March 11, 2025

Internal Revenue Service
CC:PA:01:PR (REG-117213-24)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: National Foreign Trade Council Comments on Section 987 Proposed Regulations (REG-117213-24)

The National Foreign Trade Council (the "NFTC") is writing to provide comments on REG-117213-24, "Accounting for Disregarded Transactions Between a Qualified Business Unit and Its Owner" (the "Proposed Regulations"), released by the Department of the Treasury ("Treasury") and the Internal Revenue Service ("IRS") on December 11, 2024.

The NFTC, organized in 1914, is an association of U.S. business enterprises engaged in all aspects of international trade and investment. Our membership covers the full spectrum of industrial, commercial, financial, and service activities. Our members support establishing and maintaining international tax norms that provide certainty to enterprises conducting cross-border operations.

Overview

On December 11, 2024, Treasury issued the Proposed Regulations, which provide guidance regarding the determination of Section 987 foreign exchange gain or loss on certain disregarded transactions between a Section 987 qualified business unit ("QBU") and its owner. Before submitting our comments, we would like to acknowledge Treasury's efforts in issuing the final Section 987 regulations on December 10, 2024 ("Final 987 Regulations"). While certain concerns persist about the full adherence of some specific provisions with the law, particularly in the absence of taxpayers making allowable elections, taxpayers generally appreciate the overall clarity these regulations provide in addressing key and, in some cases, long-standing taxpayer concerns. We welcome conversations with Treasury and the opportunity to provide further input as needed, prior to Treasury taking any action impacting the effectiveness or applicability of the Final 987 Regulations.

Below, we present our responses to a selection of the comments requested on the proposed regulations.

1. **Including Certain Intercompany Financing Transactions within Scope of Recurring Transfer Group Election**

In the Preamble to the Proposed Regulations, Treasury invites comments on additional transfers that should be covered by the "recurring transfer group" election and therefore translated using the yearly average exchange rate rather than the spot rate applicable on the date of transfer, under Prop. Treas. Reg. §1.987-2(f)(1). This election would greatly simplify the computation and reporting of unrecognized

Section 987 gain or loss under Treas. Regs. §1.987-4 for these types of disregarded transactions between QBUs and their owners.

Among the points raised, Treasury considers whether intercompany lending transactions should be included in the recurring transfer group election ("RTGE"). The Preamble to the Proposed Regulations references intercompany lending by banks and other financial institutions, recognizing that these transactions occur in the ordinary course of business. However, many businesses also frequently engage in short-term intercompany lending as part of routine cash management across divisions and jurisdictions. For example, multinational enterprises often rely on cash-pooling structures for cash management in which daily short-term cash pool borrowings from ("draws") or loans to ("deposits") a cash pool header, such as an in-house bank ("IHB") are used for daily liquidity needs.[1] These movements of funds may often stem from cash received by Section 987 QBUs from inventory transactions, service payments, and rental or royalty receipts—the very types of transfers already included within the scope of the RTGE. Given this, when such cash-pooling transactions occur between QBUs and their owner or among QBUs under common ownership, they should logically be incorporated into the definition of a "recurring transfer group" under Prop. Treas. Reg. §1.987-2(f)(2).

Leaving intercompany lending outside of the RTGE would create a discrepancy between QBUs transacting with third-party banks—which are not treated as contributions or remittances and do not require tracking—and those using in-house banking arrangements, which do require tracking. Extending the election to intercompany lending would alleviate this administrative burden and ensure fair treatment for taxpayers using cash pooling. This expansion would thus align with the overarching goal of the Proposed Regulations: to reduce compliance costs under Section 987 by allowing the use of the yearly average exchange rate in appropriate cases.[2]

In addition to cash pooling, and for the same reasons outlined above, we request that cash movements related to interest payments on disregarded loans (including both interest on cash management arrangements and longer term loans) also be included within the scope of the RTGE, as the interest is accrued and settled on a recurring basis. Including interest payments related to disregarded loans within the scope of the RTGE also provides a relief from administrative burden as many taxpayers do not track interest income/expense on term debt separately from cash pool debt. This proposal aligns with the economics of the transaction (because interest accrues on a daily basis) and presents minimal opportunity for abuse while reducing taxpayer burden.

