Member Companies
3M
Abbott Laboratories
ADP
American Express Company
Baker Hughes
Bank of America Corp.
The Boeing Company
Boston Scientific Corp.
Carrier Global Corp.
Caterpillar Inc.
Chevron Corporation
Cisco Systems, Inc.
The Coca-Cola Company
Corteva Inc.
Danaher Corporation
Dell Technologies, Inc.
The Dow Chemical Company
DuPont
Eli Lilly and Company
Emerson Electric Co.
Exxon Mobil Corporation
GE Aerospace
GE Vernova Inc.
General Mills Inc.
Google, Inc.
The Home Depot Inc.
Honeywell International Inc.
IBM Corporation
Johnson & Johnson
Johnson Controls, Inc.
JPMorgan Chase & Co.
Kenvue Inc.
Kimberly-Clark Corp.
MasterCard Inc.
McCormick & Company, Inc.
Morgan Stanley
Oracle Corporation
Otis Worldwide Corp.
PepsiCo, Inc.
Procter & Gamble Co.
Prudential Financial Inc.
RTX Corporation
S&P Global Inc.
State Street Corporation
Texas Instruments, Inc.
United Parcel Service, Inc.
Verizon Communications Inc.
Walmart Inc.
The Walt Disney Company

April 24, 2026

Rebecca Burch
Deputy Assistant Secretary, International Tax Affairs
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Notice 2026-17

Dear Ms. Burch:

The Alliance for Competitive Taxation ("ACT") is a coalition of leading American companies from a wide range of industries that supports a globally competitive corporate tax system.

Attached are ACT's comments in response to Notice 2026-17 (the "Notice"), which announces the Treasury Department's and the Internal Revenue Service's intention to issue proposed regulations under section 987 providing an election to use the equity and basis pool method, modifications to the loss suspension and recognition grouping rules, and an election under which controlled foreign corporations ("CFCs") would not be required to compute or recognize foreign currency gain or loss under section 987(3) except in connection with certain inbounding transactions (the "CFC Election").[1]

ACT commends Treasury and the IRS for their continued efforts to simplify the section 987 regulatory framework and reduce compliance burdens on taxpayers. The proposed modifications to the regulations, particularly the proposed CFC Election, have the potential to provide significant and much-needed simplification. Further, the election to apply a methodology based on the 1991 proposed regulations, with its more familiar equity and basis pool framework and annual netting to determine the remittance, has the potential to provide meaningful simplification for taxpayers who have struggled with the complexity of the 2024 final regulations.

While the proposed changes are welcome, ACT believes further revisions to the regulatory framework are needed to align with Congressional intent and avoid undue burden on taxpayers.

We appreciate your consideration of these comments. ACT members welcome the opportunity to discuss these comments further with your staff.

Yours sincerely,

Alliance for Competitive Taxation

cc: The Honorable Kenneth Kies, Assistant Secretary, Tax Policy
Kevin Salinger, Deputy Assistant Secretary, Tax Policy
Jim Wang, International Tax Counsel
Isaac Wood, Acting Deputy International Tax Counsel

[1] Notice 2026-17 also proposed to modify the definition of successor deferral qualified business units ("QBUs") and the definition of a section 987 hedging transaction. ACT does not have any comments with respect to these proposals.

ACT Alliance for Competitive Taxation

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Raphael Cohen, Office of Attorney Advisor, Associate Chief Counsel (International)

ALLIANCE FOR COMPETITIVE TAXATION COMMENTS ON NOTICE 2026-17, PROPOSED MODIFICATIONS TO RULES FOR COMPUTING TAXABLE INCOME OR LOSS AND FOREIGN CURRENCY GAIN OR LOSS UNDER SECTION 987

I. INTRODUCTION

In Notice 2026-17 (the "Notice"), Treasury and the IRS announced their intent to issue proposed regulations under section 987 that would (i) permit taxpayers to use an equity and basis pool method substantially similar to the method provided in the 1991 proposed regulations; (ii) narrow the scope of the loss suspension rules, simplify the loss-to-the-extent-of-gain rule, and reduce the number of recognition groupings; (iii) expand the definition of section 987 hedging transaction; and (iv) provide a CFC Election under which CFCs would generally not compute or recognize foreign currency gain or loss under section 987(3), except in connection with certain inbound transactions. Treasury and the IRS strongly encouraged comments on the Notice. This document sets forth ACT's comments on the Notice as well as general comments on the 2024 final regulations.

The comments are organized as follows:

Section II — Comments relating to certain aspects of the 2024 final regulations, as modified by sections 3 and 4 of the Notice

- A. Equity and basis pool method considerations (Section 3 of the Notice)
  1. Clarify that opening basis pool is not adjusted for suspended loss or deferred gain or loss
  2. Equity and basis pool election (manner of making or revoking election)
- B. Suspended loss rules (Section 4 of the Notice)
  1. Expand the de minimis exception to the loss suspension rules
  2. Eliminate recognition groups completely

Section III — Comments relating to the proposed CFC Election (Section 5 of the Notice)

- A. Excess asset basis / section 987 basis increase rules
  1. Remove the section 987 basis increase rule or narrowly tailor it
  2. If retained, make the section 987 basis increase symmetrical
  3. Elective Methodologies to determine section 987 basis increase
     - a. Cumulative Translation Adjustment ("CTA")
     - b. Simplified equity and basis pool method
     - c. Simplified transition method
     - d. Section 367(b) regulatory approach
  4. Recommended priority/ordering rule
  5. Limit Section 987 Basis Increase Computation Period to Ten Years
  6. Clarify recordkeeping requirements
- B. Recognition rules for section 987 basis increase
  1. Permit taxpayers to elect among approaches to account for section 987 basis increase
  2. Provide a de minimis threshold for the section 987 basis increase
- C. Pretransition gain or loss at the CFC level
  1. Permit taxpayers to elect to compute pretransition gain or loss at the CFC level
- D. Election procedural and coordination requirements
  1. Mechanics of Making the CFC Election

2. Treatment of unamortized section 987 gain or loss upon CFC termination or sale
3. Amortization of suspended and deferred section 987 loss at the CFC level
4. Continued availability of the section 988 mark-to-market election
Section IV – Other comments on 2024 final regulations
1. Eliminate the loss-to-the-extent-of-gain rule
2. Eliminate the anti-abuse rule in Treas. Reg. § 1.987-11(e)(3)(v)
3. Source and character
4. Remove the rules regarding the application of Section 987 to partnerships
Section V — Conclusion

II. COMMENTS RELATING TO CERTAIN ASPECTS OF THE 2024 FINAL REGULATIONS, AS MODIFIED BY SECTIONS 3 AND 4 OF THE NOTICE

A. Equity and Basis Pool Method Considerations (Section 3 of the Notice)

1. Clarify that Opening Basis Pool Is Not Adjusted for Suspended Loss or Deferred Gain or Loss

Notice Provision

Section 3.09(2) of the Notice provides rules for determining the opening balance of the basis pool in the first taxable year in which the equity and basis pool method election is in effect. Specifically, the basis pool is increased or decreased by the amount of net accumulated unrecognized section 987 loss or gain for all prior years, respectively.

