



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-128276-12]

RIN 1545-BL11

Recognition and Deferral of Section 987 Gain or Loss

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: Published elsewhere in this issue of the **Federal Register**, the Treasury Department and the IRS are issuing temporary regulations under section 987 of the Code relating to the recognition and deferral of foreign currency gain or loss under section 987 with respect to a qualified business unit (QBU) in connection with certain QBU terminations and certain other transactions involving partnerships. The temporary regulations also contain rules providing: an annual deemed termination election for a section 987 QBU; an elective method, available to taxpayers that make the annual deemed termination election, for translating all items of income or loss with respect to a section 987 QBU at the yearly average exchange rate; rules regarding the treatment of section 988 transactions of a section 987 QBU; rules regarding QBUs with the U.S. dollar as their functional currency; rules regarding combinations and separations of section 987 QBUs; rules regarding the translation of income used to pay creditable foreign income taxes; and rules regarding the allocation of assets and liabilities of certain partnerships for purposes of section 987. Finally, the temporary regulations

contain rules under section 988 requiring the deferral of certain section 988 loss that arises with respect to related-party loans. The text of the temporary regulations serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by **[INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-128276-12), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-128276-12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-128276-12).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Steven D. Jensen at (202) 317-6938; concerning submissions of comments or requests for a public hearing, Regina Johnson, (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

### **Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs,

Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in: (1) §§1.987-1(b)(6)(iii)(A) and 1.987-1(g)(3)(i)(E); (2) §§1.987-3(b)(4)(iii)(C) and 1.987-1(g)(3)(i)(F); (3) §§1.987-3(d) and 1.987-1(g)(3)(i)(G); and (4) §§1.987-8(d) and 1.987-1(g)(3)(i)(H). Sections 1.987-1(b)(6)(iii)(A) and 1.987-1(g)(3)(i)(E) allow a controlled foreign corporation to elect to apply section 987 and the regulations thereunder (with certain exceptions) to a dollar QBU. Sections 1.987-3(b)(4)(iii)(C) and 1.987-1(g)(3)(i)(F) allow

a taxpayer to elect to apply a foreign currency mark-to-market method of accounting for qualified short-term section 988 transactions. Sections 1.987-3(d) and 1.987-1(g)(3)(i)(G) allow a taxpayer to elect to translate all items of income, gain, deduction, and loss of the section 987 QBU at the yearly average exchange rate. Sections 1.987-8(d) and 1.987-1(g)(3)(i)(H) allow a taxpayer to elect to deem all of its section 987 QBUs to terminate on the last day of each taxable year. The preceding elections are to be made pursuant to §1.987-1(g). The collection of information is voluntary to obtain a benefit. The likely respondents are business or other for-profit institutions.

Estimated total annual reporting burden: 1,000 hours.

Estimated average annual burden hours per respondent: 1 hour.

Estimated number of respondents: 1,000.

Estimated annual frequency of responses: on occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### **Background and Explanation of Provisions**

The temporary regulations (published in the Rules and Regulations section of this issue of the **Federal Register**) contain rules relating to the recognition and deferral of section 987 gain or loss with respect to a QBU. The temporary regulations also

contain rules regarding an annual deemed termination election, an elective method for translating taxable income or loss with respect to a QBU, section 988 transactions of a section 987 QBU, QBUs with the U.S. dollar as their functional currency, combinations and separations of section 987 QBUs, translation of income used to pay creditable foreign income taxes, the allocation of assets and liabilities of certain partnerships for purposes of section 987, and the deferral of section 988 loss with respect to certain related-party loans. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains those regulations and these proposed regulations.

### **Special Analyses**

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Accordingly, a regulatory flexibility analysis is not required. This certification is based on the fact that these regulations will primarily affect U.S. corporations that have foreign operations, which tend to be larger businesses. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### **Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the “Addresses” heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. In addition, the Treasury Department and the IRS request comments on the application of section 987 to entities and QBUs described in §1.987-1(b)(1)(ii) to which the final regulations are not applicable (excluded entities and QBUs). Comments are requested on whether the Treasury Department and the IRS should issue regulations applying the foreign exchange exposure pool methodology described in §§1.987-3 and -4 to excluded entities and QBUs. Comments are also requested on the modifications, if any, that should be made to the foreign exchange exposure pool methodology adopted in the final regulations with respect to excluded entities and QBUs. All comments will be available at [www.regulations.gov](http://www.regulations.gov) or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

### **Drafting Information**

The principal author of these regulations is Mark E. Erwin of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

### **List of Subjects**

Income taxes, Reporting and recordkeeping requirements.

