To get the marked R-value, it is essential that this insulation be installed properly.

(f) For R–19 insulation batts, the fact sheet must also disclose the insulation's R-value when installed in wall cavities where the insulation's thickness exceeds the depth of the cavity.

■ 12. Revise § 460.14 to read as follows:

§ 460.14 How retailers must handle labels and fact sheets.

If you sell insulation to do-it-yourself customers, you must have fact sheets for the insulation products you sell. You must make the fact sheets available to your customers, whether you offer insulation products for sale offline or online. You can decide how to do this, as long as your insulation customers are likely to notice them. For example, you can put them in a display, and let customers take copies of them. You can keep them in a binder at a counter or service desk, and have a sign telling customers where the fact sheets are. You need not make the fact sheets available to customers if you display insulation packages on the sales floor where your insulation customers are likely to notice them and each individual insulation package offered for sale contains all package label and fact sheet disclosures required by §§ 460.12 and 460.13. If you are offering products for sale online, the product labels and fact sheets required by this part, or a direct link to this information, must appear clearly and conspicuously and in close proximity to the covered product's price on each web page that contains a detailed description of the covered product and its price.

§ 460.17 [Amended]

■ 13. In § 460.17, remove the words ''aluminum foil'' and add in their place the words ''reflective insulation.''

■ 14. In § 460.18, revise paragraph (e) to read as follows:

§ 460.18 Insulation ads.

* * * * *

(e) The affirmative disclosure requirements in this section do not apply to television or radio advertisements or to space-constrained advertisements. For the purposes of this part, ''space-constrained advertisement'' means any communication made through interactive media (such as the internet, online services, and software, including but not limited to internet search results and banner ads) that has space, format, size or technological limitations or restrictions that prevent industry members from making disclosures required by this part clearly and conspicuously. Industry members maintain the burden of showing that there is insufficient space to provide the disclosures that this part otherwise requires be made clearly and conspicuously.

■ 15. In § 460.19, revise paragraph (g) to read as follows:

§ 460.19 Savings claims.

* * * * *

(g) The affirmative disclosure requirements in this section do not apply to television or radio advertisements or to space-constrained advertisements. ''Space-constrained advertisement'' is defined in § 460.18(e).

§§ 460.22 through 460.24 [Redesignated as §§ 460.23 through 460.25]

■ 16. Redesignate §§ 460.22 through 460.24 as §§ 460.23 through 460.25.

■ 17. Add a new § 460.22 to read as follows:

§ 460.22 R-value claims for non-insulation products.

If you make an R-value claim for a product, other than a fenestration-related product, that is not home insulation and is marketed in whole or in part to reduce residential energy use by slowing heat flow, you must test the product pursuant to § 460.5 using a test or tests in that section appropriate to the product. Any advertised R-value claims must fairly reflect the results of those tests. For the purposes of this section, fenestration-related products include windows, doors, and skylights as well as attachments for those products.

Appendix to Part 460 [Designated as Appendix A to Part 460 and Amended]

■ 18. Designate the appendix to part 460 as appendix A to part 460 and amend newly designated appendix A as follows:

■ a. In the introductory text:

■ i. Remove ''16 CFR part 460'' and ''part 460'' everywhere they appear and add in their place ''this part''.

■ ii. Remove ''below'' and add in its place ''in paragraphs (a) through (d) of this appendix''.

■ iii. Remove ''in the **Federal Register** cited at the end of each exemption'' and add in its place ''cited in the authority citation to this part''.

■ b. In paragraph (a), remove ''46 FR 22179 (1981).''

■ c. In paragraph (b), remove ''46 FR 22180 (1981).''

■ d. Redesignate paragraphs (c) introductory text and (c)(1) through (4) as paragraphs (c)(1) and (c)(1)(i) through (iv), respectively.

■ e. Designate the undesignated paragraph following newly designated paragraph (c)(1)(iv) as paragraph (c)(2).

■ f. In newly designated paragraph (c)(2), remove ''48 FR 31192 (1983).''

■ g. Add paragraph (d).

The addition reads as follows:

Appendix A to Part 460—Exemptions

* * * * *

(d) The requirements in §§ 460.6 through 460.21 do not apply to R-value claims covered by § 460.22.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2019–09622 Filed 5–10–19; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9857]

RIN 1545–BL11

Recognition and Deferral of Section 987 Gain or Loss

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to combinations and separations of qualified business units (QBUs) subject to section 987 and the recognition and deferral of foreign currency gain or loss with respect to a QBU subject to section 987 in connection with certain QBU terminations and certain other transactions involving partnerships. In addition, this document withdraws temporary regulations regarding the allocation of assets and liabilities of certain partnerships for purposes of section 987. The final regulations affect taxpayers that own certain QBUs.

DATES:

Effective date: These regulations are effective on May 13, 2019.

Applicability dates: For dates of applicability, see §§ 1.987–2(e), 1.987–4(h), and 1.987–12(j).

FOR FURTHER INFORMATION CONTACT: Steven D. Jensen at (202) 317–6938 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations under §§ 1.987–2 and 1.987–4 relating to combinations and separations of QBUs subject to section 987. This document also contains final regulations under § 1.987–12 relating to the recognition and deferral of foreign currency gain or loss under section 987 with respect to a QBU subject to section 987 in connection with certain QBU terminations and certain other transactions involving partnerships (together with the final regulations under §§ 1.987–2 and 1.987–4, the final regulations). In addition, this document withdraws temporary regulations under § 1.987–7T regarding the allocation of assets and liabilities of certain partnerships for purposes of section 987.

I. Background on Section 987 Regulations

On December 8, 2016, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) published Treasury Decision 9794 (the 2016 final regulations) in the **Federal Register** (81 FR 88806), which contains rules relating to the determination of the taxable income or loss of a taxpayer with respect to a section 987 QBU; the timing, amount, character, and source of any section 987 gain or loss; and other provisions.

On the same date, the Treasury Department and the IRS also published Treasury Decision 9795 (the temporary regulations) in the **Federal Register** (81 FR 88854) and a notice of proposed rulemaking (REG–128276–12) in the **Federal Register** (81 FR 88882) by cross-reference to the temporary regulations. The temporary regulations include the following rules that are not specifically affected by this Treasury decision: 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 the translation of income used to pay creditable foreign income taxes; and rules under section 988 requiring the deferral of certain section 988 loss that arises with respect to related-party loans.

In addition, the temporary regulations contain the following provisions that are specifically affected by this Treasury decision: §§ 1.987–2T and 1.987–4T, relating to combinations and separations of QBUs; § 1.987–7T, which provides a liquidation value percentage methodology for allocating assets and liabilities of certain partnerships (section 987 aggregate partnerships, as defined in § 1.987–1(b)(5) of the 2016 final regulations); and § 1.987–12T, which requires deferral of foreign currency gain or loss under section 987 with respect to certain transactions defined as deferral events or outbound loss events—transactions that generally include QBU terminations and certain partnerships transactions.

On January 17, 2017, the Treasury Department and the IRS published Notice 2017–07, 2017–3 I.R.B. 423, announcing that certain rules under § 1.987–12T would be modified to prevent potential abuse by taxpayers making retroactive check-the-box elections. Section 1.987–12T(j)(1) states that § 1.987–12T generally applies to any deferral event or outbound loss event that occurs on or after January 6, 2017 (that is, thirty days after the date that § 1.987–12T was filed with the **Federal Register**). Under § 1.987–12T(j)(2), however, § 1.987–12T also applies to any deferral event or outbound loss event that occurs on or after December 7, 2016, if such deferral event or outbound loss event is undertaken with a principal purpose of recognizing section 987 loss. Notice 2017–07 indicated that § 1.987–12T(j)(2) would be modified so that § 1.987–12T also will apply to any deferral event or outbound loss event that is undertaken with a principal purpose of recognizing section 987 loss [1] and that occurs as a result of an entity classification election made under § 301.7701–3 that is filed on or after December 22, 2016, and that is effective before December 7, 2016. Additionally, Notice 2017–07 provided that § 1.987–12T(j)(1) would be modified so that § 1.987–12T also will apply to any deferral event or outbound loss event that occurs as a result of an entity classification election made under § 301.7701–3 that is filed on or after January 6, 2017, and that is effective before January 6, 2017.

On October 16, 2017, the Treasury Department and the IRS issued Notice 2017–57, 2017–42 I.R.B. 325, announcing that future guidance would defer the applicability dates of §§ 1.987–2T, 1.987–4T, and 1.987–7T (along with certain other provisions of the 2016 final regulations and temporary regulations) by one year. The temporary regulations provide that these sections apply to taxable years beginning on or after the day that is one year after the first day of the first taxable year following December 7, 2016. *See* §§ 1.987–2T(e); 1.987–4T(h); 1.987–7T(d).