ACT Recommendation

ACT recommends clarifying that the adjustment to the opening balance of the basis pool under the equity and basis pool method does not include any suspended section 987 loss or deferred section 987 gain or loss.

Reasons for ACT Recommendation

ACT generally supports the adjustment to the opening balance of the basis pool for net accumulated unrecognized section 987 gain or loss. ACT's recommendation is intended to prevent double-counting and to ensure a clear starting point when a taxpayer transitions to the equity and basis pool method. Other than pretransition loss that may become suspended upon transitioning to the 2024 final regulations, any suspended section 987 loss or deferred section 987 gain or loss would have been a result of a prior remittance which caused the corresponding net accumulated unrecognized section 987 gain or loss to be realized. Therefore, the adjustment to the basis pool should not again account for any suspended section 987 loss or deferred section 987 gain or loss. These amounts should be separately tracked outside of the basis pool.

2. Equity and Basis Pool Election (manner of making or revoking election)

Notice Provision

Section 3.01 of the Notice provides that "forthcoming proposed regulations are expected to… provide an election to use the equity and basis pool method." Section 3.02 of the Notice clarifies that "[t]he equity and basis pool method may be used only in a taxable year for which a current rate election is in effect" and that "[a]n election to use the equity and basis pool method is a section 987 election subject to the requirements of § 1.987-1(g)." However, section 3.02 also clarifies that this election is made "by attaching the election statement to its original, timely filed (including extensions) return for the taxable year for which the election is made, without obtaining the consent of the Commissioner under § 1.987-1(g)(3)(ii)(A)." Treas. Reg. § 1.987-1(g)(3)(ii)(A) states that "[e]xcept as provided in paragraph (g)(3)(ii)(B) or (C) of this section, a

section 987 election may not be made or revoked without the consent of the Commissioner." Paragraph (g)(3)(ii)(B) allows for a current rate election ("CRE"), annual recognition election ("ARE"), or section 988 mark-to-market election to be made or revoked without the consent of the Commissioner for any taxable year beginning at least 60 months after the election was last made or revoked.

ACT Recommendation

ACT recommends that Treasury align the election requirements for the equity and basis pool method with the CRE except that the initial equity and basis pool method election may be made under the procedures set forth in the Notice at any time the CRE is in effect without Commissioner consent.

Reasons for ACT Recommendation

The Notice explicitly provides that the equity and basis pool election may be made without obtaining the consent of the Commissioner under Treas. Reg. § 1.987-1(g)(3)(ii)(A). However, it also states that the election is subject to the requirements of Treas. Reg. § 1.987-1(g), which generally requires Commissioner consent to make or revoke section 987 elections except in limited circumstances. Absent clarification, this cross-reference creates ambiguity as to whether the equity and basis pool election may be made or revoked in a year other than the first year to which the section 987 regulations apply without obtaining consent.

Clarifying that the equity and basis pool election may be made or revoked without consent under the same 60-month limitation that applies to a CRE under Treas. Reg. § 1.987-1(g)(3)(ii)(B) would align the treatment of this election with the existing framework for the CRE. The 60-month window could also be limited to whether a CRE is in effect to ensure that the equity and basis pool method election may only be made in the year a CRE is in effect.

This result is appropriate because the Notice already ties the equity and basis pool method to the CRE. The method may be used only in a taxable year for which a CRE is in effect, and the CRE itself is subject to the binding-period rules in Treas. Reg. § 1.987-1(g)(3)(ii). Applying the same 60-month rule to the equity and basis pool election would therefore preserve consistency with the related election on which it depends.

It is also appropriate as a practical matter to permit taxpayers to change that election without Commissioner consent once the 60-month period has run. A taxpayer's internal processes, recordkeeping, and preference towards the equity and basis pool method may change over time, and the five-year limitation already provides a meaningful constraint against frequent switching.

Furthermore, because the amount of section 987 gain or loss recognized, deferred, or suspended in each year in which a CRE election is in effect is expected to be the same whether the equity and basis pool method is adopted or not, allowing changes to the election profile after a 60-month period does not create a risk of distortion or abuse. Accordingly, a taxpayer should be permitted to make or revoke an equity and basis pool election without the consent of the Commissioner under the same circumstances applicable to the CRE, ARE, and section 988 mark-to-market election.

B. Suspended Loss Rules (Section 4 of the Notice)

1. Expand the De Minimis Exception to the Loss Suspension Rules

Notice Provision

Section 4.02 of the Notice proposes that the current rate election ("CRE") loss suspension rule and partnership loss suspension rule would apply only if the remittance proportion either exceeds five percent or the total amount of net unrecognized section 987 loss that would become suspended exceeds $5 million.

ACT Recommendation

As ACT has consistently recommended,[2] and as we reiterate below in comments on the final regulations, the loss-to-the-extent-of gain rule is wholly without statutory or policy support and should be eliminated. If, however, contrary to ACT's recommendation, Treasury retains any form of the rule, the proposed modification in section 4.02 should allow the application of a percentage-based threshold even when the dollar threshold is exceeded. ACT suggests that the section 987 loss suspension rule apply only in a taxable year in which a remittance proportion exceeds 10% and the loss exceeds $5 million. Alternatively, a de minimis exception could also be based on the relative size of the unrecognized section 987 loss to be recognized compared to the owner's aggregate unrecognized section 987 loss (before the remittance) for all of its section 987 QBUs. Such threshold should be the greater of (1) $5 million or (2) 5% (or higher) of the owner's aggregate unrecognized section 987 loss.

Reasons for ACT Recommendation

As written, the "lower of" percentage threshold or $5 million is much too low to be of meaningful utility for most taxpayers with significant foreign operations subject to section 987. Many "ordinary course" remittances for large taxpayers would almost inevitably exceed this threshold. A fixed-dollar threshold disproportionately affects larger taxpayers and does not appropriately scale to the size of a taxpayer's foreign operations.

If the purpose of the rule is to address Treasury concerns with respect to tax-motivated recognitions of section 987 losses (i.e., transactions that are outside of the ordinary course of a taxpayer's operations), adopting a threshold that scales with the size of a taxpayer's operations is much more appropriate than any fixed dollar threshold. Further, the creation of a suspended loss gives rise to further record keeping burdens on the taxpayer and increases the complexity of these rules, such that applying the rules more broadly than necessary increases the deadweight loss to the system for both taxpayers and the government.

