



COMMENTARY  
OCTOBER 2017

## IRS Opens Pilot Program on Tax-Free Spin-Offs



### IN SHORT

**The Situation:** In 2013, the IRS ceased issuing private letter rulings confirming the general tax consequences of tax-free spin-offs.

**The Action:** Under Revenue Procedure 2017-52, the IRS will resume issuing these rulings pursuant to an 18-month pilot program.

**Looking Ahead:** Taxpayers should consult the Revenue Procedure when planning a tax-free spin-off, with or without a private letter ruling.

On September 21, 2017, the Internal Revenue Service ("IRS") released Revenue Procedure 2017-52, establishing a pilot program for issuing private letter rulings on the general U.S. federal income tax consequences of tax-free spin-offs under section 355 of the Internal Revenue Code. A spin-off usually is the only way for a company ("Parent") to distribute the stock of its subsidiary ("Sub") tax-free to shareholders. Since section 355 has many requirements, and substantial amounts of corporate and shareholder-level taxes are often at stake, taxpayers historically obtained IRS rulings confirming the tax-free treatment of spin-offs. However, in 2013, the IRS ceased issuing comprehensive rulings on tax-free spin-offs and instead began issuing rulings solely on "significant issues" ("Significant Issue Rulings"), reducing the utility of the ruling process for taxpayers. The Revenue Procedure, which reverses this course, is therefore excellent news for any taxpayer considering or already undertaking a tax-free spin-off.

Taxpayers can now request a ruling on the general U.S. federal income tax consequences of a tax-free spin-off ("Transactional Ruling"). A Transactional Ruling may address various ancillary consequences of a spin-off, including Parent's and Sub's earnings and profits and tax basis issues. If a taxpayer is planning multiple tax-free spin-offs (for instance, preparatory internal spin-offs to restructure and move assets prior to a spin-off to external shareholders), the taxpayer generally may request a Transactional Ruling, a Significant Issue Ruling, or no ruling for each tax-free spin-off. Nevertheless, the Revenue Procedure encourages taxpayers to be judicious in their ruling requests, noting that a more expansive request, covering multiple tax-free spin-offs, may delay the process.



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The pilot program addresses only tax-free spin-offs, and the IRS's existing spin-off "no-rule" areas (mainly whether the "no device" and business purpose requirements are satisfied, and whether a spin-off is part of a plan within the meaning of section 355(e)) generally remain in effect. However, Significant Issue Rulings still may be sought in these areas. The pilot program also does not affect the availability of international rulings, which may be especially helpful to multinationals that intend to spin off a business conducted in multiple jurisdictions. The IRS's international "no-rule" areas are not affected by the pilot program and continue to apply.

### Obtaining Transactional Rulings

If seeking a Transactional Ruling, a taxpayer must submit all relevant documentation and highlight and summarize the relevant portions of those documents in order to streamline the ruling process and limit the burden on the IRS. In addition, a taxpayer must describe all the tax-free spin-offs for which it is requesting rulings and any other transactions that are part of the same plan. The Revenue Procedure also specifically requires "a description and analysis of all legal issues that may affect the requested rulings" even if arising in a transaction for which the taxpayer is not seeking a ruling. The taxpayer must provide enough factual and legal information to allow the IRS to decide whether to issue the requested ruling(s), and the IRS may request a supplemental submission, or take other appropriate action, if the taxpayer omits any relevant information.

Taxpayers also must make a series of representations listed in the Revenue Procedure, which replace the representations from a 1996 revenue procedure that practitioners historically relied upon in seeking rulings. While generally similar to the 1996 revenue procedure, Revenue Procedure 2017-52 includes updated information requests and representations, including new representations confirming that a tax-free spin-off does not result in an inversion and that Parent and Sub operate significant active businesses and do not hold excessive amounts of investment assets. Interestingly, the Revenue Procedure also

omits certain requests and representations previously required by the 1996 revenue procedure, including representations relating to Parent's retention of Sub stock after a tax-free spin-off.

### Effective Date

The pilot program generally applies to any ruling requests postmarked after September 21, 2017, and will continue until March 21, 2019 (unless extended). Existing requests submitted prior to September 21, 2017, generally can qualify for the pilot program if the taxpayer provides the information required by the Revenue Procedure to the IRS before November 21, 2017.

### THREE KEY TAKEAWAYS

1. Revenue Procedure 2017 52 establishes an 18 month pilot program under which the IRS will resume issuing rulings on the comprehensive tax consequences of tax-free spin-offs and certain related transactions.
2. Taxpayers can now request a new comprehensive ruling, the previously available and narrower "significant issue" ruling, or no ruling at all, for any planned tax-free spin-off.
3. The Revenue Procedure generally replaces a 1996 revenue procedure and requires new and updated information and representations from taxpayers.

### CONTACTS



Scott M. Levine  
Washington



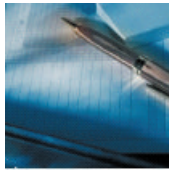
Richard M. Nugent  
New York



L. Matthew Waterhouse  
New York

[All Contacts >>>](#)

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