



# TaxNewsFlash

## United States

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### Proposed regulations: Removal of section 385 “documentation regulations”

The U.S. Treasury Department and IRS today released for publication in the Federal Register proposed regulations (REG-130244-17) that would remove from the final regulations under section 385, the documentation requirements that ordinarily must be satisfied in order for certain related-party interests in a corporation to be treated as indebtedness for federal tax purposes—referred to as the “documentation regulations.” As such, the proposed regulations would affect corporations that issue indebtedness to related corporations or partnerships.

The [proposed regulations](#) [PDF 256 KB] (7 pages) also provide conforming amendments to other final regulations to reflect the proposed removal of the documentation requirements. Comments and requests for a public hearing must be received by 90 days after the publication of these proposed regulations in the Federal Register (scheduled for Monday, September 24, 2018).

The purpose of this report is to provide text of the proposed regulations.

#### Background

Final regulations under section 385 were promulgated in October 2016. In general, as part of the final regulations, the “documentation regulations” (that is, certain portions of the regulations relating to the documentation necessary to determine whether an interest in a corporation is treated as stock or indebtedness) were to apply to interests issued, or deemed issued, on or after the date the proposed regulations were finalized. Read [TaxNewsFlash](#)

An executive order in April 2017 directed the U.S. Treasury to examine the then-recent tax regulations to determine whether any of the regulatory projects: (1) imposed an undue financial burden on U.S. taxpayers; (2) added undue complexity to the federal tax laws; or (3) exceeded the statutory authority of the IRS. According to

the executive order, Treasury was to take “appropriate steps” to delay or suspend the effective date of the identified regulations, and to modify or rescind the regulations, through notice and comment rulemaking.

The IRS and Treasury Department subsequently identified in Notice 2017-38 the documentation regulations under section 385 as one of eight tax regulations as either imposing an undue financial burden on taxpayers, or adding excessive complexity to the tax system. Read [TaxNewsFlash](#)

In July 2017, the IRS released Notice 2017-36 that delayed the application of the “documentation regulations” under Reg. section 1.385-2 by one year (so that at that time, the documentation regulations would apply only to interests issued or deemed issued on or after January 1, 2019). Notice 2017-36 also stated that the IRS and Treasury Department intended to amend the “documentation regulations.” Read [TaxNewsFlash](#)

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