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Legal Update

US IRS Releases Final Regulations Addressing IBOR Transition

As the IBOR transition continues, business teams have frequently heard from their tax departments and advisors that amending existing contracts to add IBOR replacement mechanics or replacing an IBOR rate with a new rate can have US tax consequences. The last major guidance from the Internal Revenue Service (the "**IRS**") on this subject came on October 8, 2019 (back when taking a day to work from home might have been presumed to be a light day) in the form of proposed regulations under section 1001 of the Code (the "**Proposed Regulations**").[1] The Proposed Regulations were not without imperfection. On December 30, 2021, the IRS published final regulations for the IBOR transition (the "**Final Regulations**").[2] Most importantly, as discussed in more detail below, the final version no longer contains the requirement in the Proposed Regulations that the fair market value of the instrument after the replacement or addition is substantially equivalent to the fair market value of the instrument before the replacement or addition, replacing that standard with a list of modifications that fall outside the relief provided by the Final Regulations.

This Legal Update begins with background on the principle US federal income tax concern with IBOR-related amendments to existing contracts and an overview of previous IRS guidance aimed at addressing the concern. We then discuss the types of modifications that can fit within the Final Regulations, the relief provided for modifications that do fit and a few questions left open by the IRS.

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I. Background

A. THE US TAX CONCERN

As a refresher, for debt instruments and other financial instruments, a main US federal income tax concern surrounding the replacement of an IBOR rate on an outstanding financial instrument is whether the replacement (or addition to include a fallback mechanic) results in the deemed exchange of the instrument for a deemed new instrument that differs materially in kind or in extent. This deemed exchange could result in current gain or loss recognition to a party to the instrument.[3]

In the debt context, a deemed exchange only occurs if the replacement or addition is a "significant modification."[4] An alteration of a legal right or obligation that occurs pursuant to the terms of a debt instrument is not a modification. In addition, issuer and holder options that can be unilaterally exercised are not modifications (provided, in the case of a holder option, that the exercise does not result in a deferral of, or reduction in, any scheduled payment of principal or interest). An option is unilateral only if, under the debt's terms or applicable law (i) there does not exist, at the time of exercise or as a result of exercise, a right in the other party to alter or terminate the debt instrument or to put the instrument to a person related (using a more than 50 percent standard) to the issuer, (ii) the exercise of the option does not require the consent of the other party, a related party or a court, and (iii) the exercise of the option does not require consideration, unless on the debt instrument's issue date, the consideration is a *de minimis* amount, a specified amount or based on a formula that uses objective financial information.

There are multiple, specifically enumerated tests for determining whether a modification is "significant." For example, the test for measuring whether there has been a change in yield generally asks whether the annual yield on the "new" instrument differs from the annual yield of the "old" instrument by no more than the greater of 0.25 percent or 5 percent of the annual yield of the old instrument.

There is a similar concern for non-debt instruments, but there are no clearly defined tax rules for when a modification to a non-debt instrument results in an instrument that differs materially in kind or in extent (and thus whether deemed exchange occurs upon the modification of such instruments).

B. EXISTING GUIDANCE

Until the Final Regulations came along, taxpayers had only the Proposed Regulations and Rev. Proc. 2020-44.

Under the Proposed Regulations, replacement of an IBOR (or the addition to an instrument of a fallback mechanic to replace an IBOR) generally did not result in a deemed exchange for US federal income tax purposes if: (i) the fallback rate was a qualifying rate (which was broadly defined), and (ii) the fair market value of the instrument after the replacement or addition was substantially equivalent to the fair market value of the instrument before the replacement or addition.[5] The fair market value requirement caused the market some heartburn for a variety of reasons. The Proposed Regulations included two safe harbors, neither of which appeared to provide an ideal degree of certainty. As discussed in more detail below, the Final Regulations do away with the fair market value requirement in favor of the creation of a new category of modifications that are not covered by the Final Regulations and must be tested under prior law (including, for debt instruments, Treas. Reg. section 1.1001-3).

Under Rev. Proc. 2020-44, if an existing instrument was amended to include certain enumerated fallback mechanics published by the ARRC or ISDA, then that amendment was blessed as not resulting in a deemed exchange.[6] The revenue procedure permits only limited deviations from the ARRC and ISDA fallback mechanics and only applies to the amendment of existing contracts (rather than using the fallback mechanics of a new instrument). As a result, the revenue procedure fell short of the ideal level of comfort. The revenue procedure was set to expire on December 31, 2022. As discussed below, the Final Regulations make the relief provided in the revenue procedure permanent.

