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November 12, 2026

Internal Revenue Service
1111 Constitution Ave. N.W.
Washington, D.C. 20224

U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Via electronic submission

**RE: TEI Comments on REG-103844-26**

Dear Sir or Madam:

On August 14, 2026, the Internal Revenue Service (the "Service") and the U.S. Department of the Treasury ("Treasury," together with the Service, the "Government") published proposed regulations under sections 987 and 989 (the "Proposed Regulations), regarding foreign currency gain or loss of controlled foreign corporations ("CFCs").[1] The Government previously published Notice 2026-17,[2] which announced the Government's intention to issue such proposed regulations under section 987.[3] On behalf of TEI, I am pleased to provide comments on the Proposed Regulations.

[1] REG-103844-26, 2026-37 I.R.B. 272.

Unless otherwise indicated, all "§" and "section" references are to the Internal Revenue Code of 1986, as amended (the "Code"), and all "Treas. Reg. §," "Temp. Treas. Reg. §," and "Prop. Treas. Reg. §" references are to the final, temporary, and proposed regulations, respectively, promulgated or proposed thereunder (the "Regulations"), as in effect as of the date of this document.

[2] 2026-12 I.R.B. 698.

[3] TEI also submitted comments on Notice 2026-17. *See* TEI Comments on Notice 2026-17 (Final 2026)_0.pdf.

**About TEI**

TEI was founded in 1944 to serve the needs of business tax professionals.[4] Today, the organization has 55 chapters in North and South America, Europe, and Asia. As the preeminent association of in-house tax professionals worldwide, TEI has a significant interest in promoting sound tax policy, as well as the fair and efficient administration of the tax laws, at all levels of government. Our nearly 6,000 individual members represent over 2,800 of the leading companies around the world.

TEI is dedicated to the development of sound tax policy, compliance with and uniform enforcement of tax laws, and minimization of administration and compliance costs to the benefit of both government and taxpayers. These goals can be attained only through the members' voluntary actions and their adherence to the highest standards of professional competence and integrity. TEI is committed to fostering a tax system that works—one that is administrable and with which taxpayers can comply in a cost-efficient manner. The diversity, professional training, and global viewpoints of our members enable TEI to bring a balanced and practical perspective to the Proposed Regulations.

**TEI Comments**

The Proposed Regulations include an election under which a CFC generally would not be required to compute or recognize foreign currency gain or loss upon receiving a remittance from a qualified business unit ("QBU"), except in connection with certain inbound nonrecognition transactions (the "CFC Exemption Election"). Overall, we support the inclusion of the CFC Exemption Election in final regulations. By allowing taxpayers to turn off section 987(3) for QBUs owned by CFCs, the election removes a substantial source of compliance costs and volatility. We also welcome the reliance provisions and the extended window—through October 15, 2027—to make the election for the 2025 through 2027 taxable years.

Our comments focus on two areas: (1) several procedural aspects of the election—most notably the group-wide consistency requirement and the inability to revoke the election without consent—both of which are too restrictive and lack clarity; and (2) the inbound gain-recognition rule of Prop. Treas. Reg. §1.987-16, which, as drafted, would require taxpayers to continue tracking section 987 attributes for every CFC that owns a section 987 QBU, retaining much of the burden the election is meant to eliminate.

[4] TEI is organized under the Not-For-Profit Corporation Law of the State of New York. TEI is exempt from U.S. Federal Income Tax under section 501(c)(6).

## I. The CFC Exemption Election (Prop. Treas. Reg. §1.987-15)

### A. Finalization and Interim Use of the Equity and Basis Pool Method

Although the reliance provisions give taxpayers a workable path through the transition years, we urge the Government to finalize the Proposed Regulations, taking public comments into account, as soon as practicable. Several open questions impact return preparation and business planning. Chief among them is the method for computing section 987 gain on an inbound nonrecognition transaction. For a taxpayer with many CFCs that own section 987 QBUs, this dictates which records must be maintained on an ongoing basis—and therefore drives costs and administrative burden—even before any inbound transaction is executed.

