April 26, 2026

Internal Revenue Service
CC:PA:01:PR (Notice 2026-17)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: National Foreign Trade Council Comments on Section 987 Notice 2026-17

The National Foreign Trade Council (the "NFTC") is writing to provide comments on Notice 2026-17, "Modifications to Rules for Computing Taxable Income or Loss and Foreign Currency Gain or Loss Under Section 987" (the "Notice"), released by the Department of the Treasury ("Treasury") and the Internal Revenue Service ("IRS") on February 25, 2026.

The NFTC, organized in 1914, is an association of U.S. business enterprises engaged in all aspects of international trade and investment. Our membership covers the full spectrum of industrial, commercial, financial, and service activities. Our members support establishing and maintaining international tax norms that provide certainty to enterprises conducting cross-border operations.

General Comments

The NFTC recognizes the efforts of Treasury and the IRS in providing additional simplification to the section 987 rules. As we previously commented, the Final Regulations under section 987 contained in *T.D. 10016* "Taxable Income or Loss and Currency Gain or Loss With Respect to a Qualified Business Unit" ("Final Regulations"), issued in December 2024, are overly complex and require a multi-step calculation process for businesses to track historical exchange rates, currency pools, and layering rules. While we commend the greater clarity and flexibility provided in the Final Regulations, further simplification of these rules is greatly appreciated.

The comments below provide requests for additional simplification, the need for guidance to provide more clarity and certainty to taxpayers, as the 2025 filing season has already commenced, and for the provision of rules to ensure a smooth transition for taxpayers that early-adopted the Final Regulations.

Specific Comments

I. CFC Election

The Notice announces Treasury's intent to provide a CFC election to opt out of Section 987(3), with a stated commitment to provide taxpayers "sufficient time" to make the election for 2025 on an originally filed return. Although Section 6 of the Notice provides that taxpayers may rely on Section 3 and 4, it does not allow taxpayers to rely on Section 5, which describes this election. This creates a critical timing problem: taxpayers cannot make an informed election decision without reliance-eligible guidance, and many taxpayers file before the extended deadline on October 15, 2026. Any changes to tested income would cascade throughout international filings, potentially changing thousands of data points across taxpayers' federal returns. Thus, without an interim notice providing such reliance, there will be

inadequate time for taxpayers to analyze the election's impact and integrate the decision into orderly tax return preparation processes. Otherwise, taxpayers would need to defer the CFC election to 2026, or prepare two versions of their Federal and State tax returns, or file as if the guidance will be released prior to filing and, if not, then file an amended return to correct for this item. None of these options is ideal, and each requires a significant compliance burden.

Therefore, we request that Treasury issue proposed regulations or other guidance as soon as practicable to explicitly permit taxpayer reliance, allowing taxpayers to make the CFC election for the 2025 taxable year. We further request that the guidance provide selection requirements and mechanics. In addition, guidance should clarify that there are no penalties for taxpayers who file early and have prepared their return, acting in good faith that the guidance would be released. Alternatively, we ask that the guidance provide a simplified procedure for taxpayers who have already filed their 2025 federal returns to make the CFC election retroactively.

A. Transition Rule (Section 5.04)

Under Section 5.04, unrecognized section 987 gain or loss arising before the taxable year of the CFC election is recognized pro-rata over 120 months beginning with the first month of the election year. We request explicit confirmation that this transition rule does not apply to taxpayers who have made the Annual Recognition Election ("ARE"), as such taxpayers would have no unrecognized gains or losses at the time of the CFC election. We ask that the forthcoming regulations clearly state that this rule applies only to taxpayers who adopt the CFC election without also having an ARE in effect.

In addition, the requirement that gain or loss must be recognized in respect of 987 QBUs of CFCs in order to access the rule not requiring CFCs to calculate 987(3) gain or loss should be made elective. If 987(3) should not apply to CFCs as a statutory matter, then there is no reason to not apply 987(3) prospectively, but require a retroactive or transition application requiring recognition of gain or loss. Moreover, the final regulations provided taxpayers with an election whether or not to recognize pretransition gain or loss, while the rule for 987 QBUs of CFCs requires a mandatory gain/loss recognition.