A percentage-based threshold better reflects the underlying policy by targeting situations where the relative imbalance between losses and gains is significant, rather than where the absolute amount happens to exceed a fixed-dollar threshold due to the scale of the taxpayer's operations.

A higher remittance-proportion-based threshold would reduce the likelihood that routine "ordinary course" operations are captured by the rule. Similarly, a test based on a percentage of the taxpayer's overall section 987 position aligns with the putative purpose of the loss suspension rules, which is to address the relationship between remittances and the taxpayer's aggregate foreign currency gain or loss. A relative, exposure-based threshold would apply to situations where remittances meaningfully affect the taxpayer's overall section 987 position while excluding routine or economically insignificant transactions. Accordingly, ACT believes that either of the percentage-based thresholds described above would more appropriately target the concerns that lie behind the rule. For a dollar threshold to apply to smaller section 987 QBUs and a percentage threshold to apply to larger section 987 QBUs, we recommend the loss suspension rule to apply when the greater of either amount is exceeded.

[2] Alliance on Competitive Taxation, *Comments on proposed regulations providing guidance on section 987 (NPRM REG–132422–17)* (Feb. 12, 2024), https://www.actontaxreform.com/wp-content/uploads/2025/03/act-comment-letter-on-proposed-regulations-providing-guidance-on-section-987-february-12-2024.pdf.

ACT Alliance for Competitive Taxation

2. Eliminate Recognition Groupings Completely

Notice Provision

Section 4.03(1) of the Notice provides that, for domestic corporations, all section 987 gain or loss is treated as being in a single recognition grouping. Section 4.03(2) reduces the number of recognition groupings for CFCs but retains multiple recognition groupings.

ACT Recommendation

ACT welcomes the elimination of recognition groupings for QBUs held directly by domestic corporations but recommends that the concept of recognition groupings be eliminated completely.

Reasons for ACT Recommendation

Recognition groupings add significant incremental complexity and administrative burden with minimal policy justification. Although taxpayers already track earnings and attributes for subpart F, tested income, and related purposes, the proposed rules would require separate, parallel tracking of section 987 gains and losses within recognition groupings. This introduces additional layers of ordering, matching, and monitoring that are not driven by economic currency exposure, but by formalistic constructs. The resulting compliance burden is substantial, while the policy benefit—preventing perceived mismatches outside the scope of subpart J—is limited and unrelated to the statutory grant of authority.

While section 989(c) grants the Secretary regulatory authority to "[limit] the recognition of foreign currency loss on *certain* remittances," (emphasis added), this grant of regulatory authority in section 989(c) is narrow and carefully circumscribed. The flush language of section 989(c) provides Treasury with authority to prescribe only those regulations necessary or appropriate to carry out the purposes of subpart J, which is directed specifically at foreign currency transactions. The grant of authority cannot reasonably be interpreted to mean Treasury can limit "virtually all" foreign currency losses unless the taxpayer has previously recognized at least an equivalent amount of gain in the same recognition grouping.

Section 987 gain or loss arises from the activities of a section 987 QBU. Under the current regime, such gain or loss accumulates each year to compose a net accumulated unrecognized section 987 gain or loss. An unrecognized loss is suspended only upon a remittance, at which time the grouping of the suspended loss is determined. If the activities of the QBU did not change significantly, the category of income to which such section 987 gain or loss relates should be virtually identical. A requirement to separately classify a loss arising from a single event into different categories merely adds calculation and recordkeeping complexity with minimal actual effect on the taxpayer's ability to utilize such loss.

If a QBU's activities did change, it may be possible that the loss suspended is attributable to different categories of income. However, under the current regime, the determination of the loss grouping is made based on the assets of the QBU at the time of the realization event. Given the change in the QBU's activities, it is reasonable to expect that the assets held at the time of the realization event no longer represent the category of income to which the suspended, previously unrecognized section 987 loss relates. Such previously unrecognized section 987 loss may be attributable to many previous years of activities. Limiting the taxpayer's ability to utilize a sustained economic loss in this manner is therefore arbitrary.

The section 987 regulations already contain several provisions to limit the ability of a taxpayer to recognize section 987 loss such as Treas. Reg. § 1.987-12 (deferral event rules) and Treas. Reg. § 1.987-13 (limitations on suspended losses upon certain terminations). Expanding these limitations would significantly increase complexity for taxpayers. Section 987 losses represent economic losses of a taxpayer, and taxpayers' ability to utilize economic losses in their overall tax computations is already heavily circumscribed by Treasury. ACT submits that adding further limitations to those already authorized in the regulations is unnecessary and excessively burdensome on taxpayers.

ACT Alliance for Competitive Taxation

III. COMMENTS RELATING TO THE PROPOSED CFC ELECTION (SECTION 5 OF THE NOTICE)

A. *EXCESS ASSET BASIS / SECTION 987 BASIS INCREASE RULES*

Notice Provision

The rules in Section 5.05 of the Notice would require computation of a transferor CFC's "section 987 basis increase" in the case of an inbound asset reorganization or liquidation of a CFC subject to the CFC Election.

1. Remove the Section 987 Basis Increase Rule or Narrowly Tailor It

ACT Recommendation

Treasury and the IRS should consider removing this requirement or should narrowly tailor its application.

Reasons for ACT Recommendation

ACT strongly supports the proposed CFC Election, which we believe will provide meaningful simplification benefits for both taxpayers and the government. While the proposed simplification provided by the CFC Election is welcome, the section 987 basis increase is inconsistent with the rationale behind Section 5 of the Notice that section 987(3) should not apply to CFCs as a statutory matter and that section 987(3) should not be applied prospectively. In contrast, the section 987 basis increase would require a retroactive or transition application of section 987(3) to CFCs, requiring gain or loss to be recognized.