[1] Notice 2017–07 inadvertently referred to a principal purpose of recognizing section 987 gain or loss. These final regulations, by contrast, finalize the rule in the temporary regulations by applying § 1.987–12(j)(2) solely to deferral events and outbound loss events undertaken with a principal purpose of recognizing section 987 loss.

On June 25, 2018, the Treasury Department and the IRS published Notice 2018–57, 2018–26 IRB 774, announcing that future guidance would defer the applicability dates of §§ 1.987–2T, 1.987–4T, and 1.987–7T (along with certain other provisions of the 2016 final regulations and temporary regulations) by one additional year.

II. Executive Order 13789

Executive Order 13789, issued on April 21, 2017, instructs the Secretary of the Treasury (the Secretary) to review all significant tax regulations issued on or after January 1, 2016, and to take concrete action to alleviate the burdens of regulations that (i) impose an undue financial burden on U.S. taxpayers; (ii) add undue complexity to the Federal tax laws; or (iii) exceed the statutory authority of the IRS. Executive Order 13789 further instructs the Secretary to submit to the President within 60 days an interim report that identifies regulations that meet these criteria. Notice 2017–38, 2017–30 I.R.B. 147, which was published on July 24, 2017, included the 2016 final regulations in a list of eight regulations identified by the Secretary in the interim report as meeting at least one of the first two criteria specified in E.O. 13789.

E.O. 13789 further instructs the Secretary to submit to the President by September 18, 2017, a final report that recommends specific actions to mitigate the burden imposed by regulations identified in the interim report. On October 16, 2017, the Secretary published in the **Federal Register** this final report (82 FR 48013), which indicated, among other things, that the Treasury Department and the IRS intend to propose certain modifications to the 2016 final regulations to reduce burden and compliance challenges associated with those regulations and are actively considering other rules in connection with that proposal.

III. Deferral of Section 987 Gain or Loss on Certain Terminations and Other Transactions Involving Partnerships

Under the 2016 final regulations, the owner of a section 987 QBU that terminates includes in income all of the net unrecognized section 987 gain or loss with respect to the section 987 QBU in the year it terminates. Under these rules, a termination can result, for example, solely from a transfer of a section 987 QBU from a taxpayer to a related party, notwithstanding that the QBU's assets continue to be used in the same trade or business by the related party.

Because a termination can result in the deemed remittance of all the assets of a section 987 QBU in circumstances in which the assets continue to be used by a related person in the conduct of the same trade or business that formerly was conducted by the section 987 QBU, terminations can facilitate the selective recognition of section 987 losses. In issuing the temporary regulations, the Treasury Department and the IRS determined that terminations of section 987 QBUs generally should not be permitted to facilitate the selective recognition of losses when the assets and liabilities of the section 987 QBU are transferred to a related person and remain subject to section 987 in the hands of the transferee. Similar policy considerations arise when the transfer of a partnership interest to a related person results in deemed transfers that cause the recognition of section 987 loss with respect to a section 987 QBU owned through the partnership, notwithstanding that the trade or business of the section 987 QBU continues without interruption and remains subject to section 987, and in the context of certain outbound transfers even when the assets do not remain subject to section 987 in the hands of the transferee (because, for example, the transferee has the same functional currency as the QBU). In order to address these policy concerns, the temporary regulations defer section 987 losses resulting from certain termination events, partnership transactions, and certain other transactions involving outbound transfers.

In addition, the temporary regulations generally apply to defer the recognition of section 987 gains as well as losses when the transferee is subject to section 987 with respect to the assets of the section 987 QBU. The temporary regulations do not, however, defer gain to the extent the assets of a section 987 QBU are transferred by a U.S. person to a related foreign person, consistent with the policies underlying section 367.

IV. Combinations and Separations of QBUs

The temporary regulations also include rules to prevent similarly inappropriate results when certain section 987 QBUs are combined or separated. Absent a special rule, the combination of multiple section 987 QBUs that have the same owner, or the separation of a section 987 QBU into two or more section 987 QBUs that have the same owner, would give rise to a transfer between an owner and one or more section 987 QBUs under the 2016 final regulations.

Consistent with the policy of deferring section 987 gain or loss under § 1.987–12T when assets of a section 987 QBU are reflected on the books and records of another section 987 QBU in the same controlled group as a result of certain transactions that result in deemed transfers, the temporary regulations provide that section 987 gain or loss generally is not recognized when two or more section 987 QBUs (combining QBUs) with the same owner combine into a single section 987 QBU (combined QBU) or when a section 987 QBU (separating QBU) separates into multiple section 987 QBUs (each, a separated QBU).

The temporary regulations also include certain mechanical rules applicable in this context, including (i) rules related to determining the net unrecognized section 987 gain or loss of combined QBUs and separated QBUs, and (ii) provisions regarding combining section 987 QBUs that have different functional currencies than their respective combined QBUs.

V. Determination of a Partner's Share of Assets and Liabilities of a Section 987 Aggregate Partnership

The 2016 final regulations set forth rules applicable to section 987 aggregate partnerships, which are defined as partnerships for which all of the capital and profits interests are owned, directly or indirectly, by persons that are related within the meaning of section 267(b) or section 707(b). Under the aggregate approach set forth in the 2016 final regulations, assets and liabilities reflected on the books and records of an eligible QBU of a section 987 aggregate partnership are allocated to each partner, which is considered an indirect owner of the eligible QBU. If the eligible QBU has a different functional currency than its indirect owner, then the assets and liabilities of the eligible QBU that are allocated to the partner are treated as a section 987 QBU of the indirect owner.

The temporary regulations provide specific rules for determining a partner's share of the assets and liabilities reflected on the books and records of an eligible QBU owned indirectly through a section 987 aggregate partnership. Specifically, § 1.987–7T(b) provides that, in any taxable year, a partner's share of each asset and liability of a section 987 aggregate partnership is proportional to the partner's liquidation value percentage with respect to the aggregate partnership. A partner's liquidation value percentage is defined as the ratio of the liquidation value of the partner's interest in the partnership to the aggregate liquidation value of all the partners' interests in the partnership. The liquidation value of the partner's interest in the partnership is the amount of cash the partner would receive with respect to its interest if, immediately following the applicable determination date, the partnership sold all of its assets for cash equal to the fair market value of such assets (taking into account section 7701(g)), satisfied all of its liabilities (other than those described in § 1.752–7), paid an unrelated third party to assume all of its § 1.752–7 liabilities in a fully taxable transaction, and then liquidated.

Summary of Comments and Explanation of Revisions

The Treasury Department and the IRS received one comment regarding the temporary regulations. In addition, the Treasury Department and the IRS received several comments in response to Notice 2017–38 pertaining to the temporary regulations. After consideration of all the comments, the regulations under §§ 1.987–2T, 1.987–4T, and 1.987–12T, as revised by this Treasury decision, are adopted as final regulations. In addition, the regulations under § 1.987–7T are withdrawn. The Treasury Department and the IRS are continuing to study the other provisions of the temporary regulations that are not specifically addressed by this Treasury decision. In addition, several comments were received that relate to rules in the 2016 final regulations. Comments on the 2016 final regulations, and provisions of the temporary regulations that are not specifically addressed by this Treasury decision, are beyond the scope of this rulemaking and are not addressed in this preamble. The Treasury Department and the IRS will consider these comments in connection with any future guidance projects addressing the issues discussed in the comments.

I. Comments Recommending Withdrawal of the Temporary Regulations

A number of comments recommended that all of the temporary regulations, including §§ 1.987–2T, 1.987–4T, and 1.987–12T, be withdrawn. Comments generally indicated that the 2016 final regulations and the temporary regulations are unduly complex and present significant financial and compliance burdens for taxpayers subject to the 2016 final regulations.

As described in the Background section of this Preamble, in its final report to the President in response to E.O. 13789, the Treasury Department indicated that the 2016 final regulations have proved difficult to apply for many taxpayers. The final report indicated that the Treasury Department and the IRS intend to propose modifications to the 2016 final regulations that will reduce the compliance burdens associated with the regulations. While the Treasury Department and the IRS intend to reduce those burdens as described in the final report, the Treasury Department and the IRS continue to consider it inappropriate to permit the selective recognition of section 987 losses and the deferral of section 987 gains. This is particularly true when such selective loss recognition may be accomplished through related-party transactions that do not significantly impact the conduct of the trade or business of a section 987 QBU or its owner but nonetheless generate significant tax benefits, as is true of deferral events and outbound loss events.

Accordingly, the Treasury Department and the IRS have determined that finalizing §§ 1.987–2T, 1.987–4T, and 1.987–12T, while simultaneously deferring the applicability date of the 2016 final regulations and developing guidance to mitigate the complexity and administrative challenges associated with, the 2016 final regulations, appropriately balances taxpayers' burdens with the need to prevent abuse under the 2016 final regulations or under another method of complying with section 987 utilized by a taxpayer during a period for which the 2016 final regulations are not applicable. Accordingly, this Treasury decision finalizes the rules in §§ 1.987–2T, 1.987–4T, and 1.987–12T with certain clarifications.

