

# IRS Resumes Issuing Transactional Spin-Off Rulings

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On September 21, 2017, the Internal Revenue Service (the “**IRS**”) issued Revenue Procedure 2017-52<sup>[1]</sup> (the “**Rev. Proc.**”), introducing an 18-month “pilot program” in respect of corporate “spin-off,” “split-up” and “split-off” transactions (“**Spin-off Transactions**”<sup>[2]</sup>). Under this pilot program, the IRS will again issue private letter rulings on the general federal income tax consequences of Spin-off Transactions intended to qualify as tax-free under Section 355 (a “**Transactional Ruling**”).<sup>[3]</sup> The Rev. Proc. sets forth procedures under which taxpayers may request Transactional Rulings on Spin-Off Transactions, as well as clarifying existing procedures for taxpayers that are requesting rulings limited to certain “significant issues” relating to Spin-off Transactions (a “**Significant Issue Ruling**”). The pilot program is generally effective for ruling requests postmarked or hand-delivered to the IRS from September 21, 2017 through March 21, 2019. Given the complexity of planning and implementing a Spin-off Transaction, particularly for public companies and for corporations with substantial international operations that must be divided, major stakeholders and decision-makers should consider the benefits of a comfort ruling and whether planning should be accelerated to ensure access to the pilot program. [Click here](#) to read more about the Transactional Ruling pilot program.

The Rev. Proc. effectively allows taxpayers to seek “comfort rulings” on Spin-Off Transactions intended to qualify under Section 355, resuming the IRS’ longstanding practice before 2013, when Rev. Proc. 2013-32<sup>[4]</sup> ended Transactional Rulings (although Significant Issue Rulings were still available in specific circumstances). In particular, Transactional Rulings under the pilot program may once again address general tax consequences of Spin-off Transactions under Section 355<sup>[5]</sup> as well as collateral issues commonly arising in Spin-off Transactions, including tax consequences under Sections 312, 355, 357, 358, 361, 362(b), 362(e), 368(a)(1)(D), 1032(a), 1223(1), and 1223(2). However, taxpayers will still generally be subject to the specific IRS “no rule” areas under Section 355, specifically whether a transaction is a “device” for distributing earnings and profits, whether the transaction has a corporate business purpose, and whether a distribution otherwise qualifying under Section 355 is pursuant to a “plan” under Section 355(e). Taxpayers requesting a Transactional Ruling under the Rev. Proc. must submit the usual detailed description of facts and law common to all private letter ruling requests, but must also include substantial detailed factual information regarding the Spin-Off Transaction and a fixed set of representations relating to a number of aspects and legal elements that generally must be made (or their absence explained in certain circumstances). These representations supersede the representations required under Rev. Proc. 96-30,<sup>[6]</sup> and in particular require representations that address recent changes in law (e.g., inversions under Section 7874).

The Rev. Proc. also updates the procedures for Significant Issue Rulings, supplementing the general existing guidance,<sup>[7]</sup> reflecting the information and representation requirements under the Rev. Proc.

The IRS seeks comments on the reasonableness of the requirements and conditions provided in the Rev. Proc., as well as recommendations for increasing efficiencies and any other aspect of the Rev. Proc. Additionally, the IRS seeks comments on whether Transactional Rulings should be made available for other types of transactions.

<sup>[1]</sup> The Rev. Proc. will be published in I.R.B. 2017-41, dated October 10, 2017.

[2] A “spin-off” transaction generally refers to a transaction where a parent corporation (uniformly called “**Distributing**”) distributes its stock in a corporation that it controls (uniformly called “**Controlled**”), after which the shareholders hold stock in both Distributing and Controlled. A “split-off” transaction generally refers to a transaction where Distributing distributes stock of Controlled in redemption of a certain group of Distributing shareholders, after which Distributing and Controlled are owned by separate groups of shareholders. A “split-up” transaction generally refers to a transaction where Distributing distributes its ownership in two different Controlled in redemption of all of the Distributing stock, after which separate groups of shareholders each owns stock in the two Controlled. Whether any of these types of transactions qualifies as tax-free for U.S. federal income tax purposes is governed by the same basic set of U.S. tax statutes and regulations, and for simplicity this alert follows the convention of discussing them collectively as “spin-offs” unless the context specifically requires otherwise.

[3] Section references contained herein are to sections in the Internal Revenue Code of 1986, as amended, unless stated otherwise.

[4] 2013-28 I.R.B. 55.

[5] For purely technical reasons, such a transaction would have to qualify as tax-free under either Sections 355(a) and (c) or Section 355(a) and Section 368(a)(1)(D), depending on the facts. Both such variants are eligible for Transactional Rulings under the pilot program.

[6] 1996-1 C.B. 696.

[7] In general, sections 6.03, 6.11, 7.01(2) of Revenue Procedure 2017-1, 2017-1 I.R.B. 1, and sections 3.01(51), 3.01(54), 4.02(2) and 4.02(9) of Revenue Procedure 2017-3, 2017-1 I.R.B. 130 are amended by the Rev. Proc.

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