Similarly, additional guidance should be provided, as soon as practicable, exempting 987 QBUs of CFCs from transition reporting (unless a taxpayer elects to recognize gain or loss of 987 QBUs of CFCs). The Notice is clear that compliance will not be required for 987 QBUs of CFCs, absent an inbound liquidation, once the rules described in the Notice are promulgated. There is accordingly no reason to demand transition reporting (or any reporting, for that matter) absent a recognition event, and to require otherwise imposes a burden on taxpayers with no corresponding impact on tax due. Reporting can, of course, still be required when a triggering event ultimately comes to pass.

B. Filing

It would be helpful if Treasury could provide details on the method and mechanics of making the elections, including whether a new form will be issued by the IRS. As Treasury works to develop these elections, we ask that Treasury permit a statement to be attached to the return or to the existing form for other elections until the regulations are finalized.

II. Section 987 Inbounding Rules

Under Section 5.05 in the Notice, in the case of an inbound asset reorganization or liquidation described in §1.367(b)-3(a) of a CFC subject to the CFC election, rules would require recognition of foreign currency gain (but not loss) that has not been recognized under section 987(3) due to the CFC election.

Treasury describes multiple proxies to compute this gain based on the transferor CFC's "section 987 basis increase" and separately outlines three mechanisms for how that amount may be taken into account.

It is unclear how any of the three proposed options would accurately capture specific basis increases associated with section 987 gains (see our comments below regarding each method) and, specifically, how these could be separately tracked from other basis increases. Treasury has addressed the concern with inbounding excess basis through other regulations, such as the 2016 loss importation rules.[1]

Based on this, we request that the inbound gain recognition rules be removed from any proposed regulations.

Alternatively, we request that the inbound gain recognition rules be replaced with a more targeted anti-avoidance rule or principal purpose test ("PPT"). The current rule is overly broad and captures non-tax-motivated business restructurings. This treatment is inconsistent with the broader policy rationale of the CFC election, which is to simplify compliance and reduce burden. Finally, if the rule or version of the rule is retained, we request that it accord symmetrical treatment to foreign exchange losses and gains. We fail to understand the policy rationale to prevent losses from being recognized on the same transactions if such losses would have been permitted (subject to certain limitations) had the CFC election not been made. We understand the Government's concern that basis differences could result in the importation of "excess" basis to the United States where taxpayers engage in certain transactions identified by the IRS as aimed at creating such excess basis. However, outside of these transactions (which can be addressed by a principal purpose test or anti-avoidance rule), it is uncertain if removing CFCs from the scope of section 987(3) will result in excess asset basis becoming more prevalent, given the volatility and unpredictability of foreign exchange markets.

10 Year Look-back

If the inbounding rule is preserved, we request optionality to choose the preferred method. We further request clarification on the 10-year lookback method under §1.987-10(e)(3). As drafted, the rule could potentially be applied based on financial statement balance sheets instead of tax-basis balance sheets. If taxpayers use financial statement balance sheets for this computation, Treasury should clarify the treatment of accounts that do not exist for tax purposes or are not attributable to the section 987 QBU (such as disregarded intercompany balances and investment in subsidiaries), as well as items that do not have tax basis or liabilities that are not treated as tax liabilities under section 461. Without clear guidance, taxpayers face uncertainty whether to include or exclude such accounts that could materially impact the section 987 basis increase computation. As such, we request that Treasury provide specific guidance on the treatment of accounts that do not exist for tax purposes or are not attributable to the section 987 QBU when using financial statement balance sheets for the 10-year lookback calculation, along with detailed examples demonstrating the proper approach.

In addition, we request that Treasury reduce the default lookback period for computing the section 987 basis increase under the first option from 10 taxable years to 5 taxable years, while allowing taxpayers to elect a 10-year period if they prefer greater precision. Many taxpayers may not have readily accessible historical section 987 data going back ten years. A 5-year lookback period would provide a reasonable proxy for accumulated unrecognized gain while significantly reducing compliance burden. Taxpayers who have maintained detailed historical records and prefer a longer lookback period could elect the 10-year option.