The proposed CFC Election is intended to simplify the application of section 987 for QBUs held by CFCs, yet the Notice introduces a computationally intensive rule that operates in tension with that objective. In particular, requiring a complex section 987 basis increase computation in connection with inbound transactions risks significantly undermining the intended simplification by mandating a complex computation that depends on detailed analysis of historical transactions.[3]

If Treasury and the IRS adopt such a rule, it should be focused on fact patterns that present a significant potential for distortive results that are not already within the ambit of existing rules that police loss importation or similar transactions.[4] ACT members would welcome the opportunity to discuss any such

[3] Additional considerations further support removing or narrowing the rule. (1) Given the inherent unpredictability of foreign exchange movements, the potential for abusive tax planning in this context is limited. This is particularly true in light of the operational complexity and resulting long lead times associated with inbound transactions, during which exchange rates may fluctuate significantly and unpredictably, and in light of the business purpose requirements applicable to corporate reorganizations. (2) Furthermore, any imported basis would typically yield a tax benefit only upon a subsequent disposition to a third party, which would have real non-tax business and economic consequences. Such a disposition may never occur or may occur due to non-tax business reasons after an extended period of time (and further exchange rate fluctuations). In any event, any resulting loss would remain subject to existing loss limitation regimes, including related-party loss disallowance and deferral rules under section 267 (and, in the case of a sale between members of a consolidated group, deferral under Treas. Reg. § 1.1502-13) and also could be subject to section 269 and the assignment of income and economic substance doctrines. (3) Additionally, the proposed section 987 basis increase rule would operate more harshly than analogous basis importation rules, such as those under Treas. Reg. § 1.367(b)-3, by requiring current gain recognition without corresponding relief (such as a dividends-received deduction). (4) Further, by requiring gain recognition in the absence of a realization event, the proposed rule has the potential to produce "phantom" income. (5) Finally, Congress has already addressed cross-border basis importation in section 362(e), suggesting that a more restrictive regulatory overlay in this context is unnecessary, particularly in light of the relatively low risk of abuse.

[4] *See, e.g.,* section 362(e) (providing for certain limitations on the importation of built-in losses in section 351 transactions and reorganizations) and section 334(b)(1)(B) (providing for a similar limitation on the importation of built-in losses in connection with a section 332 liquidation). *See also* Treas. Reg. § 1.59A-9(b) and § 1.59A-9(c)(12) (providing an anti-abuse rule that may disregard for section 59A purposes certain transactions that have a principal purpose of increasing the adjusted basis of property).

approaches further with Treasury. In particular, ACT believes that a targeted anti-abuse rule could address the government's concerns without imposing undue burdens on transactions that are not motivated by tax-planning considerations.

2. If Retained, Make the Section 987 Basis Increase Symmetrical

ACT Recommendation

If Treasury believes a section 987 basis increase rule is necessary, ACT recommends that it be made symmetrical by also allowing a section 987 basis decrease.

Reasons for ACT Recommendation

If taxpayers are required to recognize gain or reduce asset basis when exchange rates have moved in one direction (increasing the basis of the CFC's assets once translated to U.S. dollars), ACT believes it is appropriate to permit taxpayers to recognize a loss or increase asset basis when exchange rates have moved in the opposite direction. If the recognition of gain or reduction of asset basis is necessary to accurately reflect income when exchange rates have moved in the taxpayer's favor, then the recognition of loss or increase of asset basis is necessary to accurately reflect income when exchange rates have moved to the taxpayer's detriment. A one-sided rule that captures only gains is inequitable and inconsistent with the general principles of section 987 which seek to ensure that foreign currency gains and losses are generally recognized in a consistent and symmetrical manner so as to clearly reflect income.

3. Elective Methodologies to Determine Section 987 Basis Increase

ACT Recommendation

ACT recommends that several methodologies be made available to determine the section 987 basis increase, elective on a QBU-by-QBU basis, as part of a framework to address Treasury and the IRS's concern related to the importation of excess asset basis. These alternatives should include utilizing the cumulative translation adjustment ("CTA"), a simplified equity and basis pool method, the simplified transition method, or a section 367(b) regulatory approach, each described below.

Reasons for ACT Recommendation

An elective approach on a QBU-by-QBU basis would allow taxpayers to apply the method that best reflects the facts and available data of each QBU, particularly where different QBUs within the same controlled group have differing ownership structures, data availability/quality, and record retention. As described above, the relative accuracy and administrability of the available methodologies may vary significantly depending on these factors. As a result, a prescribed method consistently applied to all QBUs of a controlled group could lead to less accurate measurements of section 987 basis increases and, in some cases, effectively preclude the use of the most appropriate methods for certain QBUs (such as the CTA method where reliable financial data exist). This outcome would undermine both the accuracy and administrability of the regime. Allowing a QBU-by-QBU election better aligns the chosen methodology with the underlying economics of each entity while avoiding the distortions that can arise from forced uniformity.

Therefore, taxpayers should be allowed to elect among the following methods:

a. Cumulative Translation Adjustment ("CTA")

The CTA is an appropriate and administrable approach, as Treasury acknowledges in the Notice.

The CTA method would rely on financial accounting information already maintained by taxpayers as part of the financial reporting process and that generally reflects the net unrealized gain or loss from translating

a foreign subsidiary's financial statements into the parent company's reporting currency (i.e., U.S. dollars) as an approximation of the cumulative foreign currency movements with respect to a QBU's net equity against the U.S. dollar. In this way, the CTA method provides a reasonable proxy for section 987 gain or loss without requiring taxpayers to undertake detailed section 987 tracking and computations separate from their existing financial reporting processes.

Nevertheless, the CTA may not be available in certain circumstances or may not represent a reasonable proxy for section 987 gain or loss in certain cases. If a section 987 QBU of a CFC has a U.S. dollar functional currency for financial accounting purposes, no CTA would exist for such section 987 QBU given its functional currency matches the parent company's reporting currency. Further, the CTA may not represent an ideal proxy for section 987 gain or loss for several reasons including, but not limited to: (i) the CTA is calculated based on book basis, not tax, (ii) absent an event causing the account to reset (such as a purchase from a third party), it tracks translation gain or loss from inception even if the entity was a CFC for a portion of its life, (iii) it includes gains and losses from net investment hedges, and (iv) it tracks foreign currency movement between the section 987 QBU's U.S. GAAP functional currency and the company's reporting currency (i.e., U.S. dollar), not between the section 987 QBU's U.S. tax functional currency (if different than U.S. GAAP) and the CFC's functional currency.

Accordingly, ACT recommends that the CTA methodology should be permitted subject to certain safeguards. Specifically, the CTA method should be allowed in cases in which (i) the U.S. GAAP functional currency aligns with the section 987 QBU's U.S. tax functional currency, (ii) neither is the U.S. dollar, and (iii) the taxpayer is able to demonstrate that any material amounts not attributable to section 987 gain or loss (e.g., gain or loss from net investment hedges) have been identified and excluded from CTA for purposes of the computation.

b. Simplified Equity and Basis Pool Method

A simplified computation based on the equity and basis pool method from the Notice could also serve as an appropriate proxy.