II. Comments Recommending a Delay of the Applicability Date of the Temporary Regulations

Comments recommended that the applicability date for the 2016 final regulations and the temporary regulations, including §§ 1.987–2T, 1.987–4T, and 1.987–12T, be delayed for a specified period, such as one or two years. Similarly, comments recommended that the final and temporary regulations, including §§ 1.987–2T, 1.987–4T, and 1.987–12T, be withdrawn in their entirety and reproposed (in one case, with an effective date at least two years after such regulations are finalized) to allow taxpayers time to effectively plan to implement the final and temporary regulations. Generally, the comments indicated that taxpayers required additional time to update and implement existing systems to comply with the 2016 final regulations and the temporary regulations. One comment specifically recommended that the applicability date for § 1.987–12T be delayed until the applicability date of the 2016 final regulations. The comment indicated that, in certain instances, the applicability date of § 1.987–12T prevented the recognition of losses in connection with certain transactions that were in the planning and implementation stages when the temporary regulations were issued. No comments identified specific compliance challenges associated with § 1.987–12T.

The Treasury Department and the IRS decline to delay the applicability date of § 1.987–12T. As discussed in Part I of this Summary of Comments and Explanation of Revisions, § 1.987–12T prevents taxpayers from selectively recognizing section 987 losses through certain technical terminations of a section 987 QBU and similar transactions that would be relatively easy to effect through related-party transactions without meaningfully impacting a taxpayer's business operations. If the applicability date were delayed, taxpayers would be incentivized to engage in such selective recognition of section 987 losses, which would be contrary to the purposes of section 987 and § 1.987–12T. Delaying the application of related provisions under §§ 1.987–2T and 1.987–4T concerning combinations and separations of a section 987 QBU could similarly incentivize transactions designed to accelerate section 987 losses for taxpayers that have elected to apply the 2016 final regulations early. In this regard, the Treasury Department and the IRS observe that the transactions to which §§ 1.987–2T, 1.987–4T, and 1.987–12T are applicable occur exclusively among related persons, such that taxpayers may avoid the application of those sections by avoiding undertaking such transactions.

Accordingly, the final regulations retain the applicability dates of the temporary regulations, as modified by Notice 2017–07, Notice 2017–57, and Notice 2018–57. Specifically, the final regulations provide that §§ 1.987–2(c)(9), 1.987–4(c)(2), and 1.987–4(f) apply to taxable years beginning on or after the day that is three years after the first day of the first taxable year following December 7, 2016. If, however, a taxpayer makes an election under § 1.987–11(b), then §§ 1.987–2(c)(9), 1.987–4(c)(2), and 1.987–4(f) apply to taxable years to which §§ 1.987–1 through 1.987–10 apply as a result of such election.

Similarly, § 1.987–12 incorporates the applicability date provisions of § 1.987–12T, as modified by Notice 2017–07. Thus, the final regulations under § 1.987–12 generally apply to any deferral event or outbound loss event that occurs on or after January 6, 2017. Section 1.987–12 also applies to any deferral event or outbound loss event that occurs as a result of an entity classification election made under § 301.7701–3 that is filed on or after January 6, 2017, and that is effective before January 6, 2017. However, § 1.987–12 applies to any deferral event or outbound loss event occurring on or after December 7, 2016, if such deferral event or outbound loss event was undertaken with a principal purpose of recognizing section 987 loss. Similarly, § 1.987–12 applies to any deferral event or outbound loss event that occurs as a result of an entity classification election made under § 301.7701–3 that was filed on or after December 22, 2016, that was effective before December 7, 2016, and that was undertaken with a principal purpose of recognizing section 987 loss.

III. Comments Regarding the Determination of a Partner's Share of Assets and Liabilities of a Section 987 Aggregate Partnership

Comments recommended alternative approaches for determining a partner's share of the assets and liabilities of a section 987 aggregate partnership. Comments recommended that § 1.987–7 be withdrawn and replaced with the approach of the 2006 proposed regulations under section 987, which provided that a partner's share of assets and liabilities reflected on the books and records of an eligible QBU held indirectly through the partnership must be determined in a manner consistent with how the partners have agreed to share the economic benefits and burdens corresponding to those partnership assets and liabilities, taking into account the rules and principles of subchapter K. The comment indicated that that the liquidation value percentage approach was inconsistent with certain principles of subchapter K, resulting in distortions in the calculation of section 987 gain or loss in certain cases.

The Treasury Department and the IRS have determined that, in the absence of a more comprehensive set of rules for determining a partner's share of assets and liabilities reflected on the books and records of an eligible QBU held indirectly through the partnership that also articulates the interaction of those rules with applicable rules in subchapter K, a more flexible approach is warranted. Moreover, the Treasury Department and the IRS have determined that, in certain instances, the liquidation value percentage methodology set forth in § 1.987–7T may be interpreted as applying in a way that inappropriately distorts the computation of section 987 gain or loss.

Specifically, under such an interpretation, certain changes in a partner's liquidation value percentage may introduce distortions in the calculation of net unrecognized section 987 gain or loss under § 1.987–4, giving rise to net unrecognized section 987 gain or loss that is not attributable to fluctuations in exchange rates. For example, an appreciation or depreciation in property value can result in a change in liquidation value percentage that causes a change in owner functional currency net value for purposes of Step 1 of the § 1.987–4(d) calculation of unrecognized section 987 gain or loss for a taxable year without an offsetting adjustment under Step 6 or otherwise that would prevent the change in liquidation value percentage from distorting the calculation of unrecognized section 987 gain or loss. As a result, such unrecognized appreciation or depreciation generally can result in unrecognized section 987 gain or loss for a taxable year being allocated to each partner that indirectly owns a section 987 QBU even when there is no change in exchange rates.

Accordingly, the Treasury Department and the IRS are withdrawing § 1.987–7T (and making a conforming change to an example in § 1.987–12). Until new regulations are proposed and finalized, taxpayers may use any reasonable method for determining a partner's share of assets and liabilities reflected on the books and records of an eligible QBU held indirectly through the partnership. For this purpose, taxpayers may rely on subchapter K principles (consistent with the 2006 proposed regulations under section 987) or an approach similar to the liquidation value percentage method set forth in § 1.987–7T. However, the Treasury Department and the IRS do not believe that it would be reasonable to apply the liquidation value percentage method without corresponding adjustments to the determination of net unrecognized section 987 gain or loss. Thus, for example, a taxpayer using the liquidation value percentage method may be required to adjust its determination of net unrecognized section 987 gain or loss of a section 987 QBU that is owned indirectly through a partnership to prevent the determination of unrecognized section 987 gain or loss that is not attributable to fluctuations in exchange rates. These adjustments may include, for example, treating any change in a partner's owner functional currency net value that is attributable to a change in the partner's liquidation value percentage as resulting in a transfer to or from an indirectly owned section 987 QBU.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects, distributive impacts, and equity. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

This regulation does not establish a new collection of information nor modify an existing collection that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

III. Regulatory Flexibility Act

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. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Pursuant to section 7805(f), the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses. No comments were received.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2018, that threshold is approximately $150 million. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications, does not impose substantial direct compliance costs on state and local governments, and does not preempt state law within the meaning of the Executive Order.

Drafting Information

The principal author of these final regulations is Steven D. Jensen 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 in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry for § 1.987–12 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

Section 1.987–12 is issued under 26 U.S.C. 987 and 989.

* * * * *

■ **Par. 2.** Section 1.987–0 is amended by:

■ 1. Revising the entries for § 1.987–2(c)(9), § 1.987–4(c)(2), (f), § 1.987–12(a), (a)(1), (a)(2), (a)(3), (b), (b)(1), (b)(2), (b)(3), (b)(4), (c), (c)(1), (c)(2), (c)(3), (c)(4), (d), (d)(1), (d)(2), (d)(3), (d)(4), (d)(5), (e), (e)(1), (e)(2), (f), (f)(1), (f)(2), (g), and (h).

■ 2. Adding entries for § 1.987–2(e), (e)(1), (e)(2), § 1.987–4(f)(1), (f)(2), (f)(3), (h), (h)(1), (h)(2), § 1.987–12(i), (i)(1), (i)(2), (i)(3), (j), (j)(1), and (j)(2).

The revisions and additions read as follows:

§ 1.987–0 Table of contents.

* * * * *

■ **Par. 3.** Section 1.987–2 is amended by
■ 1. Revising paragraphs (c)(9).
■ 2. Adding paragraph (e).