### **Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1, as amended elsewhere in this issue of the Federal Register, is proposed to be further amended as follows:

PART 1-- INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 985, 987, 989(c) and 7805 \* \* \*

Par. 2. Section 1.987-1 is amended by adding paragraphs (b)(1)(iii), (b)(6), (c)(1)(ii)(B), (c)(3)(i)(E), (d)(3), (f), (g)(2)(i)(B) and (C), and (g)(3)(i)(E) through (H) to read as follows:

§1.987-1 Scope, definitions, and special rules.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iii) [The text of the proposed amendment to §1.987-1(b)(1)(iii) is the same as the text of §1.987-1T(b)(1)(iii) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(6) [The text of the proposed amendment to §1.987-1(b)(6) is the same as the text of §1.987-1T(b)(6) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(B) [The text of the proposed amendment to §1.987-1(c)(1)(ii)(B) is the same as the text of §1.987-1T(c)(1)(ii)(B) published elsewhere in this issue of the **Federal**

**Register]**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(i) \* \* \*

(E) [The text of the proposed amendment to §1.987-1(c)(3)(i)(E) is the same as the text of §1.987-1T(c)(3)(i)(E) published elsewhere in this issue of the **Federal**

**Register].**

\* \* \* \* \*

(d) \* \* \*

(3) [The text of the proposed amendment to §1.987-1(d)(3) is the same as the text of §1.987-1T(d)(3) published elsewhere in this issue of the **Federal Register].**

\* \* \* \* \*

(f) [The text of the proposed amendment to §1.987-1(f) is the same as the text of §1.987-1T(f) published elsewhere in this issue of the **Federal Register].**

\* \* \* \* \*

(g) \* \* \*

(2) \* \* \*

(i) \* \* \*

(B) [The text of the proposed amendment to §1.987-1(g)(2)(i)(B) is the same as the text of §1.987-1T(g)(2)(i)(B) published elsewhere in this issue of the **Federal Register**].

(C) [The text of the proposed amendment to §1.987-1(g)(2)(i)(C) is the same as the text of §1.987-1T(g)(2)(i)(C) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(3) \* \* \*

(i) \* \* \*

(E) [The text of the proposed amendment to §1.987-1(g)(3)(i)(E) is the same as the text of §1.987-1T(g)(3)(i)(E) published elsewhere in this issue of the **Federal Register**].

(F) [The text of the proposed amendment to §1.987-1(g)(3)(i)(F) is the same as the text of §1.987-1T(g)(3)(i)(F) published elsewhere in this issue of the **Federal Register**].

(G) [The text of the proposed amendment to §1.987-1(g)(3)(i)(G) is the same as the text of §1.987-1T(g)(3)(i)(G) published elsewhere in this issue of the **Federal Register**].

(H) [The text of the proposed amendment to §1.987-1(g)(3)(i)(H) is the same as the text of §1.987-1T(g)(3)(i)(H) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

Par. 3. Section 1.987-2 is amended by adding paragraph (c)(9) to read as follows:

§1.987-2 Attribution of items to eligible QBUs; definition of a transfer and related rules.

\* \* \* \* \*

(c) \* \* \*

(9) [The text of the proposed amendment to §1.987-2(c)(9) is the same as the text of §1.987-2T(c)(9) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

Par. 4. Section 1.987-3 is amended by adding paragraphs (b)(2)(ii), (b)(4), (c)(2)(ii) and (v), (d), and Example 9 through Example 14 of paragraph (e) to read as follows:

§1.987-3 Determination of section 987 taxable income or loss of an owner of a section 987 QBU.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) [The text of the proposed amendment to §1.987-3(b)(2)(ii) is the same as the text of §1.987-3T(b)(2)(ii) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(4) [The text of the proposed amendment to §1.987-3(b)(4) is the same as the text of §1.987-3T(b)(4) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(ii) [The text of the proposed amendment to §1.987-3(c)(2)(ii) is the same as the text of §1.987-3T(c)(2)(ii) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(v) [The text of the proposed amendment to §1.987-3(c)(2)(v) is the same as the text of §1.987-3T(c)(2)(v) published elsewhere in this issue of the **Federal Register**].