II. The Final Regulations

The Final Regulations follow a simple structure that blesses all modifications to any instruments that fit the definition of "**covered modifications**," other than modifications that fit the definition of "**noncovered modifications**." The regulations provide the effects of treating a modification as a covered modification both in general and for certain specific types of situations, instruments and taxpayers, including (i) integrated and hedging transactions, (ii) investment trusts, (iii) REMICs, (iv) fast-pay stock (as defined in Treas. Reg. section 1.7701(l)-3(b)(2)(ii)), and (v) FATCA. Some items, including the US tax character and source of one-time payments made in connection with replacing an IBOR, new potential noncovered modifications, and the mechanics of picking a rate in determining the interest expense of a foreign corporation, each remain subject to future guidance.

A. WHAT'S COVERED?

(1) Covered Modifications

The definition of a covered modification is simple on its face, but requires an untangling of definitions to apply, as highlighted below. A modification to the terms of a contact, including any debt instrument, derivative contract, stock, insurance contract, or lease agreement, is a covered modification if the terms of the contract are modified to:

i. replace an operative rate that references a "**discontinued IBOR**" with a "**qualified rate**," to add an obligation for one party to make a "**qualified one-time payment**" (if any), and to make "**associated modifications**" (if any),
ii. include a "**qualified rate**" as a fallback to an operative rate that references a "**discontinued IBOR**" and to make "**associated modifications**" (if any), or
iii. replace a fallback rate that references a "**discontinued IBOR**" with a "**qualified rate**" and to make "**associated modifications**" (if any).[7]

A modification of the terms of a contract includes any modification of the terms of the contract, regardless of the form of the modification (e.g., an amendment to an existing contract or exchange of one contract for another).

In addition, the Final Regulations extend Rev. Proc. 2020-44, stating that any modifications described in section 4.02 of the Revenue Procedure or any guidance that supplements the list in that section is treated as a covered modification.

In terms of when a modification must be tested under these rules, the Final Regulations clarify that if an existing contract is modified to adopt IBOR fallbacks, the testing for whether there has been a taxable exchange excepted by the regulations must be done both when the fallback mechanics are adopted and when the fallback rate is implemented, if ever. If the actual fallback is not a covered modification under the Final Regulations, taxpayers are left with standards under prior law (e.g., in the case of a debt instrument, the tests under Treas. Reg. 1.1001-3 for determining whether a modification is a "significant modification").

Discontinued IBOR. The regulations only apply to discontinued IBORs. This is a deviation from the Proposed Regulations, which applied to any IBOR rate. An IBOR rate is a discontinued IBOR for purposes of the covered contract determination where (i) the administrator of the interbank offered rate announces that the administrator has ceased or will cease to provide the interbank offered rate permanently or indefinitely, and no successor administrator is expected as of the time of the announcement to continue to provide the interbank offered rate, or (ii) certain governmental and regulatory officials for the interbank offered rate announce that the administrator of the interbank offered rate has ceased or will cease to provide the interbank offered rate permanently or indefinitely, and no successor administrator is expected as of the time of the announcement to continue to provide the interbank offered rate.[8] Status as a discontinued IBOR is not permanent, ending one year after the date on which the administrator of the rate ceases to provide the rate.

The preamble to the regulations provides a helpful example: the ICE Benchmark Administration announced it would cease to publish 3-month sterling LIBOR on March 5, 2021. On that date, 3-month sterling LIBOR became a discontinued IBOR. Status as such generally ends one year after the IBA ceased to publish the rate, December 31, 2021.[9] However, for some tenors of sterling LIBOR, the Financial Conduct Authority announced that it will compel the ICE Benchmark association to continue to publish the rates using a synthetic methodology. The preamble to the Final Regulations states that the Treasury Department and IRS view the synthetic rates as a continuation of the rates for purposes of the discontinued IBOR definition. Thus, IBOR rates produced using a synthetic methodology after the actual rates cease to be published lose discontinued IBOR status only one-year after the synthetic rates cease to be published.

Finally, the regulations are clear that the relief provided by regulations applies only to replacing or providing fallback mechanics for an IBOR rate. Thus, for example, if an instrument uses a SOFR-based rate, the Final Regulations are inapplicable to amending that instrument in order to replace that rate or providing fallbacks for that rate.

