidance regarding the treatment of certain qualified short-term debt instruments, as well as the treatment of certain transactions involving controlled partnerships, consolidated groups, and disregarded entities. The Temporary Regulations expired on October 13, 2019; however, Notice 2019-58 and today's advanced notice of proposed rulemaking provide that a taxpayer may rely on the Proposed Regulations for periods following the expiration date of the Temporary Regulations, provided that the taxpayer consistently applies the rules in the Proposed Regulations in their entirety.

In addition, on September 24, 2018, Treasury and the IRS published a notice of proposed rulemaking that proposed removing the documentation regulations and adopting conforming amendments to other final regulations to reflect the removal of the documentation regulations. The proposed regulations provided that "taxpayers may rely on these proposed regulations, in their entirety, until the date a Treasury decision adopting these regulations as final regulations is published in the Federal Register." The removal of the documentation regulations is effective on the date of publication, currently scheduled for November 4.

See also:

- PwC Insight: [Treasury and IRS propose to remove the Section 385 documentation regulations](#)
- PwC Insight: [IRS announces a one-year delay in Section 385 documentation requirements](#)
- PwC Insight: [Section 385 regulations summary chart](#)
- PwC Insight: [Treasury and IRS release Section 385 regulations](#)

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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