This methodology would follow the equity and basis pool method from the Notice but only track equity contributions, earnings, and distributions. Transfers arising from disregarded transactions would not need to be tracked, but the corresponding disregarded income or expense item could be included in the section 987 QBU's earnings. Such a simplified approach more directly reflects section 987 principles by tracking gain or loss at the QBU level and therefore provides a more accurate measure of the section 987 basis increase. While more computationally intensive than the CTA method, it remains reasonably administrable for taxpayers with sufficient tax accounting records and should be available where greater precision is desired or where the CTA method is not available or not appropriate.

c. Actual Historical Tracking or Simplified Transition Method

The transition method in Treas. Reg. § 1.987-10(e)(3) was provided by Treasury and the IRS as a reasonable approach for taxpayers to compute historic section 987 gain or loss for transition purposes in cases where taxpayers had not historically utilized an eligible method to account for section 987 gain or loss. Accordingly, this method would also be a reasonable approach to compute historic section 987 gain or loss prior to an inbound asset reorganization or liquidation. The purpose of the method was to provide taxpayers with an administrable method to compute historic section 987 gain or loss for transition purposes, which is what Treasury and the IRS are requiring taxpayers to do upon an inbound transaction (i.e., compute historic section 987 gain). Therefore, for taxpayers without contemporaneous data, such a method should represent a reasonable and workable approximation of section 987 gain in the context of the CFC Election.

Conversely, for taxpayers with contemporaneous data, if a taxpayer elects to compute the section 987 basis increase using the full methodology under Treas. Reg. § 1.987-4(d) based on actual historical tracking, ACT recommends that this computation be applied without regard to the loss suspension or recognition

grouping rules. Allowing taxpayers to rely on their actual historical data without the overlay of complex suspension regimes better aligns with the intended simplification goals of the CFC Election and promotes highly administrable tax policy.

d. Section 367(b) Regulatory Approach

ACT views the section 367(b) approach as generally the least favored option because it does not reflect section 987 principles. This proposed method relies on earnings and profits concepts that may diverge from a taxpayer's section 987 position, resulting in an overstatement of section 987 gain. Accordingly, this method could produce significant distortions. Notwithstanding these concerns, ACT recognizes that such an approach may be appropriate for fact patterns where the alternative approaches are unavailable due to data limitations.

4. Recommended Priority/Ordering Rule

ACT Recommendation

While ACT recommends an elective approach, we recognize that Treasury and the IRS may consider a priority rule necessary. If a priority rule is deemed necessary, ACT recommends that Treasury provide unconditional safe harbors that taxpayers may elect in lieu of any general priority rule. Specifically, Treasury should provide safe harbors both for taxpayers who possess the systems to compute actual section 987 gain, as well as an administrable ceiling safe harbor:

1. The Actual Tax-Basis Safe Harbors: Taxpayers may elect to compute the section 987 basis increase over the lookback period using actual tax basis under either:
   a. The Full Method: The standard methodology provided in Treas. Reg. § 1.987-4(d) (applied without regard to loss suspension or recognition grouping rules); or
   b. The Simplified Transition Method: The simplified methodology described in Treas. Reg. § 1.987-10(e)(3) (applied using only Steps 1 and 10 of Treas. Reg.§ 1.987-4(d)).
2. The Section 367(b) Safe Harbor/Ceiling: Regardless of available tax-basis data, taxpayers may elect to use the section 367(b) approach to establish the maximum amount that could be taken into account as a section 987 basis increase.

If a taxpayer does not elect one of the safe harbors above, taxpayers should be required to apply the proxy methods in the following order:

1. The CTA method
2. The equity and basis pool method

Reasons for ACT Recommendation

ACT recognizes the administrability of a section 367(b) regulatory approach, the mechanisms of which are already established. However, such approach is likely to distort and overstate the section 987 gain or loss because it may capture amounts from other sources unrelated to section 987. Therefore, we recommend this approach be utilized as a safe harbor to establish the maximum amount of section 987 gain or loss to be captured.

By relying on earnings and profits concepts, the section 367(b) approach departs from the principles of section 987 in a manner that is likely to overstate, but highly unlikely to understate, a taxpayer's foreign currency gain. At the same time, the section 367(b) approach is relatively straightforward to apply, as it is based on earnings and profits information that taxpayers already compute for other U.S. federal income tax purposes and that is generally maintained on a consistent and reliable basis. As a result, it provides a

practical and administrable proxy that can be applied uniformly, even in cases where more granular section 987 data are unavailable.

These characteristics make the section 367(b) approach well suited to function as a ceiling on the amount of any section 987 basis increase. Because it is derived from readily available and standardized data and is biased toward overstating gain, it can serve as a reasonable upper bound without creating a risk that taxpayers will understate section 987 gain. However, because it does not reflect the underlying section 987 mechanics and is likely to overstate gain, it should not be the exclusive or preferred method where more accurate computations are feasible. Accordingly, taxpayers should be permitted to apply alternative methods and to use the resulting amount where they can and do undertake a more rigorous and accurate computation of section 987 gain or loss.

5. Limit Section 987 Basis Increase Computation Period to Ten Years

ACT Recommendation

ACT supports the framework described in section 5.05 of the Notice, under which the section 987 basis increase would be computed based on data for a period not to exceed ten taxable years preceding the inbound transaction.

Reasons for ACT Recommendation

A lookback period of ten years or less strikes an appropriate balance between accuracy and administrability. Due to company data retention policies, data may not be available beyond ten years to compute the section 987 basis increase, which is why a limit on the number of years that a taxpayer must go back is necessary. This also reduces the administrative burden on the IRS.

6. Clarify Recordkeeping Requirements

ACT Recommendation

Treasury should clarify the recordkeeping requirements applicable under the CFC Election framework.

Reasons for ACT Recommendation

Treasury should clarify the recordkeeping requirements applicable under the CFC Election framework to ensure that taxpayers are required to maintain only the records necessary to apply the methods and elections ultimately adopted. In particular, taxpayers should not be required to reconstruct historical section 987 information or maintain parallel records for alternative methodologies that are not elected.

B. Recognition Rules for Section 987 Basis Increase

1. Permit Taxpayers to Elect Among Approaches with Respect to Recognition of Section 987 Basis Increase

Notice Provision

Section 5.06 of the Notice describes three options for how any section 987 basis increase (computed as described in the preceding section of this letter) would be taken into account upon an inbound transaction: (1) recognition as section 987 gain immediately before the inbound transaction by the transferor CFC; (2) reduction of the domestic acquiring corporation's basis in assets acquired; or (3) adjustment to the unrecognized section 987 gain or loss of a successor QBU owned by the domestic acquiring corporation.

ACT Recommendation

ACT recommends that taxpayers be given the option to elect among the three approaches described in Section 5.06 of the Notice.

Reasons for ACT Recommendation

The taxpayer should be able to apply whichever of these approaches most accurately reflects the economics of the transaction and the taxpayer's section 987 position, taking into account the taxpayer's facts, structure, and availability of reliable data.

