



## IRS issues updated procedures for private letter rulings regarding section 355 transactions

### Tax Alert

## Overview

On May 1, 2024, the Internal Revenue Service (IRS) published [Rev. Proc. 2024-24](#), which provides updated guidelines for taxpayers requesting private letter rulings regarding certain matters relating to [section 355](#) transactions. Rev. Proc. 2024-24 includes new or revised guidelines relating to the treatment of: (i) delayed distributions of stock or securities of the controlled corporation (Controlled); (ii) the retention of stock or securities of Controlled by the distributing corporation (Distributing); and (iii) deleveraging transactions undertaken by Distributing, including debt-for-debt exchanges. Rev. Proc. 2024-24 applies to all section 355 ruling requests postmarked or, if not mailed, received by the IRS *after* May 31, 2024.

In conjunction with the issuance of Rev. Proc. 2024-24, the IRS released [Notice 2024-38](#), which requests public comment on certain matters addressed in Rev. Proc. 2024-24 and describes the Department of Treasury's (the Treasury Department) and the IRS's concerns relating to those matters.

## Rev. Proc. 2024-24

### Background and Scope

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 Section 355 Transaction (other than the business purpose requirement, the non-device requirement, and section 355(e), except for certain legal issues). A "Section 355 Transaction" includes (i) a distribution that qualifies under section 355(a) (or so much of [section 356](#) as relates to section 355) and section 355(c) (Section 355(c) Distribution), and (ii) a series of transactions that qualify as a reorganization described in sections 355(a) and [368\(a\)\(1\)\(D\)](#) (Divisive Reorganization). Rev. Proc. 2017-52 also includes procedures for requesting rulings on "significant issues" related to Section 355 Transactions. This pilot program has been extended indefinitely.

In 2018, the IRS issued [Rev. Proc. 2018-53](#), which describes the procedures for requesting rulings on issues related to the assumption or satisfaction of debt of Distributing in a Divisive Reorganization and the representations, information, and analysis to be submitted in those requests.

In [Rev. Proc. 2022-10](#), the IRS launched an 18-month pilot program to provide expedited handling of ruling requests for Section 355 Transactions (so-called fast-track processing). [Rev. Proc. 2023-26](#) extended fast-track processing indefinitely.

With the issuance of [Rev. Procs. 2024-1](#) and [2024-3](#), the IRS removed the no-rule position on (i) the US federal income tax consequences of various corporate transactions (*for example*, section 368(a) reorganizations), and (ii) the section 355 non-device requirement and section 355(e), and also eliminated the issuance of rulings on significant issues, including with respect to Section 355 Transactions. In addition, Rev. Proc. 2024-1 made fast-tracking processing the exclusive means for requesting expedited processing for Section 355 Transactions.

On May 1, 2024, the IRS published Rev. Proc. 2024-24, which modifies Rev. Proc. 2017-52 and supersedes Rev. Proc. 2018-53. Rev. Proc. 2024-24 provides updated guidelines for taxpayers requesting rulings on Section 355 Transactions, including representations, information, and analysis to be submitted with those requests. The updated guidelines include procedures related to the following matters:

1. **Delayed Distributions.** The IRS will entertain requests for rulings that distributions of stock or securities of Controlled by Distributing over a period of time (Delayed Distribution) are, as applicable, “part of the distribution” (within the meaning of section 355(a)(1)(D) for a Section 355(c) Transaction), or “in pursuance of a plan of reorganization” (within the meaning of [section 361](#) for a Divisive Reorganization).
2. **Retention of Controlled Stock or Securities.** The IRS will entertain requests for rulings regarding the application of section 355(a)(1)(D)(ii) to the continued ownership by Distributing of stock or securities of Controlled after the distribution (Retention).
  - **Note:** A Delayed Distribution is intended to be part of a Section 355 Transaction and, thus, a tax-free distribution for Distributing. In contrast, a subsequent disposition of Controlled stock or securities that were part of a Retention would not be tax-free to Distributing.
3. **Divisive Reorganizations.** A taxpayer proposing to engage in a Divisive Reorganization may request rulings that no gain or loss will be recognized to Distributing upon: (i) Controlled’s assumption of a Distributing liability (including contingent liabilities) under [section 357\(a\)](#); (ii) Distributing’s receipt of consideration from Controlled in exchange for property transferred by Distributing to Controlled (Section 361 Consideration), including certain post-distribution payments, under section 361(b); and (iii) Distributing’s distribution to its shareholders of Section 361 Consideration that consists of stock of Controlled or “Qualified Property” (as defined in sections 355(c)(2)(B) and 361(c)(2)(B)), or Distributing’s transfer to a creditor of Distributing of such consideration to satisfy Distributing debt, under section 361(c).
  - **Note:** These items generally were previously addressed by Rev. Proc. 2018-53.

