



IRS expands scope of letter ruling program for corporate transactions

Tax Alert

Overview

On January 2, 2024, the IRS published [Rev. Proc. 2024-1](#) and [Rev. Proc. 2024-3](#), which expand the IRS's letter ruling practice for certain corporate transactions. The practical implication of this guidance is that the IRS will now issue: (i) "transactional rulings" and "comfort rulings" under sections 332, 351, 368, and 1036, (ii) with respect to distributions under section 355, rulings regarding the non-device requirement, whether a distribution and an acquisition by one or more persons of stock in the distributing corporation or the controlled corporation will be part of a plan (or series of related transactions) under section 355(e) and certain issues related to the business purpose requirement, and (iii) rulings on the excise tax on repurchases of corporate stock under section 4501.

Elimination of significant issue approach

Since the issuance of Rev. Proc. 2013-32, the IRS has restricted the scope of letter rulings that it would issue with respect to transactions under sections 332, 351, 355, 368, and 1036. Instead of issuing "transactional rulings" (i.e., rulings on whether a given transaction qualifies for nonrecognition under one of these Code sections), the IRS restricted the matters on which it would issue a ruling to only include "significant issues" (i.e., rulings on questions of law the resolution of which was not essentially free from doubt and that was germane to determining the tax consequences of a transaction).

In 2017, the IRS issued Rev. Proc. 2017-52 to initiate an 18-month pilot program under which a taxpayer could request so-called "transactional rulings" that covered the US federal income tax consequences of a distribution of stock in a controlled corporation under section 355. This pilot program, which only covered distributions under section 355, was later extended indefinitely.

With the issuance of Rev. Procs. 2024-1 and 2024-3, the IRS has ended the "significant issue" approach it had been taking and removed transactions under sections 332, 351, 368, and 1036 from the IRS's "no-rule" list. As a result, the IRS is once again open to issuing "transactional rulings" under sections 332, 351, 368, or 1036.

Observation: As part of the IRS’s expansion of its “transactional ruling” practice, it is expected that the IRS will require taxpayers seeking rulings under sections 332, 351, 355, 368, and 1036 to make certain representation in connection with their request for a letter ruling. Before 2013, the standard representations that taxpayers were required to make to receive a letter ruling under sections 332, 351, 368, and 1036 appeared in Rev. Procs. 81-60 (section 368(a)(1)(E)), 83-59 (section 351), 86-42 (section 368(a)(1)(A), (B), (C), (D) (acquisitive reorganizations), and (F)) and 90-52 (section 332). It is expected that the IRS would update these revenue procedures to take into account changes in the law since they were issued.

Comfort rulings

Historically, the IRS indicated it would not issue “comfort rulings” (i.e., rulings with respect to an issue that is clearly and adequately addressed by a statute, regulation, court decision, revenue ruling, revenue procedure, notice, or other authority published in the Internal Revenue Bulletin). In both Rev. Proc. 2024-1 and Rev. Proc. 2024-3, however, the IRS has excepted letter rulings with respect to issues under sections 332, 351, 355, 368, and 1036 from the general prohibition against issuing “comfort rulings”, indicating a willingness to issue “comfort rulings” in these areas.

Fast-track processing

The annual guidance released by the IRS at the start of each year historically provided taxpayers the ability to request expedited handling, which was only granted in rare and unusual cases. In Rev. Proc. 2022-10, the IRS launched an 18-month pilot program to provide expedited handling of ruling requests related to certain corporate transactions that complied with the program’s requirements. This program was extended indefinitely with the issuance of Rev. Proc. 2023-26, while leaving open the option to request expedited handling under the annual letter ruling guidance. Fast-track processing is available for letter ruling requests solely or primarily under the jurisdiction of the Associate Chief Counsel (Corporate) and is intended to provide taxpayers with a ruling within 12 weeks of the submission date. With the publication of Rev. Proc. 2024-1, the exclusive means of receiving expedited processing for letter ruling requests solely or primarily under the jurisdiction of the Associate Chief Counsel (Corporate) is through the fast-track processing procedures provided in Rev. Proc. 2023-26.

Section 355

Rev. Proc. 2024-3 also expands the types of rulings a taxpayer may receive with respect to distributions intended to qualify under section 355. Previously, the IRS declined to rule (subject to certain exceptions) on (i) whether a distribution under section 355 was being used principally as a device under section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d), (ii) whether a distribution and an acquisition by one or more persons of stock in the distributing corporation or the controlled corporation were part of a plan (or series of related transactions) under section 355(e), and (iii) whether a distribution satisfied the corporate business purpose requirement under Treas. Reg. § 1.355-2(b). Rev. Proc. 2024-3 removes the non-device requirement and section 355(e) from the “no-rule” list, and also states that the IRS will rule with respect to an issue related to the corporate business purpose requirement, provided that the issue is a legal issue and is not inherently factual in nature.

Excise tax

Rev. Proc. 2024-1 also adds the excise tax on repurchases of corporate stock under section 4501 to the list of issues under the jurisdiction of the Associate Chief Counsel (Corporate) for which rulings may be issued.



[Deloitte.com](#) | [Unsubscribe](#) | [Manage email preferences](#) | [Legal](#) | [Privacy](#)

30 Rockefeller Plaza
New York, NY 10112-0015
United States

As used in this document, "Deloitte" means Deloitte Tax LLP, a subsidiary of Deloitte LLP. Please see <http://www.deloitte.com/us/about> for a detailed description of our legal structure. Certain services may not be available to attest clients under the rules and regulations of public accounting.

This alert contains general information only and Deloitte is not, by means of this alert, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This alert is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this alert.

The services described herein are illustrative in nature and are intended to demonstrate our experience and capabilities in these areas; however, due to independence restrictions that may apply to audit clients (including affiliates) of Deloitte & Touche LLP, we may be unable to provide certain services based on individual facts and circumstances.

Copyright © 2024 Deloitte Development LLC. All rights reserved.