If final regulations are not issued in 2026, we request, at a minimum, interim guidance permitting taxpayers to determine section 987 asset basis using the equity and basis pool method of the 1991 proposed regulations[5] rather than the lookback methodology of Prop. Treas. Reg. §1.987-16(c)(2). The preamble to the Proposed Regulations itself acknowledges approximation is appropriate as approaches that the Government considers more precise potentially could impose significant compliance and administrative costs.

### B. Election Mechanics and Timing

We request the Government provide clarity around election procedures and provide transition relief. The Proposed Regulations provide generally that taxpayers make the election on Form 8964-ELE with an election statement attached. We ask the Government to confirm how this procedure applies to an election for the 2025 taxable year made under the extended deadline of October 15, 2027.

In many cases, a retroactive election will have little or no effect on the U.S. shareholder's taxable income for the earlier year. Requiring amended returns in those circumstances imposes significant and unnecessary compliance costs and does not provide the Service with a benefit. Accordingly, we recommend, unless the election materially changes the U.S. shareholder's taxable income for a prior year (for example, by changing the amount taken into account under the annual recognition election ("ARE") for 2025), taxpayers be permitted to make the election for prior years without filing an amended return, by attaching a statement or Form 8964-ELE to their next timely filed original return.

Moreover, if the Service publishes final regulations or other guidance after October 15, 2027, we request transition rules that give taxpayers adequate additional time to evaluate the final rules and to make elections for taxable years beginning after December 31, 2024, through the end of the transition period. For instance, if the Service publishes final regulations in December 2027,

[5] INTL-965-86, 56 Fed. Reg. 48457.

taxpayers should be able to make the election for prior years by attaching a statement to the 2028 return and should be afforded additional time to file any required amended returns.

### C. CFC-by-CFC Election

Final regulations should adopt an entity-level approach to the CFC Exemption Election. The Proposed Regulations require the election to be made consistently by all members of the taxpayer's group. We recommend instead allowing taxpayers to make the election on a CFC-by-CFC basis, consistent with the entity-level approach of Prop. Treas. Reg. §1.988-7. A blanket consistency rule is broader than necessary to protect the fisc. The risk that taxpayers would use the election selectively to achieve a tax benefit is very low, since outside the 2025 through 2027 transition years, taxpayers must make the election in the taxable year preceding the year in which it takes effect. Further, because exchange rate movements are unpredictable, an entity-specific election provides no meaningful opportunity to select CFCs based on their currency gain or loss position.

### D. Revocation

Taxpayers should be permitted to revoke the CFC Exemption Election without the Commissioner's consent after the election has remained in effect for 60 months. Unlike the current rate election ("CRE"), the ARE, and the section 988 mark-to-market election, the Proposed Regulations allow taxpayers to revoke the CFC Exemption Election only with the Commissioner's consent. Treas. Reg. §1.987-1(g)(3)(ii)(B), however, permits taxpayers to revoke those comparable elections without the Service's consent after they have remained in effect for 60 months. We see no reason to impose a more restrictive revocation rule on the CFC Exemption Election. Moreover, the existing rule, which generally prohibits taxpayers from making a new election within 60 months after revocation without obtaining consent, already prevents taxpayers from making and revoking the election to manipulate taxable income or loss. Accordingly, final regulations should provide a more permissive revocation rule for the CFC Exemption Election, consistent with revocation rules for other section 987 elections.

## II. Inbound Nonrecognition Transactions (Prop. Treas. Reg. §1.987-16)

### A. Scope of the Rule

As we urged in our comments on Notice 2026-17, final regulations should eliminate the inbound rule. If the Government believes some rule is needed, it should limit the rule to transactions undertaken with a principal purpose of importing untaxed currency basis. As drafted, the rule applies without regard to the taxpayer's purpose and will routinely reach ordinary commercial restructurings. Multinational groups regularly liquidate or merge dormant or winding-down foreign subsidiaries as part of legal entity rationalization programs in order to lower compliance and statutory filing costs. Left unchanged, the rule would oblige taxpayers to maintain section 987 records for every CFC with a section 987 QBU, which undercuts the central objectives of the Proposed Regulations (simplification and reduction of compliance burdens).