The revision and addition read as follows:

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

* * * * *

(c) * * *

(9) *Certain disregarded transactions not treated as transfers*—(i) *Combinations of section 987 QBUs.* The combination of two or more separate section 987 QBUs (combining QBUs) that are directly owned by the same owner, or that are indirectly owned by the same partner through a single section 987 aggregate partnership, into one section 987 QBU (combined QBU) does not give rise to a transfer of any combining QBU's assets or liabilities to the owner under § 1.987–2(c). In addition, transactions between the combining QBUs occurring in the taxable year of the combination do not result in a transfer of the combining QBUs' assets or liabilities to the owner under § 1.987–2(c). For this purpose, a combination occurs when the assets and liabilities that are properly reflected on the books and records of two or more combining QBUs begin to be properly reflected on the books and records of a combined QBU and the separate existence of the combining QBUs ceases. A combination may result from any transaction or series of transactions in which the combining QBUs become a combined QBU. For rules regarding the determination of net unrecognized section 987 gain or loss of a combined QBU, see § 1.987–4(f)(1).

(ii) *Change in functional currency from a combination.* If, following a combination of section 987 QBUs described in paragraph (c)(9)(i) of this section, the combined section 987 QBU has a different functional currency than one or more of the combining section 987 QBUs, any such combining section 987 QBU is treated as changing its functional currency and the owner of the combined section 987 QBU must comply with the regulations under section 985 regarding the change in functional currency. See §§ 1.985–1(c)(6) and 1.985–5.

(iii) *Separation of section 987 QBUs.* The separation of a section 987 QBU (separating QBU) into two or more section 987 QBUs (separated QBUs) that, after the separation, are directly owned by the same owner, or that are indirectly owned by the same partner through a single section 987 aggregate partnership, does not result in a transfer of the separating QBU's assets or liabilities to the owner under § 1.987–2(c). Additionally, transactions that occurred between the separating QBUs in the taxable year of the separation prior to the completion of the separation do not result in transfers for purposes of section 987. For this purpose, a separation occurs when the assets and liabilities that are properly reflected on the books and records of a separating QBU begin to be properly reflected on the books and records of two or more separated QBUs. A separation may result from any transaction or series of transactions in which a separating QBU becomes two or more separated QBUs. A separation may also result when a section 987 QBU that is subject to a grouping election under § 1.987–1(b)(2)(ii)(A) changes its functional currency. For rules regarding the determination of net unrecognized section 987 gain or loss of a separated QBU, see § 1.987–4(f)(2).

* * * * *

(e) *Effective/applicability date*—(1) *In general.* Except as set forth in paragraph (h)(2) of this section, this section is applicable as specified in § 1.987–11.

(2) *Certain disregarded transactions not treated as transfers.* Paragraph (c)(9) of this section applies to taxable years beginning on or after the day that is three years after the first day of the first taxable year following December 7, 2016. Notwithstanding the preceding sentence, if a taxpayer makes an election under § 1.987–11(b), then paragraph (c)(9) of this section applies to taxable years to which §§ 1.987–1 through 1.987–10 apply as a result of such election.

§ 1.987–2T [Removed]

■ **Par. 4.** Section 1.987–2T is removed.

■ **Par. 5.** Section 1.987–4 is amended by
■ 1. Revising paragraphs (c)(2) and (f).
■ 2. Adding paragraph (h).

The revisions and addition read as follows:

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

* * * * *

(c) * * *

(2) *Coordination with § 1.987–12.* For purposes of paragraph (c)(1) of this section, amounts taken into account under § 1.987–5 are determined without regard to § 1.987–12.

* * * * *

(f) *Combinations and separations*—(1) *Combinations.* The net unrecognized section 987 gain or loss of a combined QBU (as defined in § 1.987–2(c)(9)(i)) for a taxable year is determined under paragraph (b) of this section by taking into account the net accumulated unrecognized section 987 gain or loss of each combining QBU (as defined in § 1.987–2(c)(9)(i)) for all prior taxable years to which the regulations under section 987 apply, as determined under paragraph (c) of this section, and by treating the combining QBUs as having combined immediately prior to the beginning of the taxable year of combination. See paragraph (f)(3) of this section, *Example 1,* for an illustration of this rule.

(2) *Separations.* The net unrecognized section 987 gain or loss of a separated QBU (as defined in § 1.987–2(c)(9)(iii)) for a taxable year is determined under paragraph (b) of this section by taking into account the separated QBU's share of the net accumulated unrecognized section 987 gain or loss of the separating QBU (as defined in § 1.987–2(c)(9)(iii)) for all prior taxable years to which the regulations under section 987 apply, as determined under paragraph (c) of this section, and by treating the separating QBU as having separated immediately prior to the beginning of the taxable year of separation. A separated QBU's share of the separating QBU's net accumulated unrecognized section 987 gain or loss for all such prior taxable years is determined by apportioning the separating QBU's net accumulated unrecognized section 987 gain or loss for all such prior taxable years to each separated QBU in proportion to the aggregate adjusted basis of the gross assets properly reflected on the books and records of each separated QBU immediately after the separation. For purposes of determining the owner functional currency net value of the separated QBUs on the last day of the taxable year preceding the taxable year of separation under § 1.987–5(d)(1)(B) and (e), the balance sheets of the separated QBUs on that day will be deemed to reflect the assets and liabilities reflected on the balance sheet of the separating QBU on that day, apportioned between the separated QBUs in a reasonable manner that takes into account the assets and liabilities reflected on the balance sheets of the separated QBUs immediately after the separation. See paragraph (f)(3) of this section, *Example 2,* for an illustration of this rule.

(3) *Examples.* The following examples illustrate the rules of paragraphs (f)(1) and (2) of this section.

(i) Example 1. Combination of two section 987 QBUs that have the same owner. (A) *Facts.* DC1, a domestic corporation, owns Entity A, a DE. Entity A conducts a business in France that constitutes a section 987 QBU (French QBU) that has the euro as its functional currency. French QBU has a net accumulated unrecognized section 987 loss from all prior taxable years to which the regulations under section 987 apply of $100. DC1 also owns Entity B, a DE. Entity B conducts a business in Germany that constitutes a section 987 QBU (German QBU) that has the euro as its functional currency. German QBU has a net accumulated unrecognized section 987 gain from all prior taxable years to which the regulations under section 987 apply of $110. During the taxable year, Entity A and Entity B merge under local law. As a result, the books and records of French QBU and German QBU are combined into a new single set of books and records. The combined entity has the euro as its functional currency.

(B) *Analysis.* Pursuant to § 1.987–2(c)(9)(i), French QBU and German QBU are combining QBUs, and their combination does not give rise to a transfer that is taken into account in determining the amount of a remittance (as defined in § 1.987–5(c)). For purposes of computing net unrecognized section 987 gain or loss under this section for the year of the combination, the combination is deemed to have occurred on the last day of the owner's prior taxable year, such that the owner functional currency net value of the combined section 987 QBU at the end of that taxable year described under paragraph (d)(1)(B) of this section takes into account items reflected on the balance sheets of both French QBU and German QBU at that time. Additionally, any transactions between French QBU and German QBU occurring during the year of the merger will not result in transfers to or from a section 987 QBU. Pursuant to paragraph (f)(1) of this section, the combined QBU will have a net accumulated unrecognized section 987 gain from all prior taxable years of $10 (the $100 loss from French QBU plus the $110 gain from German QBU).

(ii) Example 2. Separation of two section 987 QBUs that have the same owner. (A) *Facts.* DC1, a domestic corporation, owns Entity A, a DE. Entity A conducts a business in the Netherlands that constitutes a section 987 QBU (Dutch QBU) that has the euro as its functional currency. The business of Dutch QBU consists of manufacturing and selling bicycles and scooters and is recorded on a single set of books and records. On the last day of Year 1, the adjusted basis of the gross assets of Dutch QBU is €1,000. In Year 2, the net accumulated unrecognized section 987 loss of Dutch QBU from all prior taxable years is $200. During Year 2, Entity A separates the bicycle and scooter business such that each business begins to have its own books and records and to meet the definition of a section 987 QBU under § 1.987–1(b)(2) (hereafter, ''bicycle QBU'' and ''scooter QBU''). There are no transfers between DC1 and Dutch QBU before the separation. After the separation, the aggregate adjusted basis of bicycle QBU's assets is €600 and the aggregate adjusted basis of scooter QBU's assets is €400. Each section 987 QBU continues to have the euro as its functional currency.

(B) *Analysis.* Pursuant to § 1.987–2(c)(9)(iii), bicycle QBU and scooter QBU are separated QBUs, and the separation of Dutch QBU, a separating QBU, does not give rise to a transfer taken into account in determining the amount of a remittance (as defined in § 1.987–5(c)). For purposes of computing net unrecognized section 987 gain or loss under this section for Year 2, the separation will be deemed to have occurred on the last day of the owner's prior taxable year, Year 1. Pursuant to paragraph (f)(2) of this section, bicycle QBU will have a net accumulated unrecognized section 987 loss of $120 (€600/€1,000 × $200), and scooter QBU will have a net accumulated unrecognized section 987 loss of $80 (€400/€1,000 × $200).

