

Report on recent US international tax developments - 1 November 2019

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On 31 October 2019, the United States (US) Treasury Department issued final regulations ([TD 9880](#)) under Internal Revenue Code (IRC)¹ Section 385 removing the minimum documentation requirements that must be satisfied to treat certain financial arrangements among related parties as indebtedness for federal tax purposes. The final regulations adopt the proposed regulations ([REG-130244-17](#)) without any change.

At the same time, Treasury issued an advance notice of proposed rulemaking ([REG-123112-19](#)) that would modify the so-called Distribution Regulations, which may treat an issuance of a debt instrument in a distribution (or similar) transaction as stock. The Distribution Regulations include a funding rule that treats as stock a debt instrument that is issued as part of a series of transactions that achieves a similar result. The most noteworthy proposed modification would remove the funding rule's per-se 72-month period for a more "facts and circumstances" test. The proposed regulations would treat the debt as stock only if its issuance has sufficient factual connection to a distribution to a member of the taxpayer's expanded group or an economically similar transaction.

While determining that the Distribution Regulations remain necessary, Treasury intends that the proposed regulations make the regulations "more streamlined and targeted." Treasury further intends the proposed regulations to apply to tax years beginning on or after the date of publication of adopting those rules as final regulations in the Federal Register.

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