### B. Losses: Symmetry and Netting

If the Government retains the inbound rule, the rule in final regulations should operate symmetrically by taking net unrecognized section 987 loss into account on the same basis as net unrecognized section 987 gain. Those losses would have been recognized under the 2024 final regulations[6] had the taxpayer not made the election. A taxpayer that makes the CFC Exemption Election and later must restructure or liquidate a CFC for legitimate business reasons, such as for entity simplification, should not be placed in a worse position than a taxpayer that does not make the election and later restructures or liquidates a CFC for legitimate business reasons, including legal entity simplification.

Even if final regulations do not permit loss recognition, they should make clear that taxpayers determine gain recognized in an inbound nonrecognition transaction on a net basis after taking into account the losses of all QBUs owned by the transferor CFCs that are party to the transaction. In every case, losses of one inbounded QBU should offset gains of another, so that, at a minimum, taxpayers recognize only net foreign currency gain. To illustrate these netting mechanics, we recommend that the existing examples be supplemented with (i) an example in which a single CFC with several QBUs is inbounded and (ii) an example in which multiple CFCs, each with several QBUs, are inbounded in the same transaction. In each example, some QBUs should have unrecognized section 987 gain and others unrecognized section 987 loss, so that netting both within a single CFC and across CFCs is demonstrated.

### C. Determining Section 987 Asset Basis (Prop. Treas. Reg. §1.987-16(c))

#### *1. Equity and basis pool method*

We recommend final regulations allow taxpayers to determine section 987 asset basis using the equity and basis pool method. Neither prescribed method (the lookback method and the excess asset basis ("EAB") method) fully delivers on the Government's simplification objective. The lookback method still depends on tax-basis balance sheets through Steps 1 and 10 of Treas. Reg. §1.987-4(d). The EAB method, for its part, offers no way to separate from a CFC's total excess asset basis the portion attributable to unrecognized section 987 gain.

The existing regulatory framework already supports the use of the equity and basis pool method. Prop. Treas. Reg. §1.987-16(c)(2) references the simplified method of Treas. Reg. §1.987-10(e)(3)(iii), which in turn references Treas. Reg. §1.987-4(e)(2). Notice 2026-17 allows taxpayers to use the equity and basis pool method "in lieu of" the alternative calculation method of Treas. Reg. §1.987-4(e)(2)(iii). Read together, these provisions permit a taxpayer that has elected the equity and basis pool method to use that same method to determine QBU net value—and therefore section 987 asset basis—on an inbound nonrecognition transaction. The equity and basis pool method also produces a more precise result than the lookback method because it tracks each

[6] T.D. 10016.

contribution to and distribution from the QBU at the spot rate on the date of the transfer, rather than applying an average rate for the year.

Taxpayers should apply the equity and basis pool method over the six-year lookback period prescribed by Prop. Treas. Reg. §1.987-16(c)(2). Taxpayers would then treat the QBU as newly formed at the beginning of the lookback period and would establish an opening equity pool balance sheet equal to the net assets of the QBU on that date. This approach avoids the need to reconstruct the QBU's full transactional history back to inception and is consistent with the computational period the Government already adopted for the lookback methodology.

Treas. Reg. §1.987-1(g)(2)(ii) requires taxpayers that elect the equity and basis pool method under section 3 of Notice 2026-17 to apply that election consistently to all section 987 QBUs within its electing group—including QBUs owned by CFCs for which a CFC Exemption Election is in effect. The CFC Exemption Election relieves taxpayers of the obligation to compute section 987 gain or loss on an ongoing basis; it does not sever the QBU's connection to the electing group's method elections. Accordingly, when an inbound nonrecognition transaction requires a taxpayer to compute section 987 gain or loss with respect to an exempt CFC's QBU, the taxpayer should use the equity and basis pool method if that is the method that applies to all other QBUs in the group.