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[1] We further note that other than dealing with external parties, IHB activities are often similar to those of a financial entity, and therefore, excluding intercompany cash-pooling activities penalizes transactions with IHBs by making them more administratively burdensome from a Section 987 perspective than other routine intercompany transactions captured in the definition of "Recurring Transfer Group." Indeed, other parts of the code recognize this and afford similar treatment to IHBs as that afforded to financial entities for certain purposes, such as for IHBs that are eligible to elect dealer status, notwithstanding not having the full suite of activities such as selling receivables, under Section 475(c)(1) under the "negligible sales" exception because such IHBs regularly purchase securities from customers (including regularly lending to customers in the ordinary course of a trade or business of lending) in the ordinary course of a trade or business even if they do not transact with external parties.

[2] The Preamble of the Proposed Regulations indicates that "permitting taxpayers to use the yearly exchange rate in lieu of the applicable spot rate would reduce the compliance burden of the Section 987 regulations."

To implement these changes, we suggest adding "Intercompany lending under a cash-pooling arrangement and interest on bona-fide debt under U.S. federal tax principles" in the list of transactions identified in Prop. Treas. Regs. §1.987-2(f)(2) (*i.e.*, sales of inventory, payments for services and rents and royalties).

2. **Including Other Recurring Ordinary Course of Business or Routine Transactions within Scope of RTGE**

Other transactions that don't strictly fall within the definition of the transactions listed in Treas. Regs. §1.987-2(f)(2) (*i.e.*, sales of inventory, payments for services and rents and royalties), may be ordinary course of business transactions of a Section 987 QBU. For example, in addition to transactions described in the prior section (*i.e.*, cash-pooling and interest payment transactions), QBUs may engage in other recurring ordinary course of business transactions with their QBU owners or other QBUs of the same owner, such as reimbursement of certain expenses or costs, utilities, insurance, and recurring asset transfers, or other fees, for which accounting under the Final Regulations may equally create significant compliance burdens. As exclusion of these transactions from RTGE also presents an administrative burden, and Section 987 abuses from such transactions are unlikely, we request that an additional broader category is included in the list under Prop. Treas. Regs. §1.987-2(f)(2) that includes other similar transactions to the ones listed and which are recurring and part of the Section 987 QBUs ordinary or normal course of business, or to simply provide a category within the RTGE definition for transactions performed in the "ordinary or normal course of business." Although we are not aware of a specific definition of "ordinary" or "normal" course of business in the Code, in this context, as in most others, it should include common or frequent transactions considering the taxpayer's business.[3]

3. **Remove Exception in Prop. Treas. Reg. §1.987-2(f)(5)(ii) in order to Make Recurring Transfer Group Election Available Irrespective of Application of the Net Value Computations under Treas. Regs. §1.987-4(e)(2)(iii)**

Prop. Treas. Regs. §1.987-2(f)(5)(ii) indicates that the RTGE does not apply to a Section 987 QBU in the year in which an owner determines the QBU's net value under the alternative formula without preparing an adjusted balance sheet. The Preamble to the Proposed Regulations indicates that, to compute the QBU's net value using the formula provided in Treas. Regs. §1.987-4(e)(2)(iii), taxpayers must separately track each transfer. However, having to track the different spot rates for each transfer that is considered a recurring transaction for purposes of computing the QBU's net value would cause an unnecessary burden for taxpayers without preventing any manipulation or distortion of the overall unrecognized 987 gains and losses. Therefore, we request removing the exception from the Proposed Regulations to allow RTGE to apply to the QBU net value computation under Treas. Regs. 1.987-4(e)(2)(iii).

4. **Application of Section 987(3) and Related Regulations to Controlled Foreign Corporations ("CFCs")**

[3] *See*, *for example*, *Deputy v. Du Pont*, 308 U.S. 488 (1940); *Lilly v. Commissioner*, 343 U.S. 90 (1952), *rev'g* 188 F.2d 269 (4th Cir. 1951), *aff'g* 14 T.C. 1066 (1950).