Qualified rate. Similar to the Proposed Regulations, the Final Regulations provide a broad scope for what constitutes a qualified rate, including any rate that can reasonably be expected to measure contemporaneous variations in the cost of newly borrowed funds in the currency in which a debt instrument is denominated within the meaning of Treas. Reg. section 1.1275-5(b).[10] This broad definition picks up most fan favorites, including SOFR, the Sterling Overnight Index Average, the Tokyo Overnight Average Rate, and others. For example, the Bloomberg Short-Term Bank Yield Index (BSBY), which is a rate generally calculated by reference to unsecured bank funding rates, fits this definition, as it can be reasonably expected to measure contemporaneous variations in the cost of newly borrowed funds. In addition, an alternative, substitute, or successor rate selected, endorsed, or recommended by the central bank, reserve bank, monetary authority, or similar institution (including any committee or working group thereof) as a replacement for a discontinued IBOR or its local currency equivalent in that jurisdiction is a qualified rate. Similarly, a rate selected, endorsed, or recommended by the ARRC as a replacement for USD LIBOR, provided that the Federal Reserve Bank of New York is an ex officio member of the ARRC at the time of the selection, endorsement, or recommendation is a qualified rate. Further, any rate that is determined by adding or subtracting a specified number of basis points to or from any rate mentioned above, or by multiplying any rate mentioned above by a specified number, is a qualified rate. Finally, the Treasury Department and IRS left themselves flexibility to add to the list of qualified rates in future guidance.

The Proposed Regulations were not entirely clear on how the modification of an instrument to include a fallback waterfall should be tested in terms of whether the rate is a qualified rate. Many transactions implemented the fallback mechanics recommended by the ARRC with some deviations, and the ARRC recommendations generally provide for a waterfall of fallback rates. The Final Regulations contain rules addressing this question, which provide that each rate in the waterfall must generally be a qualified rate.[11] The regulations provide several examples demonstrating the application of these rules. If a fallback rate is indeterminable as of the date the modification to include the fallback waterfall is adopted (e.g., if the final rate in the waterfall is left at the discretion of a party or a calculation agent), that rate is not a qualified rate, and accordingly, the waterfall of rates is not a qualified rate taken together. However, if there is a remote likelihood that a later rate in a fallback waterfall will replace an IBOR, the later rate can be disregarded in testing the full waterfall as a qualified rate. We observe that this standard will require determining, when the fallback waterfall is adopted, whether any later step of the waterfall that is otherwise not a qualified rate at adoption has a remote likelihood of being implemented.

Finally, a rate is only a qualified rate if it is based in the same currency as the rate in the existing contract.

Qualified one-time payment. A qualified one-time payment is a single cash payment that is **intended** to compensate the other party or parties for all or part of the basis difference between the discontinued IBOR and the interest rate benchmark to which the qualified rate refers.[12] The preamble to the regulations states that this subjective determination is meant to serve as a cap on what constitutes a qualified one-time payment.

Associated modifications. Associated modifications include the modification of any technical, administrative, or operational terms of a contract that is reasonably necessary to adopt or to implement an IBOR replacement modification. In addition, these include any incidental cash payment intended to compensate a counterparty for small valuation differences resulting from a modification to the administrative terms of a contract.[13] The preamble to the regulations provides the example of a change to a contract's interest period definition or a change to the timing and frequency of determining rates (e.g., delaying payment dates on an instrument for two days to calculate a SOFR-based rate (which are backward looking) as opposed to an IBOR rate (which are forward looking)).

(2) Noncovered Modifications

If it sounds like it is now pretty easy to be a covered modification, that is generally true. As discussed above, the only requirement seems to be that the replacement rate is a qualified rate. However, a sticking point resides in the list of noncovered modifications. An IBOR replacement modification (or, importantly, a portion of a modification) to a contract is a noncovered modification where the terms of the contract are modified to change the amount or timing of contractual cash flows and that change is:

i. intended to induce one or more parties to perform any act necessary to consent to the modification to the contract,
ii. intended to compensate one or more parties for a modification to the contract not related to IBOR replacement,
iii. either a concession granted to a party to the contract because that party is experiencing financial difficulty or a concession secured by a party to the contract to account for the credit deterioration of another party to the contract, or
iv. intended to compensate one or more parties for a change in rights or obligations that are not derived from the contract being modified.[14]

In addition, the Treasury Department and IRS left themselves flexibility to add additional noncovered modifications through subsequent guidance. The Final Regulations provide a number of examples demonstrating these rules.

