May 16, 2017

The Honorable Steven T. Mnuchin
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Re: Presidential Executive Order on Identifying and Reducing Tax Regulatory Burdens

Dear Secretary Mnuchin:

On April 21, 2017, President Trump issued Executive Order 13789 directing the Secretary of the Treasury to immediately review all significant tax regulations issued by the Department of the Treasury (Treasury) on or after January 1, 2016. The American Institute of CPAs (AICPA) is pleased to submit our recommendations below for several specific regulatory actions that may warrant review as part of this process.[1]

Our initial review has identified the following items as potentially imposing an undue burden on United States (U.S.) taxpayers or adding undue complexity to Federal tax laws.

REG-163113-02: Estate, Gift, and Generation-Skipping Transfer Taxes; Restrictions on Liquidation of an Interest

On August 4, 2016, Treasury and the Internal Revenue Service (IRS) issued proposed regulations under section[2] 2704 regarding restrictions on liquidation of an interest and the valuation of interests in corporations and partnerships for estate, gift, and generation-skipping transfer (GST) tax purposes. The regulations are overly broad and expand the breadth of section 2704 in a manner not contemplated by Congress. The proposed regulations would place an undue financial burden on certain family businesses and treat family-owned businesses differently than similarly situated businesses without family ownership. The AICPA testified at the December 1, 2016 hearing on the regulations and submitted a comment letter in January 2017 to urge Treasury and the IRS to formally withdraw the proposed regulations.

[1] In several instances, we have previously submitted comments on these regulations to Treasury or the Internal Revenue Service (IRS). Unless stated in those previous comments, we are not taking a position on the statutory authority of the IRS to issue these regulations nor are we supporting or opposing specific provisions of these regulations.
[2] All references herein to "section" or "§" are to the Internal Revenue Code of 1986, as amended, or the Treasury Regulations promulgated thereunder.

1455 Pennsylvania Ave. NW, Washington, DC 20004-1081
T: +1 202.737.6600 F: +1 202.638.4512
aicpaglobal.com | cimaglobal.com | aicpa.org | cgma.org

REG-127923-15: Consistent Basis Reporting Between Estate and Person Acquiring Property From Decedent

On March 4, 2016, Treasury and the IRS issued proposed regulations regarding consistent basis reporting between estates and beneficiaries. The proposed regulations cover the new section 1014(f) requirement for consistency between a recipient's basis in property acquired from a decedent and the value of the property as reported for estate tax purposes as well as cover the associated reporting requirements pursuant to new section 6035. In June 2016, the AICPA submitted comments to Treasury and IRS on the estate tax basis reporting proposed regulations, stating our concerns that the proposed regulations overreach the statutory legislative authority regarding the zero basis rule and supplemental filings.

TD 9803: Treatment of Certain Transfers of Property to Foreign Corporations

On December 16, 2016, Treasury and the IRS issued final regulations under section 367(d) which eliminated the exception under Treas. Reg. § 1.367(d)-1T(b) for outbound transfers of foreign goodwill and going concern value, and limited the application of the active foreign trade or business exception under section 367(a)(3). These regulations may result in immediate gain recognition or, at the transferor's election, annual inclusions over the useful life of the transferred property. These final regulations are broad-reaching and burdensome on taxpayers due to their complexity. In addition, these final regulations apply on a retroactive basis to September 14, 2015, requiring taxpayers to determine the tax and potential financial statement impact on transactions reported in a prior tax return. The regulations create an onerous and uncertain situation by requiring taxpayers to measure the use of the transferred property in the development and exploitation of other intangible property (i.e., derivative works), which may result in an increase to the useful life of the property that was transferred and any potential income inclusions under section 367(d).

TD 9761: Inversions and Related Transactions

On April 4, 2016, Treasury and the IRS issued final and temporary regulations under section 7874 addressing various aspects of inversions and related transactions. These regulations include provisions specifically aimed at "serial inverters." According to the preamble, Treasury and the IRS are concerned with the potential that "a single foreign corporation may avoid the application of section 7874 by completing multiple domestic entity acquisitions over a relatively short period of time in circumstances where section 7874 would otherwise have applied if the acquisitions had been made at the same time or pursuant to a plan." The new regulations issued under section 7874 increase the scope of transactions impacted by the inversion statute and will likely increase the risks and resource burdens placed on taxpayers (including foreign based multinationals) engaging in cross border merger and acquisition activity.

TD 9790: Treatment of Certain Interests in Corporations as Stock or Indebtedness

On October 21, 2016, Treasury and the IRS issued final and temporary regulations under section 385 dealing with the potential recharacterization of certain debt instruments as equity for U.S. federal income tax purposes. The regulations impose significant documentation and analysis requirements on U.S. corporations for intercompany debt issuances. The regulations also impose bright line rules defining situations where financial instruments issued as debt are recharacterized as equity when issued in connection with certain transactions which may not have a tax avoidance motive. The scope of these regulations imposes an significant administrative burden on U.S. taxpayers engaged in ordinary course of business transactions with no tax avoidance intent. The complexity of the regulations coupled with the potential for draconian outcomes in terms of tax liability dramatically increases the financial and administrative burdens placed on taxpayer resources. In July 2016, the AICPA submitted comments on various aspects of the proposed regulations under section 385, many of which remain relevant to the regulations issued in October 2016.

TD 9814: Transfers of Certain Property by U.S. Persons to Partnerships With Related Foreign Partners

On January 19, 2017, Treasury and the IRS issued final and temporary regulations that address transfers of appreciated property by U.S. persons to partnerships with foreign partners related to the transferor. The regulations create complexity and additional burdens on taxpayers in an effort to prevent a limited potential abuse which the IRS could address under existing anti-abuse regulations. They were issued with an effective date going back to a notice issued almost 18 months earlier, which is certain to create increased complexity and administrative burdens for many taxpayers. In addition, for the first time in any IRS guidance, the regulations mandate the use of the remedial method under section 704(c). It is generally unclear how this mandate will interact with the anti-churning rules under section 197(f)(9) or the treatment of reverse section 704(c) gain arising from revaluation events. The AICPA submitted a comment letter addressing a number of these issues in response to Notice 2015-54, which first proposed these regulations.

* * * * *

The AICPA is the world's largest member association representing the accounting profession, with more than 418,000 members in 143 countries and a history of serving the public interest since 1887. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

We appreciate your consideration of these comments and welcome the opportunity to discuss these issues further. Please feel free to contact me at (408) 924-3508 or Annette.Nellen@sjsu.edu; or Jonathan Horn, Senior Manager – AICPA Tax Policy & Advocacy, at (202) 434-9204 or Jonathan.Horn@aicpa-cima.com.

Respectfully submitted,

A Nellen

Annette Nellen, CPA, CGMA, Esq.
Chair, AICPA Tax Executive Committee

cc: The Honorable John Koskinen, Commissioner, Internal Revenue Service