In response to Treasury's request for comments on whether Section 987(3) and its related regulations should apply to CFCs, we propose a simplified approach for CFCs to make appropriate adjustments to comply with Section 987(3) while still maintaining the requirement to compute and translate taxable income under Sections 987(1) and 987(2).

Section 987(3) provides the Secretary with discretion to determine the appropriate "proper adjustment" for transfers of property between QBUs. In most cases, much like the treatment of PTEP under Section 959, which allows earnings in different currencies to tier-up in a CFC chain without generating incremental currency gains or losses before reaching the U.S. parent, we believe that foreign exchange gains or losses related to Section 987 QBUs of CFCs ought to be captured through basis adjustments or under Sections 959 and 986(c) when earnings are permanently distributed to the U.S. shareholder.

In other words, removing the Section 987(3) application from the outbound QBU context would provide parity in treatment of QBU to CFC distributions with treatment of CFC-to-CFC distributions. Importantly, removing the Section 987(3) application from the outbound QBU context provides an opportunity for Treasury to simplify guidance without compromising on overall economics.

i. Example

The example below demonstrates how this process works when earnings from a QBU of a CFC are distributed through the CFC to its U.S. shareholder:

Facts and Assumptions:

1. On January 1, 2025, a U.S. shareholder makes a 150 GBP initial contribution to a EUR functional wholly-owned CFC, which in turn contributes the 150 GBP to its GBP functional QBU.
2. During 2025, the GBP QBU generates 1,000 GBP taxable income.
3. On December 31, 2025, the GBP QBU distributes 1,150 GBP to its EUR CFC owner, and the EUR CFC owner distributes the same amount to its U.S. shareholder.

   Assume no other earnings or basis at the CFC.

The above amounts are converted using the following exchange rates, as appropriate:

Step	Rate: Description	Rate: GBP to EUR	Rate: EUR to USD	Amount GBP	Amount EUR	Amount USD
1	1/1/2025 spot	1.1	1.2	150	165	198
2	2025 Average	1.2	1	1,000	1,200	1,200
3	12/31/2025 spot	1.3	1.1	1,150	1,495	1,645

(a) Assuming the Section 987 Regulations continue to include Section 987(3) remittances at the CFC level, and no special elections such as annual recognition election ("ARE") are in place, the total net income/loss would be USD 1,447 (USD 1,200 Section 987(1)/(2), USD 263 ordinary (Sections 987/986(c)) gain minus USD 16 remaining basis), as detailed below.

- The CFC will include EUR 1,200 in connection with the QBU in 2025. The CFC will also include Section 987 gain in connection with the QBU in 2025 of USD 130 on the GBP 1,150

remittance. This assumes the income of the CFC is 100% taxable at the U.S. shareholder level under Section 954 or 954A.[4] See calculation below.

	Equity Pool	Basis Pool	*Citation*
Contribution to GBP QBU	GBP 150	EUR 165	*§987(3)*
GBP QBU Income	GBP 1,000	EUR 1,200	*§987(1)& (2), §954*
Total Basis/Equity Pool	**GBP 1,150**	**EUR 1,365**	
Remittance from GBP QBU to EUR CFC	**GBP 1,150**	EUR 1,495	*§987(3)*
987 Gain on Remittance at EUR CFC		**EUR 130**	*§987(3), §954*[5]
987 Gain on Remittance at EUR CFC (USD equiv.)		**USD 130**	

- The U.S. shareholder will recognize Section 986(c) gain of USD 133 on the distribution of USD 1,645 (GBP 1,150/EUR 1,495) as limited by available PTEP of EUR 1,330 based on the difference between (a) the foreign exchange rate used to calculate PTEP generated during the year (which is the average exchange rate including the Section 987 gain) and (b) the spot rate on the date of the distribution. See below calculation.

