

M&A Update

Broad Anti-Inversion Rules Released

April 5, 2016

On April 4, 2016, Treasury released new rules making it more difficult for some U.S. companies to invert (“*Serial Inversion Regulations*”), Proposed Regulations limiting the effectiveness of “earnings stripping” techniques (“*Earnings Stripping Regulations*”), and Final and Temporary Treasury Regulations incorporating rules previously described in Notices 2014-52 and 2015-79.

Key takeaways from the Serial Inversion Regulations include:

- The Serial Inversion Regulations exclude foreign company stock attributable to domestic company acquisitions within three years of the *signing date* of the latest acquisition for purposes of determining the ownership threshold percentage under section 7874.
- The application of this rule does not depend on whether “there was a demonstrable plan to undertake the subsequent domestic entity acquisition at the time of the prior domestic entity acquisitions”, which effectively precludes a foreign company from bulking up by acquiring a series of smaller domestic companies.
- This rule has only a three year life, generally applying to acquisitions completed on or after April 4, 2016. The rule expires on April 4, 2019.

Key takeaways from the Earning Stripping Regulations include:

- The Earnings Stripping Regulations may recharacterize all or a portion of debt issued by an inverted domestic company to a new foreign parent as stock for tax purposes, rendering payments on the instrument nondeductible dividends rather than valuable U.S. tax deductions.
- These rules generally apply to purported debt instruments issued on or after April 4, 2016. However, a debt instrument treated as stock under the Earnings Stripping Regulations will continue to be treated as debt for tax purposes until 90 days after the Earnings Stripping Regulations are issued in final form.
- Other rules released with the Earnings Stripping Regulations, including the documentation of key information involving related party debt instruments, will not be effective until final Earnings Stripping Regulations are issued.

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If you have any questions, please contact any of the following attorneys or your Cadwalader contact:

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