* * * * *

(h) *Effective/applicability date*—(1) *In general.* Except as set forth in paragraph (h)(2) of this section, this section is applicable as specified in § 1.987–11.

(2) *Combinations and separations.* Paragraphs (c)(2) and (f) of this section apply to taxable years beginning on or after the day that is three years after the first day of the first taxable year following December 7, 2016. Notwithstanding the preceding sentence, if a taxpayer makes an election under § 1.987–11(b), then paragraphs (c)(2) and (f) of this section applies to taxable years to which §§ 1.987–1 through 1.987–10 apply as a result of such election.

§ 1.987–4T [Removed]

■ **Par. 6.** Section 1.987–4T is removed.

§ 1.987–7 [Amended]

■ **Par. 7.** Section 1.987–7 is amended by removing and reserving paragraph (b).

§ 1.987–7T [Removed]

■ **Par. 8.** Section 1.987–7T is removed.

■ **Par. 9.** Section 1.987–12 is revised to read as follows:

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

(a) *In general*—(1) *Overview.* This section provides rules that defer the recognition of section 987 gain or loss that, but for this section, would be recognized in connection with certain QBU terminations and certain other transactions involving partnerships. This paragraph (a) provides an overview of this section and describes the section's scope of application, including with respect to QBUs subject to section 987 but to which §§ 1.987–1 through 1.987–11 generally do not apply. Paragraph (b) of this section describes the extent to which section 987 gain or loss is recognized under § 1.987–5 or similar principles in the taxable year of a deferral event (as defined in paragraph (b)(2) of this section) with respect to a QBU. Paragraph (c) of this section describes the extent to which section 987 gain or loss that, as a result of paragraph (b), is not recognized under § 1.987–5 or similar principles is recognized upon the occurrence of subsequent events. Paragraph (d) of this section describes the extent to which section 987 loss is recognized under § 1.987–5 or similar principles in the taxable year of an outbound loss event (as defined in paragraph (d)(2) of this section) with respect to a QBU. Paragraph (e) of this section provides rules for determining the source and character of gains and losses that, as a result of this section, are not recognized under § 1.987–5 or similar principles in the taxable year of a deferral event or outbound loss event. Paragraph (f) of this section defines controlled group and qualified successor for purposes of this section. Paragraph (g) of this section provides an anti-abuse rule. Paragraph (h) of this section provides examples illustrating the rules described in this section. Paragraph (i) of this section provides rules coordinating the application of this section with the fresh start transition method. Paragraph (j) of this section provides dates of applicability.

(2) *Scope.* This section applies to any foreign currency gain or loss realized under section 987(3), including foreign currency gain or loss of an entity described in § 1.987–1(b)(1)(ii) (certain entities not otherwise subject to the regulations under section 987). References in this section to section 987 gain or loss refer to any foreign currency gain or loss realized under section 987(3), references to a section 987 QBU refer to any eligible QBU (as defined in § 1.987–1(b)(3)(i), but without regard to § 1.987–1(b)(3)(ii)) that is subject to section 987, and references to a section 987 aggregate partnership refer to any partnership for which the acquisition or disposition of a partnership interest could give rise to foreign currency gain or loss realized under section 987(3). Additionally, references to recognition of section 987 gain or loss under § 1.987–5 encompass any determination and recognition of gain or loss under section 987(3) that would occur but for this section. Accordingly, the principles of this section apply to a QBU subject to section 987 regardless of whether the QBU otherwise is subject to §§ 1.987–1 through 1.987–11. An owner of a QBU that is not subject to § 1.987–5 must adapt the rules set forth in this section as necessary to recognize section 987 gains or losses that are subject to this section consistent with the principles of this section.

(3) *Exceptions*—(i) *Annual deemed termination elections.* This section does not apply to section 987 gain or loss of a section 987 QBU with respect to which the annual deemed termination election described in § 1.987–8(d) is in effect.

(ii) *De minimis exception.* This section does not apply to a section 987 QBU for a taxable year if the net unrecognized section 987 gain or loss of the section 987 QBU that, as a result of this section, would not be recognized under § 1.987–5 in the taxable year does not exceed $5 million.

(b) *Gain and loss recognition in connection with a deferral event*—(1) *In general.* Notwithstanding § 1.987–5, the owner of a section 987 QBU with respect to which a deferral event occurs (a deferral QBU) includes in taxable income section 987 gain or loss in connection with the deferral event only to the extent provided in paragraphs (b)(3) and (c) of this section. However, if the deferral event also constitutes an outbound loss event described in paragraph (d) of this section, the amount of loss recognized by the owner may be further limited under that paragraph.

(2) *Deferral event*—(i) *In general.* A deferral event with respect to a section 987 QBU means any transaction or series of transactions that satisfy the conditions described in paragraphs (b)(2)(ii) and (iii) of this section.

(ii) *Transactions.* The transaction or series of transactions include either:

(A) A termination of the section 987 QBU other than any of the following terminations: A termination described in § 1.987–8(b)(3), a termination described in § 1.987–8(c), or a termination described solely in § 1.987–8(b)(1); or

(B) A disposition of part of an interest in a section 987 aggregate partnership or DE through which the section 987 QBU is owned, a disposition of part of a directly held section 987 QBU, or any contribution by another person to a section 987 aggregate partnership, DE, or section 987 QBU of assets that, immediately after the contribution, are not considered to be included on the books and records of an eligible QBU, provided that the contribution gives rise to a deemed transfer from the section 987 QBU to the owner. See paragraph (h) of this section, *Examples 1, 2,* and *4,* for illustrations of this rule.

(iii) *Assets on books of successor QBU.* Immediately after the transaction or series of transactions, assets of the section 987 QBU are reflected on the books and records of a successor QBU (as defined in paragraph (b)(4) of this section).

(3) *Gain or loss recognized under § 1.987–5 in the taxable year of a deferral event.* In the taxable year of a deferral event with respect to a deferral QBU, the owner of the deferral QBU recognizes section 987 gain or loss as determined under § 1.987–5, except that, solely for purposes of applying § 1.987–5, all assets and liabilities of the deferral QBU that, immediately after the deferral event, are reflected on the books and records of a successor QBU are treated as not having been transferred and therefore as remaining on the books and records of the deferral QBU notwithstanding the deferral event.

(4) *Successor QBU.* For purposes of this section, a section 987 QBU (potential successor QBU) is a successor QBU with respect to a section 987 QBU referred to in paragraph (b)(2)(ii) of this section if, immediately after the transaction or series of transactions described in that paragraph, the potential successor QBU satisfies all of the conditions described in paragraphs (b)(4)(i) through (iii) of this section.

(i) The books and records of the potential successor QBU reflect assets that, immediately before the transaction or series of transactions described in paragraph (b)(2)(ii) of this section, were reflected on the books and records of the section 987 QBU referred to in that paragraph.

(ii) The owner of the potential successor QBU and the owner of the section 987 QBU referred to in paragraph (b)(2)(ii) of this section immediately before the transaction or series of transactions described in that paragraph are members of the same controlled group.

(iii) In the case of a section 987 QBU referred to in paragraph (b)(2)(ii)(A) of this section, if the owner of the section 987 QBU immediately before the transaction or series of transactions described in that paragraph was a U.S. person, the potential successor QBU is owned by a U.S. person.

(c) *Recognition of deferred section 987 gain or loss in the taxable year of a deferral event and in subsequent taxable years*—(1) *In general*—(i) *Deferred section 987 gain or loss.* A deferral QBU owner (as defined in paragraph (c)(1)(ii) of this section) recognizes section 987 gain or loss attributable to the deferral QBU that, as a result of paragraph (b) of this section, is not recognized in the taxable year of the deferral event under § 1.987–5 (deferred section 987 gain or loss) in the taxable year of the deferral event and in subsequent taxable years as provided in paragraphs (c)(2) through (4) of this section.

(ii) *Deferral QBU owner.* For purposes of this paragraph (c), a deferral QBU owner means, with respect to a deferral QBU, the owner of the deferral QBU immediately before the deferral event, or the owner's qualified successor.

(2) *Recognition upon a subsequent remittance*—(i) *In general.* Except as provided in paragraph (c)(3) of this section, a deferral QBU owner recognizes deferred section 987 gain or loss in the taxable year of the deferral event and in subsequent taxable years upon a remittance from a successor QBU to the owner of the successor QBU (successor QBU owner) in the amount described in paragraph (c)(2)(ii) of this section.