	EUR	PTEP Basis (Average Foreign Exchange Rate)	PTEP Distribution (Spot Rate)	986(c) Gain	*Citation*
987 Gains at the EUR CFC	EUR 130	USD 130	USD 143	USD 13	*§987(3)*
QBU Income at the EUR CFC	EUR 1,200	USD 1,200	USD 1,320	USD 120	*§987(1) and (2)*
Total	**EUR 1,330**	**USD 1,330**	**USD 1,463**	**USD 133**	*§986(c)*

- The U.S. shareholder will have a remaining basis of USD 16 in the shares of the CFC after the PTEP distribution of USD 1,463. See below calculation.

	EUR Amount	USD Amount	Rate Used	*Citation*
Contributed Basis	EUR 165	USD 198 [a]	Spot	
PTEP	EUR 1,330	USD 1,330 [b]	Average	
Total Basis	EUR 1,495	USD 1,528 [c]		
PTEP Distribution		(USD 1,463) [d]	Spot	*§959(c), §301(c)(1)*
Basis Reduction		(USD 182) [e]	Spot	*§301(c)(2)*
Total Distribution = [d] +[e]	EUR 1,495	USD 1,645 [f]	Spot	
Remaining Basis = [a]-[e]		**USD 16 [g]**		
Section 986(c) gain = [d]-[b]		**USD 133 [h]**		*§986(c)*

[4] To note, if the income were not included under Sections 954 or 954A, the symmetry with the CFC-to-CFC context would nevertheless persist. That is, in the CFC-to-CFC context, distributions are excluded under Sections 954(c)(3), 954(c)(6), or otherwise Section 245A, in the absence of specific guidance to the contrary.

[5] Assumes all Section 987 gain is treated as foreign base company income in this example.

(b) If the Section 987 Regulations are modified to exclude Section 987(3) remittances at the CFC level, the total net gain/loss resulting would continue to be USD 1,447 (USD 1,200 Section 987(1)/(2), USD 120 ordinary (Section 986(c)) and USD 127 capital gain), as detailed below.

- The CFC will include EUR 1,200 in connection with the QBU in 2025, which may also be included in the U.S. under Section 954. See below calculation.

	Equity Pool	**Basis Pool**	***Citation***
GBP QBU Income	GBP 1,000	EUR 1,200	*§987(1)&(2), §954*

- The Section 987 gain recognized by the CFC in connection with the QBU in 2025 will be nil.

- The U.S. shareholder will recognize Section 986(c) gain of USD 120, on the distribution of USD 1,645 (GBP 1,150/EUR 1,495) as limited by available PTEP of EUR 1,200 based on the difference between (a) the foreign exchange rate used to calculate PTEP generated during the year (which is the average exchange rate) and (b) the spot rate on the date of the distribution. See below calculation.

	EUR	**PTEP Basis (Average Foreign Exchange Rate)**	**PTEP Distribution (Spot Rate)**	**986(c) Gain**	***Citation***
987 Gains at the EUR CFC	Nil	Nil	Nil	Nil	*§987(3)*
QBU Income at the EUR CFC	EUR 1,200	USD 1,200	USD 1,320	USD 120	*§987(1)&(2)*
Total	**EUR 1,200**	**USD 1,200**	**USD 1,320**	**USD 120**	*§986(c)*

- The U.S. shareholder will have capital gain of USD 127 on the distribution of USD 1,645 (GBP 1,150/EUR 1,495). See below calculation.

	EUR Amount	**USD Amount**	**Rate Used**	***Citation***
Contributed Basis	EUR 165	USD 198 [a]	Spot	
PTEP	EUR 1,200	USD 1,200 [b]	Average	
Total Basis	EUR 1,495	**USD 1,398 [c]**		
PTEP Distribution		(USD 1,320) [d]	Spot	*§§959(c), 301(c)(1)*
Basis Reduction		(USD 198) [e]	Spot	*§301(c)(2)*
USSH Capital Gain [g]+[d]+[e]		USD 127 [f]		*§301(c)(3)*
Total Distribution	EUR 1,495	**USD 1,645 [g]**	Spot	
Remaining Basis [a]-[e]		**USD 0 [h]**		
Section 986(c) = [d]-[b]		**USD 120 [i]**		