In particular, because taxpayers will have varying levels of historical information and differing operational structures and degrees of integration between the CFC and its QBUs, a single inflexible approach would not be appropriate in all cases. Where a section 987 QBU and its associated currency risk continue in the hands of a domestic owner, permitting a rollover into section 987 pools preserves continuity and avoids premature recognition of amounts that remain economically unrecognized. Denying that result solely because it is not available in all cases would inappropriately accelerate income and discourage taxpayers from undertaking certain inbounding transactions. In the absence of such a successor QBU, immediate gain recognition may be more appropriate where the relevant currency exposure has effectively been realized at the CFC level, whereas a basis reduction approach may better align with transactions in which the economic effect is more appropriately reflected in asset values. Allowing flexibility among these methods therefore promotes a more accurate matching of tax outcomes to economic income across materially different fact patterns.

To prevent inappropriate results, Treasury could require that the selected method be applied consistently with respect to a particular inbound transaction and supported by reasonable documentation.

2. Provide a De Minimis Threshold for the Section 987 Basis Increase

Notice Provision

Section 5.05 of the Notice contemplates a de minimis threshold for computing the section 987 basis increase (e.g., based on the aggregate gross basis in all of the transferor CFC's assets in the hands of the domestic acquiring corporation immediately after the inbound transaction).

ACT Recommendation

ACT recommends that Treasury and the IRS provide a de minimis threshold, set at a level that provides meaningful relief from unnecessary compliance burdens in cases where the section 987 basis increase is expected to be minimal relative to the size of the transaction or the taxpayer's overall section 987 exposure. ACT recommends that the section 987 basis increase should not apply if the aggregate gross basis in all of the transferor CFC's assets in the hands of the domestic acquiring corporation immediately after the inbound transaction is 10% or less of the domestic acquiring corporation's aggregate gross basis in all of its assets immediately after the inbound transaction (inclusive of the CFC's assets). Alternatively, ACT suggests that the section 987 basis increase provisions should not apply if the section 987 basis increase amount (computed as described above) is less than or equal to 10% of the CFC's gross asset basis being inbounded.

Reasons for ACT Recommendation

A de minimis threshold promotes administrability by ensuring that taxpayers and the IRS are not required to devote resources to tracking and computing immaterial amounts that do not meaningfully affect a taxpayer's U.S. tax liability.

C. Pretransition Gain or Loss at the CFC Level

1. Permit Taxpayers to Elect to Compute Pretransition Gain or Loss at the CFC Level

Notice Provision

Section 5.04 of the Notice describes transition rules to be issued, under which unrecognized section 987 gain or loss arising before the taxable year of the CFC Election would be recognized pro rata over a period of 120 months.

ACT Recommendation

ACT recommends that the proposed approach for pretransition gain or loss at the CFC level be made elective, both as to the computation and the recognition of such pretransition gain or loss, and if such election is not made, exempt section 987 QBUs of CFCs from transition reporting with respect to the CFC Election.

Reasons for ACT Recommendation

It is not clear why taxpayers should be required to compute and recognize pretransition gain or loss at the CFC level if the intent of the CFC Election is to turn off section 987(3) at the CFC level. Requiring such computation and recognition will effectively condition access to a simplification regime on the acceleration of potentially significant amounts of income or loss, creating a material economic cost or benefit unrelated to the taxpayer's current or future operations or the purpose of the election. For taxpayers with relatively neutral or loss positions, the prerequisite to computing pretransition gain or loss for its section 987 QBUs of CFCs creates an economic benefit that a taxpayer may be willing to waive in return for simplification. Taxpayers with substantial unrecognized section 987 gain may be deterred from electing altogether, notwithstanding that the election is intended to reduce complexity, because the upfront inclusion could outweigh the administrative benefits. As a result, the proposed rule may effectively limit the availability of the election to taxpayers with relatively neutral or loss positions rather than operating as a broadly accessible simplification measure.

If a taxpayer does not elect to compute and/or recognize pretransition gain or loss, the inbound liquidation computation could be required to start from an earlier date, possibly including the entire life of the section 987 QBU or the period described under Treas. Reg. § 1.987-10(e)(3)(ii) (all taxable years ending after September 7, 2006). In this way, pretransition amounts could still be captured upon an inbounding event, satisfying the regulatory purpose without discouraging or effectively limiting access to the election.

D. Election Procedural and Coordination Requirements

1. Mechanics of Making the CFC Election

Notice Provision

Section 5.03 of the Notice states that taxpayers would be permitted to make the CFC Election on an originally filed return (including extensions), that a consistency requirement would apply, and that an election, once made, could be revoked only with the consent of the Commissioner. The Notice does not address whether taxpayers may make the election on an amended return.

ACT Recommendation

ACT recommends that taxpayers be permitted to make the CFC Election on an amended return for taxable years beginning in 2025, with such amended return relief remaining available until final regulations are issued.

ACT also requests that Treasury provide more detailed guidance on the mechanics for making the CFC Election, including the manner, timing, and scope of the election, as well as any required statements or representations.

Reasons for ACT Recommendation

Taxpayers may be required to file returns for taxable year 2025 before detailed guidance or final regulations are available with respect to the CFC Election. Accordingly, given that the CFC Election is expected to be binding and subject to consistency requirements, limiting the election to originally filed returns would force taxpayers to make elections based on incomplete information and prevent taxpayers from being able to align their elections with subsequently-issued guidance, thus increasing the risk of taxpayers being locked into suboptimal elections or locked out of favorable elections.

2. Treatment of Unamortized Section 987 Gain or Loss Upon CFC Termination or Sale

Notice Provision

Section 5.04 of the Notice provides that "[u]nder the transition rules, the unrecognized section 987 gain or loss would be recognized pro rata over a period of 120 months beginning with the first month of the taxable year in which the CFC election is made."

ACT Recommendation

ACT requests clarification that if a taxpayer makes the CFC Election and the CFC subsequently terminates, is sold, or ceases to be a CFC, any unamortized section 987 gain or loss that is required to be recognized over the 120-month transition period is accelerated and recognized in that taxable year.

Reasons for ACT Recommendation

Without such clarification, taxpayers may be left without a clear mechanism to take into account any remaining unamortized section 987 gain or loss. The absence of clarity creates the risk that such amounts could be permanently lost or, alternatively, duplicated.

3. Amortization of Suspended and Deferred Section 987 Loss at the CFC Level and Coordination with Annual Recognition Election ("ARE")

Notice Provision

Section 5.04 of the Notice provides a transition rule for the unrecognized section 987 gain or loss to be recognized pro rata over a period of 120 months beginning with the first month of the taxable year in which the CFC Election is made.

ACT Recommendation

ACT requests clarification that suspended and deferred section 987 loss at the CFC level can be amortized over 120 months starting in the year the CFC Election is made, absent making an ARE.