(d) [The text of the proposed amendment to §1.987-3(d) is the same as the text of §1.987-3T(d) published elsewhere in this issue of the **Federal Register**].

(e) Examples. \* \* \*

Example 9 [The text of the proposed amendment to §1.987-3(e) Example 9 is the same as the text of §1.987-3T(e) Example 9 published elsewhere in this issue of the **Federal Register**].

Example 10 [The text of the proposed amendment to §1.987-3(e) Example 10 is the same as the text of §1.987-3T(e) Example 10 published elsewhere in this issue of the **Federal Register**].

Example 11 [The text of the proposed amendment to §1.987-3(e) Example 11 is the same as the text of §1.987-3T(e) Example 11 published elsewhere in this issue of the **Federal Register**].

Example 12 [The text of the proposed amendment to §1.987-3(e) Example 12 is the same as the text of §1.987-3T(e) Example 12 published elsewhere in this issue of the **Federal Register**].

Example 13 [The text of the proposed amendment to §1.987-3(e) Example 13 is the same as the text of §1.987-3T(e) Example 13 published elsewhere in this issue of the **Federal Register**].

Example 14 [The text of the proposed amendment to §1.987-3(e) Example 14 is the same as the text of §1.987-3T(e) Example 14 published elsewhere in this issue of the **Federal Register**].

Par. 5. Section 1.987-4 is amended by adding paragraphs (c)(2) and (f) to read as follows:

§1.987-4 Determination of net unrecognized section 987 gain or loss of a section 987 QBU.

\* \* \* \* \*

(c) \* \* \*

(2) [The text of the proposed amendment to §1.987-4(c)(2) is the same as the text of §1.987-4T(c)(2) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(f) [The text of the proposed amendment to §1.987-4(f) is the same as the text of §1.987-4T(f) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

Par. 6. Section 1.987-6 is amended by adding paragraph (b)(4) to read as follows:

§1.987-6 Character and source of section 987 gain or loss.

\* \* \* \* \*

(b) \* \* \*

(4) [The text of the proposed amendment to §1.987-6(b)(4) is the same as the text of §1.987-6T(b)(4) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

Par. 7. Section 1.987-7 is amended by adding paragraph (b) to read as follows:

§1.987-7 Section 987 aggregate partnerships.

\* \* \* \* \*

(b) [The text of the proposed amendment to §1.987-7(b) is the same as the text of §1.987-7T(b) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

Par. 8. Section 1.987-8 is amended by adding paragraph (d) to read as follows:

§1.987-8 Termination of a section 987 QBU.

\* \* \* \* \*

(d) [The text of the proposed amendment to §1.987-8(d) is the same as the text of §1.987-8T(d) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

Par. 9. Section 1.987-12 is revised to read as follows:

§1.987-12 Deferral of section 987 gain or loss.

[The text of the proposed amendment to §1.987-12 is the same as the text of §1.987-12T published elsewhere in this issue of the **Federal Register**].

Par. 10. Section 1.988-1 is amended by adding paragraph (a)(3) to read as follows:

§1.988-1 Certain definitions and special rules.

\* \* \* \* \*

(a) \* \* \*

(3) [The text of the proposed amendment to §1.988-1(a)(3) is the same as the text of §1.988-1T(a)(3) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

Par. 11. Section 1.988-2 is amended by revising paragraph (b)(16) and adding paragraph (i) to read as follows:

§1.988-2 Recognition and computation of exchange gain or loss.

\* \* \* \* \*

(b) \* \* \*

(16) [The text of the proposed amendment to §1.988-2(b)(16) is the same as the text of §1.988-2T(b)(16) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(i) [The text of the proposed amendment to §1.988-2(i) is the same as the text of §1.988-2T(i) published elsewhere in this issue of the **Federal Register**].

John Dalrymple  
Deputy Commissioner for Services and Enforcement.

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