If the Service retains the lookback method as a fallback, we recommend that taxpayers be permitted to (i) use the equity pool balance, translated into the owner's functional currency at the year-end spot rate, as the opening owner functional currency net value ("OFCNV") for the first year of the lookback period and (ii) roll OFCNV forward for later years by taking into account only transfers to and from the QBU and the QBU's net income, without preparing a full tax-basis balance sheet for each year. This would achieve the Government's intended goal of simplification.

**2.** ***Netting under the lookback method***

We ask the Government to confirm that, under Prop. Treas. Reg. §1.987-16(c)(2), gains and losses for each year in the 72-month window are combined into a single net figure when determining section 987 asset basis. The Proposed Regulations use two formulations—"aggregate net amount of unrecognized section 987 gain" and "the sum of the transferor CFC's annual unrecognized section 987 gain or loss . . . for each pre-transaction taxable year." Neither formulation clearly indicates whether a loss year offsets a gain year. We believe they should. Suppose a QBU has $1,000 of unrecognized section 987 gain in Year 1 and $400 of unrecognized section 987 loss in Year 2. Its section 987 asset basis should be $600, not $1,000. The example in Prop. Treas. Reg. §1.987-16(f) does not resolve the question because it involves gains in both years. Ignoring loss years would tax more currency gain than the QBU actually accumulated over the 72 months.

Consistent with Part II.B, final regulations should also confirm that losses of one QBU offset gains of another QBU owned by the same transferor CFC, whether or not the taxpayer made a QBU grouping election. Final regulations should expand the examples to illustrate both netting across taxable years and netting across multiple QBUs.

### *3. EAB method in multi-tier structures*

Final regulations should provide a workable method for isolating the foreign currency component under the EAB method. The EAB method measures the total excess of asset basis over the amount described in Treas. Reg. §1.367(b)-3(g)(2)(i), but it does not identify how much of that excess results from exchange rate movements. Where a transferor CFC owns lower-tier CFCs and multiple QBUs with different functional currencies, the excess will inevitably reflect basis changes unrelated to currency. We request guidance on how to isolate the foreign currency component of the EAB in these structures, together with a realistic example in which the transferor CFC owns multiple QBUs and lower-tier entities.

### *4. Partial inbounding of a transferor CFC's section 987 QBUs*

Final regulations should ensure the inbound rule reaches only the QBUs whose assets enter the U.S. tax base. Guidance is needed for cases when only a portion of a transferor CFC's section 987 QBU assets is transferred in an inbound nonrecognition transaction. This can arise, for instance, in a section 368(a)(1)(D) transaction in which a CFC moves a single QBU's business into a U.S. corporation and keeps its remaining QBUs offshore.

Read literally, Prop. Treas. Reg. §§1.987-16(c)(2)(iii) and (d)(1) would include every QBU of the transferor CFC in the gain computation, including QBUs whose assets never are transferred from the CFC. That approach would require taxpayers to recognize gain attributable to QBUs whose assets remain with the transferor CFC and never enter the U.S. tax base. Such a result extends beyond the rule's stated purpose of preventing the importation of basis associated with transferred assets.

A QBU grouping election compounds the problem. A grouped QBU keeps a single set of pools for all of the QBUs in the group and is treated as one section 987 QBU, so the lookback would be based on the group's entire history and could trigger gain related to QBU assets for a QBU that remained with the transferor CFC.

