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August 20, 2015

The Honorable Mark Mazur
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Re: **Report No. 1328 on Proposed Regulations Regarding Allocation of Income and Deduction of Corporations Joining or Leaving Consolidated Groups**

Dear Messrs. Mazur, Koskinen and Wilkins:

I am pleased to submit the attached report (the "Report") on the proposed amendments to Treas. Reg. § 1.1502-76 that were published on March 6, 2015 (the "Proposed Regulations") with respect to allocation of income of corporations that join or leave consolidated groups between the pre-change and post-change years.

We agree with the general approach of the Proposed Regulations in making the application of the "next day rule" subject to bright-line standards, as opposed to the current regulations under which the application of that rule is arguably objective. In particular, we believe that the Proposed Regulations generally reach appropriate results with respect to deductions for compensation and success based fees, deductions associated with respect to debt refinancings, and gain or loss from the sale of

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The Honorable Mark Mazur
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The Honorable William J. Wilkins
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assets on the date on which a corporation joins or leaves a consolidated group.

Our primary recommendations are as follows:

1. Gain or loss from any disposition of assets outside the ordinary course of business (rather than the more limited category of dispositions set forth in the current regulations and Proposed Regulations), should be treated as an extraordinary item and therefore subject to the next day rule if it occurs after the corporation joins or leaves the group.

2. We agree with the general approach of the Proposed Regulations in providing that the end of the day, next day, beginning of the day, and previous day rules apply only for purposes of determining the taxable year in which items are reported, and not for purposes of other consolidated return rules. We believe, however, that applying this principle requires careful consideration of the interplay of provisions of the consolidated return regulations, and we recommend changing two of the results reached in examples in the Proposed Regulations involving redemptions of stock.

3. We recommend clarifying changes to the previous day rule that applies to former S corporations that join consolidated groups.

4. We recommend that taxpayers be permitted to apply the beginning of the day and previous day rules even where the corporation was not an S corporation prior to joining a group, to the extent that that is consistent with the non-tax economics of a sale transaction.

5. We recommend amending the regulations so as not to permit ratable allocation of non-extraordinary items for an entire year, but support permitting ratable allocation for the month in which a corporation joins or leaves a group in certain circumstances.

6. We recommend amending the regulations to provide for allocation of QEF inclusions from PFICs between the pre-change and post-change tax years in the same manner that currently applies to partnership items.

7. We recommend providing examples to illustrate the intended application of the anti-avoidance rule.

We appreciate your consideration of our recommendations.

Respectfully submitted,

David R. Sicular
Chair

Enclosure

The Honorable Mark Mazur
The Honorable John Koskinen
The Honorable William J. Wilkins
August 20, 2015

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