The following table shows the net results under both scenarios detailed above:

	With 987(3) Adjustments	**Without 987(3) Adjustments**
§987(3) Gain (loss)	USD 130	0

§986(c)	USD 133	USD 120
§987(1)/(2) Income	USD 1,200	USD 1,200
§301(c)(2) Remaining Basis (reduces total)	USD (16)	0
§301(c)(3) Capital Gain	0	USD 127
Total	**USD 1,447**	**USD 1,447**

The central argument we would like to present is that current guidance requires complex tracking and remeasuring foreign exchange inclusion under Section 987(3) in the outbound QBU context that is absent in the CFC-to-CFC context without a material change in economics. In other words, Section 987(3) in the outbound QBU context is not unlike Section 986(c) applied at the CFC level, if the upper tier CFC were to track PTEP basis in the lower tier CFC in the upper CFC's functional currency and were to pick up a remeasurement from a distribution of the PTEP in its Profit & Loss statement ("P&L"). We understand the absence of requiring such tracking and remeasurement to be the better approach, as in the CFC-to-CFC context the economics of the remeasurement are captured either in the Section 986(c) amount or the basis of the CFC, without a burdensome tracking and remeasurement exercise. As previously stated, removing the Section 987(3) application from the outbound QBU context would provide parity in treatment of QBU to CFC distributions with treatment of CFC-to-CFC distributions and an opportunity for Treasury to simplify guidance without compromising on overall economics.

The below summary highlights the difference in treatment between outbound QBU and CFC-to-CFC contexts for an otherwise same economic and structural fact pattern. For ease of understanding, assume economic considerations compare (a) USD parent of a EUR CFC holding a GBP QBU to (b) a USD parent of a EUR CFC holding a GBP CFC.

1. Remittances of Contributions – While a CFC to QBU contribution and subsequent remittance from the QBU to the CFC under Section 987(3) of contributed capital create a P&L recognition event at the CFC level, a similar Section 351 contribution / Section 301(c)(2) distribution of basis between CFCs would not result in a P&L recognition event at the CFC level.

2. Remittances of Inclusions under Subpart F/GILTI - While a remittance out of the equity pool (comprised of contributions and net income, whether taxed or untaxed) from a QBU to a CFC under Section 987(3) creates a P&L recognition event at the CFC level, a similar distribution (or tiering up) of Section 959(c)(1) and (2) PTEP between CFCs would not result in a P&L recognition event at the CFC level. As discussed above, there is no guidance akin to a Section 986(c) inclusion event at the CFC level in the CFC-to-CFC context, while there is guidance that calls for an inclusion event in the QBU to CFC context, under Section 987(3).

3. Remittances of Untaxed Earnings - While a remittance out of the equity pool (comprised of contributions and net income, whether taxed or untaxed) from a QBU to a CFC under Section 987(3)

creates a recognition event at the CFC level, a similar distribution (or tiering up) of Section 959(c)(3) earnings between CFCs would not result in a recognition event at the CFC level.[6]

It is worth noting that foreign exchange gain or loss would also be captured in a scenario where there is no Section 954 inclusion that creates PTEP, such as when a CFC has Section 245A earnings. In that scenario, both applying Section 987(3) adjustments and not applying existing Section 987(3) adjustments will lead to the same result, with the distribution resulting in the same amount of capital gain based on the portion of the USD 1,645 distribution that exceeds the basis of USD 198. Moreover, even if there were no earnings at all and the CFC were to simply return capital to the U.S. shareholder, both approaches would lead to the same result for the shareholder.