We therefore recommend final regulations:

- for ungrouped QBUs, limit the lookback computation and gain recognition under Prop. Treas. Reg. §1.987-16 to the QBU or QBUs whose assets are actually transferred, excluding QBUs that remain with the transferor CFC;
- for grouped QBUs, apply the separation fraction defined in Treas. Reg. §1.987-1(h) and §1.987-4(f)(2) to allocate the grouped QBU's section 987 asset basis to the transferred member QBU or QBUs, with taxpayers permitted to compute the separation fraction using either the US GAAP net assets (assets less liabilities) or tax-basis net assets of each member QBU;

- ensure that any gain taken into account on a partial inbounding is credited against the section 987 asset basis that remains with the transferor CFC (or grouped QBU), so the same gain is not taxed again in a later transaction; and
- include an example illustrating both the ungrouped and grouped fact patterns.

**D. Manner of Recognition**

Final regulations should permit taxpayers to choose among the available methods for taking inbound gain into account rather than prescribing a single approach. The preamble describes three approaches for taking inbound gain into account: (i) immediate recognition of gain; (ii) a reduction in the acquiring corporation's basis in the acquired assets; and (iii) an adjustment to the unrecognized section 987 gain or loss pool. Because these approaches can produce very different results depending on the transaction, and no single approach is best in every case, we recommend that taxpayers be permitted to choose among them.

**E. De Minimis Rule**

We recommend conforming the de minimis rule of Prop. Treas. Reg. §1.987-16(e) more closely to the pre-election de minimis rule of Prop. Treas. Reg. §1.987-15(e)(2)(iii). In particular, final regulations should (1) raise the threshold to $50 million and be adjusted annually for inflation under a reasonable method; (2) apply the threshold at the QBU level rather than at the CFC level; (3) measure the amount by using the average of QBU net assets for the three years preceding the year of the inbound transaction; and (4) determine the amount by reference to the QBU's U.S. GAAP balance sheet reported on Schedule F of Form 8858.

The concern the rule addresses—importation of basis attributable to currency movements that escaped U.S. tax because of the election—relates to the assets of the section 987 QBU, not to the CFC as a whole. A CFC may hold substantial investments and assets that have nothing to do with its QBUs. Applying the threshold at the CFC level therefore inflates the measurement base with irrelevant items and can cause a taxpayer with a modest QBU inside a large CFC to fail the test even though the risk of basis importation is minimal.

**F. Source and Character of Inbound Gain**

Under final regulations, the source and character of inbound gain should be determined using the same framework that was used to compute that gain. Accordingly, if taxpayers compute inbound gain using the equity and basis pool method, as we recommend, final regulations should provide that the source and character of that gain should be determined under the general rule of Treas. Reg. §1.987-6(b)(2)(i)(A) by reference to the assets of the section 987 QBU rather than all of the assets of the transferor CFC.

A QBU-level method, such as the equity and basis pool method or the lookback method, measures inbound gain by reference to a particular QBU's history, and the sourcing rule should follow suit. Sourcing a QBU-specific gain by reference to the CFC's entire asset base is internally inconsistent

and would force taxpayers to build and maintain a separate CFC-level asset model solely for sourcing. If the QBU no longer exists when the inbound transaction occurs, taxpayers should instead reference the QBU's asset mix on the date the QBU is terminated, as contemplated by Prop. Treas. Reg. §1.987-16(d)(1).

By contrast, the computation for the EAB method is done at the CFC level under Treas. Reg. §1.367(b)-3. In that case, measuring source by reference to CFC-level assets is defensible. Final regulations therefore should reserve CFC-level sourcing for taxpayers that compute inbound gain using the EAB method. We further recommend that taxpayers be permitted to elect the modified gross income method of Treas. Reg. §1.861-9(j) in lieu of the asset method. Such an approach would avoid duplicative work for taxpayers already using the modified gross income method to apportion interest expense.

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TEI appreciates the opportunity to comment on the Proposed Regulations. TEI's comments were prepared under the aegis of the Tax Reform Task Force, whose Chair is Andreia Verissimo. Should you have any questions regarding TEI's comments, please do not hesitate to contact Andreia Verissimo at alveriss@amazon.com or TEI Tax Counsel Kelly Madigan at kmadigan@tei.org.

Respectfully submitted,

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