ACT also requests clarification on the interaction of the ARE and the CFC Election. Specifically, if a taxpayer makes both the ARE and the CFC Election in the same taxable year, ACT recommends that the taxpayer be permitted to take all unrecognized, suspended, and deferred section 987 gain or loss into account in the year in which the CFC Election is made.

Reasons for ACT Recommendation

The Notice does not address the treatment of suspended or deferred section 987 losses. Consequently, it is unclear whether such losses are intended to be amortized on the same basis, creating uncertainty as to whether, when, and how such losses may be taken into account. Such losses should be amortized over the same 120-month period to ensure consistent treatment and avoid distortions, omissions, or duplications resulting from disparate treatment of economically similar amounts, unless an ARE is made.

Because the ARE, once made, must remain in effect for five taxable years, which is half of the 120-month amortization period for the CFC Election, permitting unrecognized, suspended, and deferred section 987 gain or loss to be fully taken into account in the year of the CFC Election and ARE would provide a clear transition between the two elections and promote consistency and administrability.

The suspension and deferral regimes are designed to permit suspended and deferred losses to be recognized upon subsequent remittances under Treas. Reg. § 1.987-12(c) or upon recognition of gain under Treas. Reg. § 1.987-11(e). Absent the requested clarification, suspended and deferred losses could effectively remain trapped indefinitely while a CFC Election is in place, because the election would remove the requirement to compute section 987 gain and track remittances, eliminating the recognition events inherent in the suspension and deferral regimes.

4. Continued Availability of the Section 988 Mark-to-Market Election and Spot Rate Convention Election

Regulation Provision

Treas. Reg. § 1.987-3(b)(4)(ii) provides an election to mark to market a section 987 QBU's section 988 transactions annually.

Treas. Reg. § 1.987-1(c)(1)(ii) provides an election to use a spot rate convention that reasonably approximates the spot rate. A spot rate convention may be based on the spot rate at the beginning of a reasonable period, the spot rate at the end of a reasonable period, the average of spot rates for a reasonable period, or spot and forward rates for a reasonable period (not exceeding 3 months).

ACT Recommendation

ACT requests clarification that taxpayers who make a section 988 mark-to-market election under Treas. Reg. § 1.987-3(b)(4)(ii) and/or the spot rate convention election under Treas. Reg. § 1.987-1(c)(1)(ii) may continue to apply the elections to section 987 QBUs held by CFCs even if the CFC Election is made.

Reasons for ACT Recommendation

The section 988 mark-to-market election and the spot rate convention election each is relevant for sections 987(1) and (2), which would continue to apply to section 987 QBUs of CFCs under the CFC Election.

IV. OTHER COMMENTS ON 2024 FINAL REGULATIONS

1. Eliminate the Loss-to-the-Extent-of-Gain Rule

Regulation Provision

Under the 2024 final regulations, suspended section 987 loss is recognized only to the extent that the owner recognizes section 987 gain in the same taxable year or during a three-year lookback period (the "loss-to-the-extent-of-gain rule"). Section 4 of the Notice proposes modifications to narrow the scope of the loss suspension rules and simplify the loss-to-the-extent-of-gain rule.

ACT Recommendation

ACT recommends that the loss-to-the-extent-of-gain rule be removed.

Reasons for ACT Recommendation

Section 987 provides for the recognition of foreign currency gain or loss upon a remittance, but the loss-to-the-extent-of-gain rule introduces a new set of policy issues into the section 987 regulations by effectively requiring taxpayers to "match" losses with gains before permitting recognition. This matching concept finds no basis in the statute, which adopts a remittance-based approach to foreign currency gain or loss without regard to whether offsetting gains have been recognized. Further, under section 989(c)(2), Congress granted Treasury authority to limit recognition of foreign currency loss on "certain" remittances; this cannot be reasonably interpreted to mean "virtually all" remittances unless a taxpayer can "match" the loss to a gain.

The stated policy goal, according to the preambles to the 2023 proposed section 987 regulations, is that "without appropriate limitation, the current rate election would facilitate the abuses and inappropriate outcomes that occurred under the 1991 proposed regulations, including the potential for taxpayers to choose to recognize significant, and potentially uneconomic, section 987 losses while avoiding or deferring section 987 gains." However, this rule goes beyond being an anti-abuse rule. By imposing a matching requirement, the loss-to-the-extent-of-gain rule limits the recognition of genuine economic losses sustained by a taxpayer and rests on an overbroad assumption that such losses may be uneconomic. Meanwhile, much, if not all, of the "inappropriate outcomes that occurred under the 1991 proposed regulations" are already addressed through other anti-abuse provisions, including modifications to the attribution rules under Treas. Reg. § 1.987-2 and the exclusion of certain assets from QBU ownership.

Further, if a QBU generates section 987 losses on a sustained basis due to foreign exchange trends and broader economic conditions, those losses may never be recognized under the current rules unless the taxpayer undertakes artificial transactions to generate offsetting gains. As a result, the loss-to-the-extent-of-gain rule not only fails to serve a meaningful anti-abuse purpose but also distorts taxpayer incentives, encourages tax-driven behavior, and can result in the indefinite deferral of real economic losses.

2. Eliminate the Anti-Abuse Rule in Treas. Reg. § 1.987-11(e)(3)(v)

Regulation Provision

Treas. Reg. § 1.987-11(e)(3)(v) provides an anti-abuse rule that applies where an owner recognizes section 987 gain with a principal purpose of reducing the U.S. federal income tax liability of the owner (or its U.S. shareholders or partners, as applicable), including over multiple taxable years. When this provision applies, the section 987 gain is disregarded for purposes of determining the amount of suspended loss recognized in a taxable year. The regulation provides that this rule may apply, for example, if an owner that is a CFC recognizes section 987 gain that is offset by a tax attribute of one of the CFC's U.S. shareholders that would not otherwise be used.

ACT Recommendation

If any version of the loss-to-the-extent-of-gain rule is retained, ACT strongly recommends that the anti-abuse rule in Treas. Reg. § 1.987-11(e)(3)(v) be eliminated.

Reasons for ACT Recommendation

There is no support in the statutory text or legislative history of subpart J for denying the existence of an economic gain merely because the taxpayer could reduce its tax liability by offsetting the gain with an unrelated economic loss. Section 987 is intended to measure foreign currency gain or loss, not to police whether those amounts produce favorable tax outcomes when combined with other attributes. The subjective test by which the regulations would disregard section 987 gain is inconsistent with section 987 and with the statutory grant of authority.

This anti-abuse rule further extends the same flawed premise underlying the loss-to-the-extent-of-gain rule by allowing the IRS to disregard economically real section 987 gain based on how that gain interacts with other, unrelated tax attributes, rather than on whether the gain itself is properly realized under section 987. A section 987 gain or loss exists only when an economic gain or loss has been sustained. Disregarding a sustained economic gain to prevent a taxpayer from utilizing a real economic loss is overly punitive and does not target abusive behavior but instead denies the use of an otherwise valid tax attribute.

