IRS Announces New "No-Rule" Policy on Spin-Off and Reorganization Transactions, to Take Effect August 23

June 27, 2013

On June 25, the Internal Revenue Service ("IRS") announced a new "no-rule" policy affecting various reorganization and spin-off transactions. Specifically, effective for ruling requests postmarked or received after August 23, 2013, the IRS will no longer rule on whether a transaction qualifies for nonrecognition treatment under sections 332, 351, 355, 368 and 1036 of the Internal Revenue Code (the "Code")[1]. Instead, the IRS will rule only on "significant issues" arising under these provisions. Accordingly, taxpayers that are planning a spin-off transaction must submit their ruling requests prior to August 23.

Under the newly announced policy, the IRS will not rule on whether a transaction qualifies under any of the provisions described above, even if the transaction presents a "significant issue." The IRS will, however, rule on the significant issues themselves. The definition of a "significant issue" under the new guidance is "an issue of law the resolution of which is not essentially free from doubt and that is germane to determining the tax consequences of the transaction." Under its prior guidance, a significant issue also had to be "not clearly and adequately addressed by a statute, regulation, decision of a court, tax treaty, revenue ruling, revenue procedure, notice or other authority."

Taxpayers submitting ruling requests after August 23 will no longer receive "comfort" rulings covering an entire spin-off transaction under section 355. Instead, these transactions will likely have to rely more heavily on opinions of tax counsel and on judgments as to the risk of executing a spin-off without a broad ruling.

The new no-rule guidelines were described by the IRS as part of an effort to conserve resources. They come only a few months after the IRS announced three additional areas for which no rulings would be issued (debt exchanges, north-south transactions and recapitalizations to attain control of a spinco). Taken together with its ten-year old policy not to rule on the "business purpose," "device" and section 355(e) "plan" requirements, the IRS has further restricted its once broad ruling approach.

[1] All "section" references are to the Code.

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This memorandum is for general information purposes and should not be regarded as legal advice. Please contact your relationship partner if we can be of assistance regarding these important developments. The names and office locations of all of our partners, as well as our recent memoranda, can be obtained from our website, www.simpsonthacher.com.

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