## Procedures and Representations

In any ***Section 355 Transaction*** ruling request, the taxpayer must submit the representations, information, and analysis set forth in Rev. Proc. 2017-52 (as modified by Rev. Proc. 2024-24) and in Section 3.03 of Rev. Proc. 2024-24. In any ruling request relating to a ***Divisive Reorganization***, the taxpayer must submit the representations, information, and analysis set forth in Rev. Proc.

In general, each representation set forth in Section 3.03 or Section 3.05 of Rev. Proc. 2024-24 must be submitted precisely in the language requested. If a taxpayer cannot submit any representation precisely as required, the taxpayer must provide an explanation for why it would not be possible to provide that representation in the language requested. Variations of the language or representations may delay processing the ruling request and will not be accepted unless the taxpayer submits reasons satisfactory of the Associate Chief Counsel (Corporate). For simplicity, the representations described below summarize the language of the specific representations required by Rev. Proc. 2024-24.

### **Representations, Information, and Analysis in Requests for Rulings on all Section 355 Transactions**

Section 3.03 of Rev. Proc. 2024-24 provides representations, information, and analysis required for a request for rulings on any Section 355 Transaction, which generally relate to Delayed Distributions, Retention, and the solvency of Distributing and Controlled.

#### **1. Delayed Distributions**

Section 3.03(2) of Rev. Proc. 2024-24 describes representations, information, and analysis required for a request for rulings on Delayed Distributions. In general, a taxpayer must represent that either (i) Distributing will distribute on the same date all the stock and securities of Controlled, and any options (or similar instruments) to acquire stock or securities of Controlled, that it holds immediately before the Distribution (*that is*, there is no Delayed Distribution), or (ii) the distribution period will be no longer than the period of time necessary to complete all distributions, but in any event the final distribution date will be ***no later than 12 months*** after the first distribution date. If a Delayed Distribution will take place ***more than 90 days*** after the first distribution date, the taxpayer must also submit summaries of the expected percentage of stock or securities of Controlled that will not be distributed within 90 days of the first distribution and the duration of the distribution period, and the business reasons for this percentage and duration.

The taxpayer must submit relevant facts and analysis to establish that each distribution is, as applicable, “part of the distribution” (within the meaning of section 355(a)(1)(D)) or “in pursuance of the plan of reorganization” (within the meaning of section 361). In administering the private letter ruling program, the IRS will not treat the length of time alone as preventing a distribution from being “part of the distribution” or “in pursuance of the plan of reorganization.” However, the IRS will consider the length of time between distributions as a ***primary factor*** for purposes of its analysis.

#### **2. Retention of Controlled Stock or Securities**

Section 3.03(3) of Rev. Proc. 2024-24 describes representations, information, and analysis required for a request for rulings on a Retention. To obtain a ruling that a Retention will satisfy the requirements of section 355(a)(1)(D)(ii), the taxpayer must submit certain representations establishing that: (i) after the distribution, the Controlled stock will be widely held; (ii) each business purpose for the Retention exists at the time of the Retention and is not speculative or otherwise contingent upon events that potentially could occur after the distribution; (iii) there will be no overlap of directors, officers, or key employees between Distributing and Controlled after the distribution (subject to certain exceptions); (iv) any retained stock or securities of Controlled will be disposed of as soon as a disposition is warranted, consistent with the business purpose or purposes for the Retention, but in any event, ***not later than five***



*years* after the distribution; and (v) Distributing will vote the retained stock of Controlled in proportion to the votes cast by Controlled's other shareholders.

The taxpayer must submit information regarding: (i) the number of shares and percentage of each class of stock in, and the principal amount of each series of securities of, Controlled to be held by Distributing after the distribution; (ii) any options (or similar instruments) to acquire Controlled stock or securities that Distributing will hold after the distribution; and (iii) an explanation for why the Retention is necessary, including a description of each business reason for the Retention and any other cause for the Retention that is not a business reason. The taxpayer must also submit information describing any US federal income tax benefit, or any advantage relating to the US federal income tax treatment, of the Retention and the disposition of the retained stock or securities of Controlled. Rev. Proc. 2024-24 includes examples of relevant US federal income tax benefits and advantages and factors indicating that a Retention will be in pursuance of a plan having as one of its principal purposes the avoidance of US federal income tax.