(ii) *Amount.* The amount of deferred section 987 gain or loss that is recognized pursuant to this paragraph (c)(2) in a taxable year of the deferral QBU owner is the outstanding deferred section 987 gain or loss (that is, the amount of deferred section 987 gain or loss not previously recognized) multiplied by the remittance proportion of the successor QBU owner with respect to the successor QBU for the taxable year ending with or within the taxable year of the deferral QBU owner, as determined under § 1.987–5(b) (and, to the extent relevant, paragraphs (b) and (c)(2)(iii) of this section) without regard to any election under § 1.987–8(d). For purposes of computing this remittance proportion, multiple successor QBUs of the same deferral QBU are treated as a single successor QBU. See paragraph (h) of this section, *Example 5,* for an illustration of this rule.

(iii) *Deemed remittance when a successor QBU ceases to be owned by a member of the deferral QBU owner's controlled group.* For purposes of this paragraph (c)(2), in a taxable year of the deferral QBU owner in which a successor QBU ceases to be owned by a member of a controlled group that includes the deferral QBU owner, the successor QBU owner is treated as having a remittance proportion of 1. Accordingly, if there is only one successor QBU with respect to a deferral QBU and that successor QBU ceases to be owned by a member of the controlled group that includes the deferral QBU owner, all outstanding deferred section 987 gain or loss with respect to that deferral QBU will be recognized. This paragraph (c)(2)(iii) does not affect the application of §§ 1.987–1 through 1.987–11 to the successor QBU owner with respect to its ownership of the successor QBU.

(3) *Recognition of deferred section 987 loss in certain outbound successor QBU terminations.* Notwithstanding paragraph (c)(2) of this section, if assets of the successor QBU (transferred assets) are transferred (or deemed transferred) in a transaction that would constitute an outbound loss event if the successor QBU had a net accumulated section 987 loss at the time of the exchange, then the deferral QBU owner recognizes outstanding deferred section 987 loss, if any, to the extent it would recognize loss under paragraph (d)(1) of this section if (i) the deferral QBU owner owned the successor QBU, (ii) the deferral QBU owner had net unrecognized section 987 loss with respect to the successor QBU equal to its outstanding deferred section 987 loss with respect to the deferral QBU, and (iii) the transferred assets were transferred (or deemed transferred) in an outbound loss event. Any outstanding deferred section 987 loss with respect to the deferral QBU that is not recognized as a result of the preceding sentence is recognized by the deferral QBU owner in the first taxable year in which the deferral QBU owner (including any qualified successor) ceases to be a member of a controlled group that includes the acquirer of the transferred assets or any qualified successor of such acquirer.

(4) *Special rules regarding successor QBUs*—(i) *Successor QBU with respect to a deferral QBU that is a successor QBU.* If a section 987 QBU is a successor QBU with respect to a deferral QBU that is a successor QBU with respect to another deferral QBU, the first-mentioned section 987 QBU is considered a successor QBU with respect to the second-mentioned deferral QBU. For example, if QBU A is a successor QBU with respect to QBU B, and QBU B is a successor QBU with respect to QBU C, then QBU A is a successor QBU with respect to QBU C.

(ii) *Separation of a successor QBU.* If a successor QBU with respect to a deferral QBU separates into two or more separated QBUs (as defined in § 1.987–2(c)(9)(iii)), each separated QBU is considered a successor QBU with respect to the deferral QBU.

(iii) *Combination of a successor QBU.* If a successor QBU with respect to a deferral QBU combines with another section 987 QBU of the same owner, resulting in a combined QBU (as defined in § 1.987–2(c)(9)(i)), the combined QBU is considered a successor QBU with respect to the deferral QBU.

(d) *Loss recognition upon an outbound loss event*—(1) *In general.* Notwithstanding § 1.987–5, the owner of a section 987 QBU with respect to which an outbound loss event occurs (an outbound loss QBU) includes in taxable income in the taxable year of an outbound loss event section 987 loss with respect to that section 987 QBU only to the extent provided in paragraph (d)(3) of this section.

(2) *Outbound loss event.* An outbound loss event means, with respect to a section 987 QBU:

(i) Any termination of the section 987 QBU in connection with a transfer by a U.S. person of assets of the section 987 QBU to a foreign person that is a member of the same controlled group as the U.S. transferor immediately before the transaction or, if the transferee did not exist immediately before the transaction, immediately after the transaction (related foreign person), provided that the termination would result in the recognition of section 987 loss with respect to the section 987 QBU under § 1.987–5 and paragraph (b) of this section but for this paragraph (d); or

(ii) Any transfer by a U.S. person of part of an interest in a section 987 aggregate partnership or DE through which the U.S. person owns the section 987 QBU to a related foreign person that has the same functional currency as the section 987 QBU, or any contribution by such a related foreign person to such a partnership or DE of assets that, immediately after the contribution, are not considered to be included on the books and records of an eligible QBU, provided that the transfer would result in the recognition of section 987 loss with respect to the section 987 QBU under § 1.987–5 and paragraph (b) of this section but for this paragraph (d). See paragraph (h) of this section, *Example 3,* for an illustration of this rule.

(3) *Loss recognized upon an outbound loss event.* In the taxable year of an outbound loss event with respect to an outbound loss QBU, the owner of the outbound loss QBU recognizes section 987 loss as determined under § 1.987–5 and paragraphs (b) and (c) of this section, except that, solely for purposes of applying § 1.987–5, the following assets and liabilities of the outbound loss QBU are treated as not having been transferred and therefore as remaining on the books and records of the outbound loss QBU notwithstanding the outbound loss event:

(i) In the case of an outbound loss event described in paragraph (d)(2)(i) of this section, assets and liabilities that, immediately after the outbound loss event, are reflected on the books and records of the related foreign person described in that paragraph or of an eligible QBU owned by such related foreign person; and

(ii) In the case of an outbound loss event described in paragraph (d)(2)(ii) of this section, assets and liabilities that, immediately after the outbound loss event, are reflected on the books and records of the eligible QBU from which the assets and liabilities of the outbound loss QBU are allocated and not on the books and records of a section 987 QBU.

(4) *Adjustment of basis of stock received in certain nonrecognition transactions.* If an outbound loss event results from the transfer of assets of the outbound loss QBU in a transaction described in section 351 or section 361, the basis of the stock that is received in the transaction is increased by an amount equal to the section 987 loss that, as a result of this paragraph (d), is not recognized with respect to the outbound loss QBU in the taxable year of the outbound loss event (outbound section 987 loss).

(5) *Recognition of outbound section 987 loss that is not converted into stock basis.* Outbound section 987 loss attributable to an outbound loss event that is not described in paragraph (d)(4) of this section is recognized by the owner of the outbound loss QBU in the first taxable year in which the owner or any qualified successor of the owner ceases to be a member of a controlled group that includes the related foreign person referred to in paragraph (d)(2)(i) or (ii) of this section, or any qualified successor of such person.

(e) *Source and character*—(1) *Deferred section 987 gain or loss and certain outbound section 987 loss.* The source and character of deferred section 987 gain or loss recognized pursuant to paragraph (c) of this section, and of outbound section 987 loss recognized pursuant to paragraph (d)(5) of this section, is determined under § 1.987–6 as if such deferred section 987 gain or loss were recognized pursuant to § 1.987–5 without regard to this section on the date of the related deferral event or outbound loss event.

(2) *Outbound section 987 loss reflected in stock basis.* If loss is recognized on the sale or exchange of stock described in paragraph (d)(4) of this section within two years of the outbound loss event described in that paragraph, then, to the extent of the outbound section 987 loss, the source and character of the loss recognized on the sale or exchange is determined under § 1.987–6 as if such loss were section 987 loss recognized pursuant to § 1.987–5 without regard to this section on the date of the outbound loss event.

(f) *Definitions*—(1) *Controlled group.* For purposes of this section, a controlled group means all persons with the relationships to each other specified in sections 267(b) or 707(b).

(2) *Qualified successor.* For purposes of this section, a qualified successor with respect to a corporation (transferor corporation) means another corporation (acquiring corporation) that acquires the assets of the transferor corporation in a transaction described in section 381(a), but only if (A) the acquiring corporation is a domestic corporation and the transferor corporation was a domestic corporation, or (B) the acquiring corporation is a controlled foreign corporation (as defined in section 957(a)) (CFC) and the transferor corporation was a CFC. A qualified successor of a corporation includes the qualified successor of a qualified successor of the corporation.

(g) *Anti-abuse.* No section 987 loss is recognized under § 1.987–5 or this section in connection with a transaction or series of transactions that are undertaken with a principal purpose of avoiding the purposes of this section.

(h) *Examples.* The following examples illustrate the application of this section. For purposes of the examples, DC1 is a domestic corporation that owns all of the stock of DC2, which is also a domestic corporation, and CFC1 and CFC2 are CFCs. In addition, DC1, DC2, CFC1, and CFC2 are members of a controlled group as defined in paragraph (f)(1) of this section, and the de minimis rule of paragraph (a)(3)(ii) of this section is not applicable. Finally, except as otherwise provided, Business A is a section 987 QBU with the euro as its functional currency, there are no transfers between Business A and its owner, and Business A's assets are not depreciable or amortizable.