We observe that three of the four noncovered modifications rely on an intent-based standard, which could make them administratively difficult to apply. Taxpayers applied the fair market standard of the

Proposed Regulations by including relatively simple provisions into the adoption of IBOR replacement mechanics stating that the parties agreed that the instrument subject to a contract had a substantially equivalent fair market value before and after the adoption of the fallbacks. Now, tax departments may need to draft guidelines to streamline the amendment of contracts in bulk to ensure that no noncovered modifications are being made in any particular contract.

B. TAX TREATMENT

To the extent a modification (or portion of a modification) made in connection with IBOR transition is a covered modification, the modification is not treated as a deemed exchange of the contract for a deemed new contract that differs materially in kind or extent within the meaning of Treas. Reg. section 1.1001-1(a). If a noncovered modification occurs contemporaneous with a covered modification, Treas. Reg. sections 1.1001-1(a) or 1.1001-3, as appropriate, applies to determine whether the noncovered modification results in a deemed exchange. In making this determination for the noncovered modification, the covered modification is ignored as though it were a pre-existing term of the contract being analyzed.

The Final Regulations provide rules for determining the effect of a covered modification on an integrated transaction under Treas. Reg. section 1.1275-6, a qualified hedging transaction under Treas. Reg. 1.988-5(a), and a qualified hedging transaction under Treas. Reg. 1.148-4(h).[15] In each case, in general, a covered modification that is a part of such integrated or hedging transactions is not treated as legging out of or terminating the transaction, as long as the integrated or hedging transaction satisfies the requirements of the applicable regulations within 90 days of the first covered modification of such transaction. The Final Regulations do not apply to "super integrated" hedging transactions of tax-advantaged bonds described in Treas. Reg. section 1.148-4(h)(4). In addition, the regulations provide that a covered modification of the discount rate on one leg of a hedging transaction under Treas. Reg. section 1.446-4 is not treated as a disposition or termination (within the meaning of Treas. Reg. section 1.446-4(e)(6)) of either leg of the transaction.

The Final Regulations also provide some coordinating and clarifying rules to address potential concerns or traps relating to certain specific areas of the Code.

Investment trusts. An investment trust is not classified as a trust if there is a power under the trust agreement to vary the investment of the certificate holders. The Final Regulations provide that neither a covered modification of a contract held by an investment trust nor a covered modification of an ownership interest in the investment trust are treated as a power to vary the investment of the certificate holder for purposes of Treas. Reg. section 301.7701-4(c)(1).[16]

REMICs. The replacement of an IBOR rate presents three federal tax considerations for REMICs. First, among other requirements for an entity to be qualified as a REMIC, the regular interests of the REMIC must be issued on the startup day with fixed terms. Absent IRS guidance that a replacement of an IBOR is not a significant modification, if a REMIC regular interest has mechanics to change its reference rate from an IBOR to something else, there is a risk the regular interest could be viewed as being issued without fixed terms. Second, also among the other requirements for an entity to be qualified as a REMIC, REMIC regular interests are only permitted to have certain specified contingencies in respect of principal. Fallback language specifying a fallback rate could potentially cause a regular interest to fail this requirement despite the fact that the contingency is to switch to an economic equivalent of an IBOR. Finally, there is a risk that expenses incurred to alter a regular interest could be viewed as causing the payments of principal and interest on the regular interest to be subject to a contingency, which could disqualify the interest as a regular interest.

The Final Regulations generally adopt the approach of the Proposed Regulations with respect to the effect of a covered modification on REMICs, providing guidance on each of these considerations.[17] First, the Final Regulations provide that a change in the reference rate for a regular interest after the REMIC startup day that is a covered modification is disregarded in determining whether the regular interest has fixed terms on the REMIC startup day. In addition, the regulations state that an interest in a REMIC does not fail to qualify as a regular interest solely because it is subject to a contingency whereby a rate that references a discontinued IBOR and is a variable rate permitted by the REMIC rules may change to a fixed or different variable rate also permitted under the REMIC rules in anticipation of an IBOR becoming unavailable or unreliable. Finally, the Final Regulations provide that an interest in a REMIC does not fail to qualify as a regular interest solely because it is subject to a contingency whereby the amount of payments of principal or interest with respect to the REMIC interest are reduced by reasonable costs incurred to replace a discontinued IBOR. Relatedly, the regulations provide that payments of such expenses by a third party will not be considered to be a contribution to the REMIC under the REMIC rules. On this final point, the preamble to the regulations states that the Treasury Department and IRS generally view the costs of obtaining tax opinions and rating agency confirmations required by a REMIC's governing documents as reasonable in nature.