We also understand that Treasury and the IRS are concerned that basis differences between inside asset basis and outside basis could create opportunities for "excess" basis to be inbounded into the United States. While this concern is warranted in situations where taxpayers engage in certain reorganizations identified by the IRS or in other transactions aimed at creating excess asset basis, we do not believe that foreign exchange gains and losses, which are usually generated as ordinary course of business transactions, should warrant the same level of concern. It is also unclear how not recognizing gain or loss under Section 987(3) would make excess asset basis more prevalent, given the volatility and unpredictability of foreign exchange markets. However, even if there is a concern with this, Treasury has already addressed the concern more broadly through other rules and regulations, such as the 2016 loss importation rules, which we believe limit the potential for benefitting from excess losses in most scenarios involving inbounding of CFCs.[7]

We realize there may be concerns that excluding CFCs from Section 987(3) could lead to shifts in the timing and characterization of foreign exchange gains and losses. While these factors would indeed be affected as demonstrated in the example above, the broader policy implications suggest that such changes would be largely neutral—potentially favorable or unfavorable to taxpayers depending on their specific circumstances, but generally difficult to manipulate. In fact, capturing foreign exchange gains and losses of CFC-owned QBUs through other tax provisions—such as Subpart F, which applies to regarded transactions and is not solely concerned with foreign exchange—could reduce opportunities for selective recognition of gains or losses through remittances that would otherwise have no U.S. tax impact outside of Section 987. Notably, if a taxpayer does not recognize foreign exchange gains and losses on a mark-to-market basis (for instance, by not making an ARE election under the Final Regulations), they could potentially time inclusions of gains or losses for tax optimization, despite the "loss to the extent of gain" limitation. Consequently, removing the requirement to remeasure Section 987 gains or losses at the CFC level could, in fact, further mitigate Treasury's concerns regarding tax planning strategies such as the artificial triggering of losses in a particular year.

Further, it is worth noting that foreign exchange gains or losses should ultimately be accounted for, but taxpayers are unlikely to plan for specific outcomes, as these would primarily be driven by the character and nature of income from business operations.

[6] As above, in the CFC-to-CFC context, distributions are excluded under Sections 954(c)(3), 954(c)(6), or otherwise section 245A, in the absence of specific guidance to the contrary.
[7] *See* T.D. 9759 (26 CFR 1) published on March 28, 2016 providing for limitation on the importation of net built-in losses.

Consequently, applying Section 987(3) to CFCs imposes an unnecessary compliance and administrative burden on taxpayers, requiring them to track adjustments for transfers between a QBU and its owner and to determine foreign currency gains or losses related to such transfers. Given the absence of tangible benefits for either taxpayers or Treasury as outlined above, eliminating this requirement would enhance efficiency without undermining policy objectives.

ii. Transition gain/loss considerations

As discussed, we welcome the exclusion of CFCs from the scope of Section 987(3). Should CFCs be excluded, we request that Treasury provide clear guidance as to how exclusion would impact pre-transaction Section 987 gains or losses under the Final 987 Regulations.

We request that Treasury address the following issues in guidance:

- Should Section 987(3) no longer continue to apply to outbound QBUs, would unrecognized pre-transition Section 987 gains and losses from outbound QBUs continue to be recognized, or would the gains and losses be eliminated?
- If pre-transition gains and losses are recognized or preserved, are they recognized or will they be recognized at the CFC level or directly by the U.S. shareholder?
- Should Section 987(3) no longer continue to apply to outbound QBUs, but Treasury determines that pre-transition gains and losses from outbound QBUs should continue to be recognized, can Treasury confirm that guidance under Treas. Reg. §1.987-10(e)(5)(ii) covering amortization of pre-transition gain/loss and QBU terminations would also continue to apply? If they do not continue to apply, we request Treasury provides additional guidance.

5. **Application of Section 987- Compliance**

Not only does Section 987(3) on CFCs place unnecessary compliance and administrative burdens on taxpayers, but also the entire use of Section 987 at the QBU level is largely one of compliance and complex computation.