(1) Example 1. Contribution of a section 987 QBU to a member of the controlled group. (i) *Facts.* DC1 owns all of the interests in Business A. The balance sheet of Business A reflects assets with an aggregate adjusted basis of €1,000x and no liabilities. DC1 contributes €900x of Business A's assets to DC2 in an exchange to which section 351 applies. Immediately after the contribution, the remaining €100x of Business A's assets are no longer reflected on the books and records of a section 987 QBU. DC2, which has the U.S. dollar as its functional currency, uses the former Business A assets in a business (Business B) that constitutes a section 987 QBU. At the time of the contribution, Business A has net accumulated unrecognized section 987 gain of $100x.

(ii) *Analysis.* (A) Under § 1.987–2(c)(2)(ii), DC1's contribution of €900x of Business A's assets to DC2 is treated as a transfer of all of the assets of Business A to DC1, immediately followed by DC1's contribution of €900x of Business A's assets to DC2. The contribution of Business A's assets is a deferral event within the meaning of paragraph (b)(2) of this section because:

(*1*) The transfer from Business A to DC1 is a transfer of substantially all of Business A's assets to DC1, resulting in a termination of Business A under § 1.987–8(b)(2); and

(*2*) Immediately after the transaction, assets of Business A are reflected on the books and records of Business B, a section 987 QBU owned by a member of DC1's controlled group and a successor QBU within the meaning of paragraph (b)(4) of this section. Accordingly, Business A is a deferral QBU within the meaning of paragraph (b)(1) of this section, and DC1 is a deferral QBU owner of Business A within the meaning of paragraph (c)(1)(ii) of this section.

(B) Under paragraph (b)(3) of this section, DC1's taxable income in the taxable year of the deferral event includes DC1's section 987 gain or loss determined with respect to Business A under § 1.987–5, except that, for purposes of applying § 1.987–5, all assets and liabilities of Business A that are reflected on the books and records of Business B immediately after Business A's termination are treated as not having been transferred and therefore as though they remained on Business A's books and records (notwithstanding the deemed transfer of those assets under § 1.987–8(e)). Accordingly, in the taxable year of the deferral event, DC1 is treated as making a remittance of €100x, corresponding to the assets of Business A that are no longer reflected on the books and records of a section 987 QBU, and is treated as having a remittance proportion with respect to Business A of 0.1, determined by dividing the €100x remittance by the sum of the remittance and the €900x aggregate adjusted basis of the gross assets deemed to remain on Business A's books at the end of the year. Thus, DC1 recognizes $10x of section 987 gain in the taxable year of the deferral event. DC1's deferred section 987 gain equals $90x, which is the amount of section 987 gain that, but for the application of paragraph (b) of this section, DC1 would have recognized under § 1.987–5 ($100x), less the amount of section 987 gain recognized by DC1 under § 1.987–5 and this section ($10x).

(2) Example 2. Election to be classified as a corporation. (i) *Facts.* DC1 owns all of the interests in Entity A, a DE. Entity A conducts Business A, which has net accumulated unrecognized section 987 gain of $500x. Entity A elects to be classified as a corporation under § 301.7701–3(a). As a result of the election and pursuant to § 301.7701–3(g)(1)(iv), DC1 is treated as contributing all of the assets and liabilities of Business A to newly-formed CFC1, which has the euro as its functional currency. Immediately after the contribution, the assets and liabilities of Business A are reflected on CFC1's balance sheet.

(ii) *Analysis.* Under § 1.987–2(c)(2)(ii), DC1's contribution of all of the assets and liabilities of Business A to CFC1 is treated as a transfer of all of the assets and liabilities of Business A to DC1, followed immediately by DC1's contribution of those assets and liabilities to CFC1. Because the deemed transfer from Business A to DC1 is a transfer of substantially all of Business A's assets to DC1, the Business A QBU terminates under § 1.987–8(b)(2). The contribution of Business A's assets is not a deferral event within the meaning of paragraph (b)(2) of this section because, immediately after the transaction, no assets of Business A are reflected on the books and records of a successor QBU within the meaning of paragraph (b)(4) of this section due to the fact that the assets of Business A are not reflected on the books and records of a section 987 QBU immediately after the termination as well as the fact that the requirement of paragraph (b)(4)(iii) of this section is not met. Accordingly, DC1 recognizes section 987 gain with respect to Business A under § 1.987–5 without regard to this section. Because the requirement of paragraph (b)(4)(iii) of this section is not met, the result would be the same even if the assets of Business A were transferred in a section 351 exchange to an existing foreign corporation that had a different functional currency than Business A.

(3) Example 3. Outbound loss event. (i) *Facts.* The facts are the same as in *Example 2 in paragraph (h)(2) of this section,* except that Business A has net accumulated unrecognized section 987 loss of $500x rather than net accumulated unrecognized section 987 gain of $500x.

(ii) *Analysis.* (A) The analysis of the transactions under §§ 1.987–2(c)(2)(ii), 1.987–8(b)(2), and paragraph (b) of this section is the same as in *Example 2 in paragraph (h)(2) of this section.* However, the termination of Business A as a result of the transfer of the assets of Business A by a U.S. person (DC1) to a foreign person (CFC1) that is a member of DC1's controlled group is an outbound loss event described in paragraph (d)(2) of this section.

(B) Under paragraphs (d)(1) and (3) of this section, in the taxable year of the outbound loss event, DC1 includes in taxable income section 987 loss recognized with respect to Business A as determined under § 1.987–5, except that, for purposes of applying § 1.987–5, all assets and liabilities of Business A that are reflected on the books and records of CFC1, a related foreign person described in paragraph (d)(2) of this section, are treated as not having been transferred. Accordingly, DC1's remittance proportion with respect to Business A is 0, and DC1 recognizes no section 987 loss with respect to Business A. DC1's outbound section 987 loss is $500x, which is the amount of section 987 loss that DC1 would have recognized under § 1.987–5 ($500x) without regard to paragraph (d) of this section, less the amount of section 987 loss recognized by DC1 under paragraph (d)(3) of this section ($0). Under paragraph (d)(4) of this section, DC1 must increase its basis in its CFC1 shares by the amount of the outbound section 987 loss ($500x).

(4) Example 4. Conversion of a DE to a partnership. (i) *Facts.* (A) DC1 owns all of the interests in Entity A, a DE that conducts Business A. On the last day of Year 1, DC1 sells 50 percent of its interest in Entity A to DC2 (the Entity A sale).

(B) For Federal income tax purposes, Entity A is converted to a partnership when DC2 purchases the 50 percent interest in Entity A. DC2's purchase is treated as the purchase of 50 percent of the assets of Entity A (that is, the assets of Business A), which, prior to the purchase, were treated as held directly by DC1 for Federal income tax purposes. Immediately after DC2's deemed purchase of 50 percent of Business A assets, DC1 and DC2 are treated as contributing their respective interests in Business A assets to a partnership. *See* Rev. Rul. 99–5, 1999–1 CB 434 (situation 1). In connection with the deemed contribution, DC1 and DC2 agree to share equally in all items of the partnership's profits and loss, and, for purposes of § 1.987–7, to determine their share of assets and liabilities of the resulting partnership in accordance with their respective shares of partnership profits.

(ii) *Analysis.* (A) The transactions deemed to occur under Rev. Rul. 99–5 are not taken into account for purposes of this section. The Entity A sale and resulting existence of a partnership, however, have consequences under section 987 and this section, as described in this Example 4 in paragraphs (h)(4)(ii)(B) through (D) of this section.

(B) Immediately after the Entity A sale, Entity A is a section 987 aggregate partnership within the meaning of § 1.987–1(b)(5) because DC1 and DC2 own all the interests in partnership capital and profits, DC1 and DC2 are related within the meaning of section 267(b), and the partnership has an eligible QBU (Business A) that would be a section 987 QBU with respect to a partner if owned by the partner directly. As a result of the Entity A sale, 50 percent of the assets and liabilities of Business A ceased to be reflected on the books and records of DC1's Business A section 987 QBU. As a result, such assets and liabilities are treated as if they were transferred from DC1's Business A section 987 QBU to DC1. Additionally, following DC2's acquisition of 50 percent of the interest in Entity A, DC2 is allocated 50 percent of the assets and liabilities of Business A under §§ 1.987–2(b). Because DC2 and Business A have different functional currencies, DC2's portion of the Business A assets and liabilities constitutes a section 987 QBU. Accordingly, 50 percent of the assets and liabilities of Business A are treated as transferred by DC2 to DC2's Business A section 987 QBU.