VRDI rules. Under the VRDI regulations, when an instrument pays interest at a single qualified floating rate (a "**QFR**"), stated interest is considered to be qualified stated interest, not resulting in OID. However, if an instrument provides for interest at two or more QFRs, the OID determination becomes more complicated. The applicable regulations require that each QFR be converted to a fixed rate substitute that equals the value of the QFR on the testing date. In a case where one fixed rate substitute exceeds the other by more than a *de minimis* amount, the excess will be treated as OID. If two QFRs can reasonably be expected to have approximately the same value throughout the term of the debt instrument, the instrument is treated as having one QFR.

The academic concern was that a VRDI linked to an IBOR rate with another QFR as a fallback might be viewed as having two QFRs for purposes of the rules discussed above. Generally adopting the approach taken by the Proposed Regulations, the Final Regulations alleviate this concern, stating that where a VRDI provides for both a discontinued IBOR rate that is a QFR and a methodology to change the discontinued IBOR to a different rate in anticipation of the IBOR becoming unavailable or unreliable, the two rates are treated as a single QFR for purposes of the VRDI regulations (and therefore the OID analysis above is not necessary).[18] The regulations also provide that the possibility that an discontinued IBOR rate will become unavailable is treated as a remote contingency for purposes of the OID regulations and that the fact that a discontinued IBOR rate becomes unavailable or unreliable is not treated as a change in circumstances under the OID regulations (which could both otherwise potentially cause complications).

Fast-pay stock. The issuance of fast-pay stock is a listed transaction, described in Treas. Reg. 1.7701(l)-3(b)(1). Fast-pay stock is generally stock structured so that dividends paid by the corporation with respect to the stock are economically equivalent to a return of a holder's investment, determined on a facts and circumstances basis. Stock is generally examined under these rules when it is issued and when there is a significant modification in the terms of the stock or related agreement or a significant change in the related facts and circumstances. In a new addition, the Final Regulations provide that a covered modification of stock is not a significant modification in the terms of the stock or related agreements or a significant change in the relevant facts and circumstances.[19] If a noncovered modification is made as part of the same plan that includes the covered modification, and the noncovered modification is otherwise a significant modification or change in facts and circumstances described in the fast-pay stock regulations, then the determination of whether the stock is fast-pay stock is made taking into account all the facts and circumstances, including the covered and noncovered modification.

FATCA. There was concern before the Proposed Regulations that the replacement of an IBOR could affect the grandfather status of instruments under the Foreign Account Tax Compliance Act ("FATCA"). The Final Regulations (similar to the proposed version) provide that a covered modification is not a material modification for FATCA purposes.[20]

C. THE OPEN ITEMS

The Treasury Department and IRS reserved on a few items, to be the subject of future guidance. First, as discussed above, the Treasury Department and IRS left themselves room to add additional qualified rates and noncovered modifications.

Second, the Final Regulations do not provide additional guidance on the US tax character and source of qualified one-time payments. The Proposed Regulations provided that the character and source of a one-time payment made by a payor is the same as the source and character of a payment under the contract by that payor (e.g., a one-time payment by a lessee on a lease is generally rent and sourced accordingly).[21] The Proposed Regulations were not clear on how this rule applies to certain financial contracts and the timing of the same. The preamble to the Regulations states that the Treasury Department and IRS will publish guidance on this point in the future, and that until then, taxpayers may continue to rely on the Proposed Regulations.

Finally, the Final Regulations do not expand on the amendments made by the Proposed Regulations to the interest expense allocation regulations under section 882. Under Treas. Reg. section 1.882-5, a foreign corporation can determine its interest expense allocable under section 882(c) to income that is effectively connected with the conduct of a trade or business in the United States, which can result in the foreign corporation having US-connected liabilities that exceed US-booked liabilities ("**excess US-connected liabilities**"). Where this occurs, the foreign corporation can use as an interest rate on the US-connected liabilities the foreign corporation's average US-dollar borrowing cost on all US-dollar liabilities other than US-booked liabilities. In the alternative, the if the foreign corporation is a bank, it can use a published average of 30-day LIBOR for the year in determining its average US-dollar borrowing cost. The Proposed Regulations permitted a foreign corporation that is a bank to use yearly average SOFR instead of 30-day LIBOR. Comments to the Proposed Regulations pointed out that yearly average SOFR might not be an economic equivalent to the average 30-day LIBOR for a year. The preamble to the Final Regulations states that taxpayers may continue to rely on the Proposed Regulations on this point until further guidance is published, which the IRS anticipates issuing before 30-day USD LIBOR is discontinued in 2023.