The IRS will apply "significantly increased" scrutiny to any ruling request regarding a Retention that involves the existence of any factor described in Section 3.03(3)(e)(ii) of Rev. Proc. 2024-24. These factors include overlapping directors and the existence of continuing contractual agreements between Distributing and Controlled (including their affiliates) that include provisions that are not arm's length.

### 3. Section 355 Transactions involving Delayed Distributions and Retentions

With regard to the same Section 355 Transaction, the IRS will entertain a request for rulings involving a Delayed Distribution *and* a Retention. However, any Controlled stock or securities that are subject to a Delayed Distribution ruling *will not be covered* by the Retention ruling. That is, only the remaining Controlled stock or securities not distributed as "part of the distribution" or "in pursuance of the plan of reorganization" in the Section 355 Transaction will be considered for purposes of a Retention ruling.

**Observation:** In recent years, the IRS generally has provided taxpayers with significant flexibility in private letter rulings to determine at a later time whether stock and securities of Controlled held by Distributing after the distribution would be distributed to shareholders or transferred to creditors as part of the Section 355 Transaction or disposed of in separate taxable transactions. The guidelines set forth in Rev. Proc. 2024-24 relating to requests for rulings on Delayed Distributions and Retentions appear to represent a change in this ruling policy pursuant to which the IRS is seeking a more clearly-defined transaction upfront and the specific reasons for transactions where all Controlled stock and securities are not distributed or transferred by Distributing at the time of the Section 355 Transaction or shortly thereafter.

### 4. Retention of Controlled Debt

Pursuant to Section 3.03(4) of Rev. Proc. 2024-24, a taxpayer must provide a representation that, if Controlled (or a related party to Controlled) will owe debt to Distributing (or a related party to Distributing) after the distribution, no such debt will constitute stock or securities. The taxpayer must submit information and analysis that any such indebtedness does not constitute stock or securities.

### 5. Solvency and Viability of Distributing and Controlled

Pursuant to Section 3.03(5) of Rev. Proc. 2024-24, a taxpayer must submit representations establishing that after the distribution: (i) the fair market value of the assets of Distributing and Controlled will, in each case, exceed the

amount of its liabilities; and (ii) Controlled will be adequately capitalized and, therefore, the taxpayer expects Controlled to (A) have the means to satisfy its liabilities, and (B) continue as an economically viable entity. The taxpayer must submit information and analysis to support these representations, which may include projections and other financial information. Notice 2024-38 mentioned that the Treasury Department and the IRS are of the view that a Section 355 Transaction cannot be used to burden Controlled with excessive leverage that jeopardizes Controlled's ability to continue as a viable going concern.

### **General Information and Analysis in Requests for Rulings on Divisive Reorganizations**

Section 3.04 of Rev. Proc. 2024-24 identifies general information and analysis required in requests for rulings on Divisive Reorganizations. In a request for rulings on a Divisive Reorganization, the taxpayer must submit information describing (i) each Distributing debt that will be satisfied with Section 361 Consideration or other Distributing liabilities that will be assumed by Controlled, and (ii) the Section 361 Consideration that will be distributed to Distributing's shareholders or transferred to Distributing's creditors in satisfaction of Distributing debt. The request for rulings must also describe the transactions that will implement Controlled's assumption of each Distributing liability, each distribution of Section 361 Consideration to Distributing's shareholders, and each transfer of Section 361 Consideration to Distributing's creditors in satisfaction of Distributing debt.

The request for rulings must also include information and analysis to establish that any assumption of a Distributing liability by Controlled will be subject to section 357, and any transfer of Section 361 Consideration by Distributing to its creditors in satisfaction of Distributing debt or distribution of Section 361 Consideration to its shareholders will be in pursuance of the plan of reorganization.

### **Representations, Information, and Analysis in Requests for Rulings on Divisive Reorganizations**

Section 3.05 of Rev. Proc. 2024-24 provides representations, information, and analysis required in connection with requests for rulings that no gain or loss will be recognized to Distributing upon (i) Controlled's assumption of a Distributing liability (including contingent liabilities) under section 357(a); (ii) Distributing's receipt of Section 361 Consideration (including certain post-distribution payments) under section 361(b); and (iii) Distributing's distribution to its shareholders of Section 361 Consideration that consists of stock of Controlled or Qualified Property, or Distributing's transfer to a creditor of Distributing of that consideration to satisfy Distributing debt, under section 361(c).

**Observation:** The representations, information, and analysis described in Section 3.05 of Rev. Proc. 2024-24 replace the guidelines set forth in Rev. Proc. 2018-53 regarding rulings on issues relating to the assumption or satisfaction of Distributing debt in a Divisive Reorganization.