In addition, this rule creates significant uncertainty for taxpayers. It is difficult -- and may often be impossible -- for a taxpayer to determine conclusively whether recognition of a section 987 gain that would otherwise allow recognition of a section 987 loss has an impermissible "principal purpose" of reducing U.S. federal income tax liability merely because the section 987 gain could be characterized as facilitating the use of an unrelated tax attribute. For many taxpayers, the complexity and constantly varying nature of their overall tax computation will make this determination an almost entirely arbitrary exercise. Further, taxpayers will be exposed to the use of hindsight by the IRS, which can challenge a taxpayer's attribute utilization based on facts that may not have been apparent at the time the section 987 gain was recognized.

Put simply, the loss-to-the-extent-of-gain rule is an inappropriate attempt by the existing regulations to limit taxpayers' ability to recognize genuine economic loss, and the addition of the anti-abuse rule further reveals the underlying policy flaws of the rule by subjecting taxpayers to additional arbitrary requirements that are wholly without support in the statutory text or legislative history of subpart J. This misguided attempt by the existing regulations to import unrelated and unsupported policy objectives into taxpayers' section 987 computations should be abandoned.

3. Source and Character

Regulation Provision

Treas. Reg. § 1.987-6(b) provides rules for determining the source and character of section 987 gain or loss. Under these rules, section 987 gain or loss is assigned to statutory and residual groupings based on the relative tax book value of the assets of the section 987 QBU, applying (with certain modifications) the asset method prescribed in Treas. Reg. §§ 1.861-9(g) and 1.861-9T(g).

ACT Recommendation

ACT recommends that Treasury replace the current asset-based sourcing approach with an income-based sourcing approach.

Reasons for ACT Recommendation

Applying an income-based sourcing approach such as the modified gross income method is more consistent with the language in the section 987 statute. Specifically, section 987(3)(B) provides that section 987 gain or loss should be sourced "by reference to the source of the income giving rise to post-1986 accumulated earnings." In addition, as ACT has previously commented in other contexts,[5] using an asset-based tax book value method to characterize income will often produce results that are highly distortive. Self-created intangibles will frequently have little to no tax book value, for example, while any cash on a QBU's balance sheet will generally have tax basis equal to its value. If a QBU's assets consist largely of self-created intangibles and cash, the source and character of any section 987 gain or loss will be determined largely or entirely by the characterization of the QBU's cash, notwithstanding that this result will almost certainly be at odds with economic reality. While ACT recognizes that the use of any methodology (asset-based or income-based) can produce results that imperfectly characterize section 987 gain or loss, requiring taxpayers to utilize the tax book value method will very often produce results that are difficult to align with the taxpayer's actual business model, particularly for taxpayers for whom self-created intangibles are a significant income-producing item. Accordingly, ACT recommends the use of an income-based approach to characterize section 987 gain or loss.

4. Remove the rules regarding the application of Section 987 to Partnerships

Regulation Provision

Treas. Reg. § 1.987-7(b) provides that, except for certain provisions enumerated in Treas. Reg. § 1.987-7(c), the 2024 final regulations do not apply to a partnership or an eligible QBU if a partnership is the owner for U.S. federal income tax purposes of the eligible QBU's assets and liabilities. However, a taxpayer must apply sections 987 and 989(a) to partnerships and eligible QBUs of partnerships in a reasonable manner using a method that is applied consistently from year to year with respect to a particular partnership or eligible QBU.

ACT Recommendation

ACT recommends that Treas. Reg. § 1.987-7 be removed and replaced with a simpler regulatory approach that, pending further guidance from Treasury, requires taxpayers to utilize a reasonable method of applying the provisions of subpart J to partnerships.

Reasons for ACT Recommendation

The apparent intent of Treas. Reg. § 1.987-7 is essentially to require taxpayers to use an undefined reasonable formulation of section 987 for partnerships pursuant to Treas. Reg. § 1.987-7(b) and then to apply the various loss disallowance rules (in some instances) to the method that is applied to a partnership subject to section 987, but not to apply the "transition rule" and a host of other provisions. However, the overlay of the highly detailed and prescriptive provisions of subchapter K with the provisions of subpart J raises numerous complex questions that have not been addressed by the government in any meaningful way in the 40 years since subpart J was enacted. Accordingly, ACT recommends that, until the government has promulgated guidance in this area, taxpayers should be permitted to utilize a reasonable method of complying with the statutory provisions of subpart J together with the detailed statutory and regulatory framework of subchapter K.

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5 Alliance for Competitive Taxation, Recommendations Regarding 2022 Proposed Foreign Tax Credit Regulations (Jan. 23, 2023), https://www.actontaxreform.com/wp-content/uploads/2025/03/act-letter-on-proposed-ftc-regulations-reg-112096-22-1-23-23.pdf

V. CONCLUSION

ACT appreciates Treasury's and the IRS's significant efforts to simplify the section 987 regulations and reduce compliance burdens on taxpayers through Notice 2026-17. We respectfully recommend that the forthcoming proposed regulations:

- Clarify that the opening basis pool is not adjusted for suspended loss or deferred gain or loss
- Provide additional guidance regarding the manner of making or revoking the equity and basis pool election
- Expand the de minimis exception to the loss suspension rules
- Eliminate recognition groups completely
- Consider our recommendations regarding the excess asset basis / section 987 basis increase rules
- Remove the section 987 basis increase rule or narrowly tailor it
- If retained, make the section 987 basis increase symmetrical
- Consider our recommendations regarding methodologies to determine section 987 basis increase
- Make such methodologies elective or, if necessary, adopt the recommended priority/ordering rule
- Limit the Section 987 Basis Increase computation period to ten years
- Clarify recordkeeping requirements
- Permit taxpayers to elect among approaches to account for section 987 basis increase
- Provide a de minimis threshold for the section 987 basis increase
- Permit taxpayers to elect to compute pretransition gain or loss at the CFC level
- Consider our recommendations regarding the mechanics of making the CFC Election
- Consider our recommendations regarding the treatment of unamortized section 987 gain or loss upon CFC termination or sale
- Consider our recommendations regarding the amortization of suspended and deferred section 987 loss at the CFC level
- Allow continued availability of the section 988 mark-to-market election
- Eliminate the loss-to-the-extent-of-gain rule
- Eliminate the anti-abuse rule in Treas. Reg. § 1.987-11(e)(3)(v)
- Consider our recommendations regarding the source and character rules
- Remove the rules regarding the application of Section 987 to partnerships.

ACT representatives would welcome the opportunity to discuss these matters with you at your convenience.

Yours sincerely,

Alliance for Competitive Taxation