D. EFFECTIVE DATES

The Final Regulations become effective 60 days after they are published in the Federal Register. A taxpayer may rely on the Final Regulations before such date, provided that the taxpayer and parties related to the taxpayer apply the regulations consistently. For IBOR replacement amendments entered into after the Proposed Regulations were issued but before the date the Final Regulations were issued, taxpayers are permitted to rely on the Proposed Regulations.

III. Looking Ahead

All told, the Final Regulations provide some new mechanics that seem helpful as taxpayers look to continue to amend existing contracts to implement IBOR replacement technology or actually replace an IBOR rate. As discussed, the ill-favored fair market value requirement contained in the Proposed

Regulations is out of the picture. In its place, the Final Regulations include the new concept of noncovered modifications, which taxpayers must address in their global IBOR replacement efforts. At first blush, the new standards may require analysis of each transaction adopting IBOR replacement technology or replacing an IBOR rate on a transaction-by-transaction basis because the Final Regulations include intent-based triggers.

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Endnotes

[1] All sections references are to the Internal Revenue Code of 1986, as amended (the "**Code**") and the Treasury regulations thereunder.

[2] The Final Regulations are available at https://public-inspection.federalregister.gov/2021-28452.pdf. The IRS released Rev. Proc. 2020-44 since the issuance of the Proposed Regulations, but that guidance only applied to limited and specific circumstances (as discussed in more detail below).

[3] For a discussion of the potential recognition of loss under the wash sale rules, see Thomas A. Humphreys and Brennan W. Young, "The More Things Change, the More They Stay the Same? Losses in a Deemed Exchange and the Wash Sale Rules," Journal of Taxation of Financial Instruments, Volume 18 Issue 3, 2021.

[4] Treas. Reg. section 1.1001-3.

[5] For a more detailed discussion of the Proposed Regulations, see our Legal Update, available at https://www.mayerbrown.com/en/perspectives-events/publications/2019/10/the-worlds-most-important-number-the-irs-addresses-the-replacement-of-libor.

[6] For a more detailed discussion of Rev. Proc. 2020-44, see our Legal Update, available at https://www.mayerbrown.com/en/perspectives-events/publications/2020/10/limited-us-tax-guidance-for-adding-arrc-and-isda-fallbacks.

[7] Treas. Reg. section 1.1001-6(h)(1).

[8] Treas. Reg. 1.1001-6(h)(4). These include the regulatory supervisor for the administrator of the interbank offered rate, the central bank for the currency of the interbank offered rate, an insolvency official with jurisdiction over the administrator for the interbank offered rate, a resolution authority with jurisdiction over the administrator for the interbank offered rate, a court, or an entity with similar insolvency or resolution authority over the administrator.

[9] See ICE Benchmark Administration, ICE LIBOR Feedback Statement on Consultation on Potential Cessation (March 5, 2021), available at https://www.theice.com/publicdocs/ICE_LIBOR_feedback_statement_on_consultation_on_potential_cessation.pdf.

[10] Treas. Reg. section 1.1001-6(h)(3).

[11] Treas. Reg. section 1.1001-6(h)(3)(iii).

[12] Treas. Reg. section 1.1001-6(h)(6).

[13] Treas. Reg. section 1.1001-6(h)(5).

[14] Here, if each contract in a given portfolio of contracts has the same parties, those parties modify more than one contract in the portfolio (each such contract is a modified portfolio contract), and those modifications provide for a single, aggregate qualified one-time payment with respect to all modified portfolio contracts, then the portion of the qualified one-time payment allocable to any one modified portfolio contract is treated as not intended to compensate for a change in rights or obligations derived from any other modified portfolio contract. Treas. Reg. section 1.1001-6(j).

[15] Treas. Reg. section 1.1001-6(c).

[16] Treas. Reg. section 1.1001-6(f).

[17] Treas. Reg. 1.860G-1(e).

[18] *See* Treas. Reg. section 1.1275-2(m).

[19] Treas. Reg. section 1.1001-6(f).

[20] Treas. Reg. section 1.1001-6(d).

[21] Prop. Treas. Reg. section 1.1001-6(d).