As part of the representations, information, and analysis required in Section 3.05 of Rev. Proc. 2024-24, the taxpayer must provide:

1. Representations related to the scope of the plan of reorganization, analysis that each specific step of the proposed transaction is part of the plan of reorganization, and a copy of the plan of reorganization;
2. Representations, information, and analysis supporting the treatment of Distributing as the obligor of Distributing debt that will be satisfied with Section 361 Consideration and each other Distributing liability that will be assumed by Controlled;
3. Representations and information related to the adjusted basis of the assets transferred by Distributing to Controlled;

4. Representations, information, and analysis related to circumstances where the holder of Distributing debt or other Distributing liabilities is related to Distributing;
5. Representations, information, and analysis associated with the use of intermediaries in connection with the repayment of Distributing debt with Section 361 Consideration;
6. Representations related to the “historical” nature of Distributing debt and other liabilities;
7. Representations and information related to contingent liabilities of Distributing to be assumed by Controlled;
8. Representations and information related to the “historical average” of Distributing debt;
9. Representations, information, and analysis related to the distribution of Qualified Property, money, and other property by Distributing occurring as part of the plan of reorganization;
10. Representations, information, and analysis related to delayed transfers to creditors of Section 361 Consideration in satisfaction of Distributing debt in connection with a plan of reorganization.
11. Representations, information, and analysis related to the effect of transactions related to Divisive Reorganizations on Controlled securities (*for example*, a [Treas. Reg. § 1.1001-3](#) event with respect to Controlled securities).
12. Representations, information, and analysis regarding whether there will be any “replacement” debt of any Distributing debt satisfied with Section 361 Consideration;
13. Representations, information, and analysis regarding whether an agreement or arrangement between Distributing and Controlled will constitute an assumption of a Distributing liability; and
14. Representations, information, and analysis establishing that no assumption by Controlled of any Distributing liability will violate section 357(b) (avoidance of US federal income tax).

With respect to a request for rulings on Divisive Reorganizations, if the characterization of an obligation as debt for US federal income tax purposes is relevant to the request, and such characterization is not entirely free from doubt, the taxpayer must submit a description of the obligation and information and analysis explaining the taxpayer’s conclusion regarding the characterization of the obligation.

**Observation:** Among other things, the foregoing guidelines significantly change a general current practice for Distributing deleveraging transactions involving debt-for-debt and debt-for-equity exchanges. In particular, this practice involved a so-called “direct issuance” transaction whereby an investment bank would lend funds to Distributing as part of the Section 355 Transaction, and the next day Distributing would repay the investment bank with Controlled securities or stock. The guidelines generally now require that either (i) the investment bank lend funds to Distributing prior to the first public announcement of the Section 355 Transaction, or (ii) the investment bank acquire Distributing debt from holders that was issued prior to the first public announcement of the Section 355 Transaction and transfer that debt to Distributing in exchange for Controlled securities or stock (referred to as an intermediary transaction in Rev. Proc. 2024-24). In the case of an intermediary transaction, the investment bank must demonstrate that it is acting as a principal for its own account and not as an agent for Distributing.

#### Effective Date

Rev. Proc. 2024-24 applies to all section 355 ruling requests postmarked or, if not mailed, received by the IRS after May 31, 2024.



It is not yet clear how Rev. Proc. 2024-24 may impact the availability of fast-track processing where the ruling request includes matters addressed by Rev. Proc. 2024-24, especially where the taxpayer requests deviations from the required representations.

## Notice 2024-38

On May 1, 2024, the IRS issued Notice 2024-38 in conjunction with Rev. Proc. 2024-24, which requests public feedback on the provisions set forth in Rev. Proc. 2024-24, and describes the Treasury Department's and the IRS's views and concerns relating to certain matters addressed in Rev. Proc. 2024-24, including:

1. The distinction between Delayed Distributions and Retention;
2. The degree of connection between Distributing and Controlled that prevents genuine separations;
3. Solvency and continued viability of Distributing and Controlled;
4. The plan of reorganization requirement for Divisive Reorganizations;
5. Application of substance over form, agency, and other relevant theories to intermediated exchanges and direct issuance transactions;
6. US federal income tax treatment and consequences of post-distribution payments;
7. Effect of transactions related to Divisive Reorganizations on Controlled securities;
8. Replacement of Distributing debt; and
9. The separate and distinct relevance and application of sections 357 and 361.

Comments are due July 30, 2024, but consideration will be given to any comments submitted after July 30, 2024, if such consideration will not delay the issuance of future published guidance.



[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.