Indeed, the administrative intricacy of determining the Section 987 gain or loss under the Final Regulations is particularly significant. Treas. Reg. §1.987-4 dictates the method of calculating net unrecognized Section 987 gain or loss for purposes of a Section 987 QBU. Under Treas. Reg. §1.987-4(b), such amount is determined as the total of (i) the unrecognized Section 987 gain or loss of the current taxable year and (ii) the net accumulated unrecognized Section 987 gain or loss for all prior taxable years. To calculate the unidentified Section 987 gain or loss for a taxable year, Treas. Reg. §1.987-4(d) requires a ten-step, step-by-step process. The first step is to calculate the change in owner functional currency net value ("OFCNV") of the Section 987 QBU using end-of-year exchange rates for marked items and historic rates for historic items. Subsequent steps adjust for the various components creating this annual change, other than changes in exchange rates.

This advanced method poses significant compliance challenges, particularly with the necessity of preparing and maintaining a tax-basis balance sheet ("TBBS"). Maintenance of the TBBS is a meticulous and time-consuming process, particularly tracking and reconciling tax attributes on a periodic basis. This

issue is further obviated at the QBU level, where volume of transactions and accuracy requirements make the process more time-consuming and resource-intensive.

Therefore, the NFTC recommends that the final regulations should take these elements into consideration and reconsider these rules.

6. Considerations for Requiring Application of Section 987(3) to CFCs

If Treasury opts to maintain the application of Section 987(3) to foreign corporations despite the considerations outlined above, we urge Treasury to reconsider the requirement in the Final 987 Regulations that taxpayers use the asset method to determine the character and source of Section 987 gains or losses of CFCs. Instead, taxpayers should be given the option to elect the modified gross income ("MGI") method under Treas. Reg. §1.987-6(b). This approach aligns with existing regulations that permit taxpayers to use MGI for interest expense allocation of CFCs under Temp. Reg. §1.861-9T, a method widely used due to its administrative feasibility. Allowing this election for Section 987 purposes would provide a more practical alternative without altering the economic outcomes. Accordingly, there is no apparent policy rationale for prohibiting a similar election for sourcing and characterizing Section 987 gains or losses.

The Final 987 Regulations already include several elections designed to simplify compliance by reducing the need for full tax-basis balance sheets for Section 987 purposes. However, requiring the asset method to determine the source and character of Section 987 gains or losses would effectively impose an annual TBBS requirement for CFCs, even in cases where it is unnecessary outside of specific restructurings or transactions. As noted in previous comments on the Proposed Regulations, most companies primarily rely on U.S. GAAP balance sheets, which do not account for book-to-tax differences or disregarded transactions. In addition, many QBUs have mixed-use assets that produce multiple categories of income. Compliance with the current guidance would require taxpayers to find a way to split such assets between the different categories, and taxpayers may opt to use gross income as a reasonable approach to effect the 'split.' Requiring a TBBS under the Final 987 Regulations and Proposed Regulations would thus introduce a substantial compliance burden without a clear economic benefit to Treasury, particularly for companies that have already elected the MGI method for interest expense allocation instead of the asset method.

Treasury has expressed concerns that the MGI method could lead to greater year-to-year variability in the sourcing and characterization of Section 987 gains or losses due to extraordinary events or tax planning. However, it is unclear why the same concern would not apply under the asset method, as taxpayers can experience substantial fluctuations in asset composition—such as changes in cash holdings or investments in other CFCs—due to extraordinary events or transactions. These fluctuations could similarly impact the characterization and sourcing of Section 987 gains and losses. Moreover, regardless of the method used, taxpayers are unlikely to manipulate the nature of their assets or income to derive a tax benefit at the CFC level for Section 987 purposes. Given the inherent unpredictability of currency markets, any allocation of gains and losses across different inclusion categories could be advantageous in some years and disadvantageous in others. Ultimately, as discussed above, balances would still be subject to remeasurement and inclusion at the U.S. level.

In conclusion, if Treasury continues to apply Section 987(3) to foreign corporations, we request that it reconsider its approach and, at a minimum, allow taxpayers to elect to use the MGI method for determining the character and source of Section 987 gains and losses under Treas. Reg. §1.987-6(b).

Conclusion

Thank you for consideration of our comments. We are happy to answer any questions or clarify any of the comments raised; please contact Anne Gordon, Vice President of International Tax Policy (agordon@nftc.org).