(C) The Entity A sale is a deferral event described in paragraph (b)(2) of this section because:

(1) The sale constitutes the disposition of part of an interest in a DE; and

(2) Immediately after the transaction, assets of DC1's Business A section 987 QBU are reflected on the books and records of DC1's Business A section 987 QBU and DC2's Business A section 987 QBU, each of which is a successor QBU with respect to DC1's Business A section 987 QBU within the meaning of paragraph (b)(4) of this section. Accordingly, DC1's Business A section 987 QBU is a deferral QBU within the meaning of paragraph (b)(1) of this section, and DC1 is a deferral QBU owner within the meaning of paragraph (c)(1)(ii) of this section. Under paragraph (b)(1) of this section, DC1 includes in taxable income section 987 gain or loss with respect to Business A in connection with the deferral event to the extent provided in paragraphs (b)(3) and (c) of this section.

(D) Under paragraph (b) of this section, in the taxable year of the Entity A sale, DC1 includes in taxable income section 987 gain or loss with respect to Business A as determined under § 1.987–5, except that, for purposes of applying § 1.987–5, all assets and liabilities of Business A that, immediately after the Entity A sale, are reflected on the books and records of successor QBUs are treated as though they were not transferred and therefore as remaining on the books and records of DC1's Business A section 987 QBU notwithstanding the Entity A sale. Accordingly, DC1's remittance amount under § 1.987–5 is $0, and DC1 recognizes no section 987 gain or loss with respect to Business A.

(5) Example 5. Partial recognition of deferred gain or loss. (i) *Facts.* DC1 owns all of the interests in Entity A, a DE that conducts Business A in Country X. During Year 1, DC1 contributes all of its interests in Entity A to DC2 in an exchange to which section 351 applies. At the time of the contribution, Business A has net accumulated unrecognized section 987 gain of $100x. After the contribution, Entity A continues to conduct business in Country X (Business B). In Year 3, as a result of a net transfer of property from Business B to DC2, DC2's remittance proportion with respect to Business B, as determined under § 1.987–5, is 0.25.

(ii) *Analysis.* (A) For the reasons described in *Example 1 in paragraph (h)(1) of this section,* the contribution of Entity A by DC1 to DC2 results in a termination of Business A and a deferral event with respect to Business A, a deferral QBU; DC1 is a deferral QBU owner within the meaning of paragraph (c)(1)(ii) of this section; Business B is a successor QBU with respect to Business A; DC2 is a successor QBU owner; and the $100x of net accumulated unrecognized section 987 gain with respect to Business A becomes deferred section 987 gain as a result of the deferral event.

(B) Under paragraph (c)(1) of this section, DC1 recognizes deferred section 987 gain with respect to Business A in accordance with paragraphs (c)(2) through (4) of this section. Under paragraph (c)(2)(i) of this section, DC1 recognizes deferred section 987 gain in Year 3 as a result of the remittance from Business B to DC2. Under paragraph (c)(2)(ii) of this section, the amount of deferred section 987 gain that DC1 recognizes is $25x, which is DC1's outstanding deferred section 987 gain or loss ($100x) with respect to Business A multiplied by the remittance proportion (0.25) of DC2 with respect to Business B for the taxable year as determined under § 1.987–5(b).

(i) *Coordination with fresh start transition method*—(1) *In general.* If a taxpayer is a deferral QBU owner, or is or was the owner of an outbound loss QBU, and the taxpayer is required under § 1.987–10(a) to apply the fresh start transition method described in § 1.987–10(b) to the deferral QBU or outbound loss QBU, or would have been so required if the taxpayer had owned the deferral QBU or outbound loss QBU on the transition date (as defined in § 1.987–11(c)), the adjustments described in paragraphs (i)(2) and (3) of this section, as applicable, must be made on the transition date.

(2) *Adjustment to deferred section 987 gain or loss.* The amount of any outstanding deferred section 987 gain or loss of a deferral QBU owner with respect to a deferral QBU described in paragraph (i)(1) of this section must be adjusted to equal the amount of outstanding deferred section 987 gain or loss that the deferral QBU owner would have had with respect to the deferral QBU on the transition date if, immediately before the deferral event, the deferral QBU had transitioned to the method prescribed by §§ 1.987–1 through 1.987–10 pursuant to the fresh start transition method.

(3) *Adjustments in the case of an outbound loss event.* The basis of any stock described in paragraph (d)(4) of this section that was received in connection with the transfer (or deemed transfer) of assets of an outbound loss QBU described in paragraph (i)(1) of this section and that is held on the transition date must be adjusted to equal the basis that such stock would have had on the transition date if, immediately prior to the outbound loss event, the outbound loss QBU had transitioned to the method prescribed by §§ 1.987–1 through 1.987–10 pursuant to the fresh start transition method. If no such stock was received, the amount of any outbound section 987 loss with respect to the outbound loss QBU that may be recognized on or after the transition date pursuant to paragraph (d)(5) of this section must be adjusted to equal the amount of such loss that would be outstanding and that may be recognized pursuant to that paragraph if, immediately before the outbound loss event, the outbound loss QBU had transitioned to the method prescribed by §§ 1.987–1 through 1.987–10 pursuant to the fresh start transition method.

(j) *Applicability date*—(1) *In general.* Except as described in paragraph (j)(2) of this section, this section applies to any deferral event or outbound loss event that occurs on or after January 6, 2017. This section also applies to any deferral event or outbound loss event that occurs as a result of an entity classification election made under § 301.7701–3 that is filed on or after January 6, 2017, and that is effective before January 6, 2017.

(2) *Exceptions*—(i) *Principal purpose.* This section applies to any deferral event or outbound loss event occurring on or after December 7, 2016, if such deferral event or outbound loss event was undertaken with a principal purpose of recognizing section 987 loss.

(ii) *Entity classification.* This section also applies to any deferral event or outbound loss event that occurs as a result of an entity classification election made under § 301.7701–3 that was filed on or after December 22, 2016, that was effective before December 7, 2016, and that was undertaken with a principal purpose of recognizing section 987 loss.

§ 1.987–12T [Removed]

■ **Par. 10.** Section 1.987–12T is removed.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

Approved: April 8, 2019.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[TD 9858]

RIN 1545–BO38

User Fees Relating to Enrolled Agents and Enrolled Retirement Plan Agents

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations that amend regulations relating to imposing user fees for enrolled agents and enrolled retirement plan agents. The final regulations remove the initial enrollment user fee for enrolled retirement plan agents because the IRS no longer offers initial enrollment as an enrolled retirement plan agent. The final regulations also increase the amount of the renewal user fee for enrolled retirement plan agents from $30 to $67. In addition, the final regulations increase the amount of both the enrollment and renewal user fee for enrolled agents from $30 to $67. The final regulations affect individuals who are, or apply to become, enrolled agents and individuals who are enrolled retirement plan agents. The Independent Offices Appropriations Act of 1952 authorizes charging user fees.

DATES:

Effective date: This regulation is effective June 12, 2019.

Applicability date: For the dates of applicability, see §§ 300.5(d), 300.6(d), and 300.10(d).

FOR FURTHER INFORMATION CONTACT: Mark Shurtliff at (202) 317–6845 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains amendments to 26 CFR part 300 regarding user fees.

A. User Fee Authority and Enrolled Agent and Enrolled Retirement Plan Agent User Fees

The Independent Offices Appropriations Act of 1952 (IOAA) (31 U.S.C. 9701) authorizes each agency to promulgate regulations establishing a charge for services the agency provides (user fees). The charges must be fair and must be based on the costs to the government, the value of the service to the recipient, the public policy or interest served, and other relevant facts. Under the IOAA, user fee regulations are subject to policies prescribed by the President. Those policies are currently set forth in the Office of Management and Budget (OMB) Circular A–25, 58 FR 38142 (July 15, 1993).

Under OMB Circular A–25, Federal agencies that provide services that confer special benefits on identifiable recipients beyond those accruing to the general public are to establish user fees that recover the full cost of providing the special benefit. An agency that seeks to impose a user fee for government-provided services must calculate the full cost of providing those services, review user fees biennially, and update them as necessary. Section 330(a)(1) of title 31 of the United States Code authorizes the Secretary of the Treasury to regulate the practice of representatives before the Department of the Treasury (Treasury Department). Pursuant to section 330 of title 31, the Secretary has published regulations governing practice before the IRS in 31 CFR part 10 and reprinted the regulations as Treasury Department Circular No. 230 (Circular 230). Section 10.3 of Circular 230 defines who may practice before the IRS and includes individuals who have been granted enrollment to practice as enrolled agents and enrolled retirement plan agents. Section 10.4 of Circular 230 authorizes the IRS to grant enrollment as an enrolled agent or enrolled retirement plan agent to individuals who demonstrate special competence in tax matters by passing a written examination administered by, or under