[1] T.D. 9759 (Mar. 28, 2016) providing for limitation on the importation of net built-in losses.

Excess Asset Basis Calculation

The excess asset basis calculation operates at the CFC level and produces a single number representing the CFC's total basis imbalance across multiple asset types. The Notice does not provide guidance on how to isolate the portion of total CFC-level excess asset basis that specifically represents deferred section 987 currency gains from the QBU. We request that Treasury provide a clear methodology to isolate the QBU-related section 987 gain or loss component, supported by a detailed example demonstrating this isolation from total CFC excess asset basis.

The CTA option creates a fundamental measurement mismatch when the CFC's functional currency differs from the reporting currency for US GAAP consolidated financial statements (*e.g.*, USD). For GAAP, CTA measures translation from the QBU's functional currency to USD; for section 987, foreign currency gain or loss measures translation from the QBU's functional currency to the CFC owner's functional currency (often non-USD).

> Example: A Luxembourg CFC (EUR functional currency) owns a UK branch QBU (GBP functional currency). GAAP CTA captures GBP → USD effects, while section 987 measures GBP → EUR effects. These currency pairs move independently, so the GAAP CTA would not accurately reflect the section 987 exposure that would have been recognized under section 987(3) absent the CFC election.

We ask Treasury to clarify that the CTA proxy is only appropriate when the CFC's functional currency is USD, or provide guidance on adjusting the CTA to reflect the correct currency pairing (QBU to CFC functional currency, not QBU to USD). Without such adjustments, using the CTA for non-USD functional currency CFCs would introduce material distortions.

Moreover, significant book/tax differences exist between CTA and section 987 due to disregarded transactions.

Section 988 MTM Election Compatibility with CFC Election

We request clarification that taxpayers may continue to make and maintain the section 988 mark-to-market election ("MTM") under Treas. Reg. §1.987-3(b)(4)(ii) for section 987 QBUs owned by CFCs for which a CFC election under Section 5 of the Notice is made. The CFC election affects only recognition of section 987(3) gain or loss on remittances, while section 987(1) and (2) continue to apply for computing taxable income. Because the section 988 MTM election operates under these continuing provisions and addresses the timing of recognition for foreign currency-denominated financial transactions of the QBU, it operates independently from the CFC election. This would reduce compliance burden for taxpayers that have implemented the section 988 MTM election to align tax and financial accounting treatment, avoiding section 1092 straddle issues, and would prevent uncertainty about whether the CFC election inadvertently revokes or precludes the section 988 MTM election.

III. Remittance Proportion Formula

Section 3 provides a new election to use the equity and basis pool method (similar to the 1991 proposed regulations) to determine section 987 gain or loss, utilizing an equity pool and basis pool instead of the complex FEEP calculation. The Notice states this approach is intended to "reduce compliance and administrative burden" and provide "a simpler framework with which many taxpayers are already familiar." We welcome this proposal and commend Treasury on affording taxpayers the flexibility to use this method.

However, the mechanics of the remittance proportion formula in Section 3.10(1)(a) still require taxpayers to track liabilities. By requiring a liabilities component, taxpayers must then maintain a tax basis balance sheet. This adds complexity and erodes the simplification of the new election. One of the core benefits of the equity and basis pool method was eliminating the need for detailed tax basis balance sheet tracking by using simplified equity and basis pool. This is helpful as most taxpayers do not have readily available tax basis balance sheets. In order to prepare tax basis balance sheets, taxpayers must map both current and historic tax adjustments to the relevant balance sheet accounts. This process is operationally complex and resource-intensive because book-to-tax adjustments are typically tracked at the income statement level, not at the balance sheet level, and systems are not designed for tax basis balance sheet preparation.

We request Treasury revise the remittance proportion formula when the equity and basis pool method election is in effect. Our proposal for the formula is:

Remittance proportion = remittance amount /(equity pool + remittance amount).

The revised formula should achieve true simplification by eliminating the tax basis balance sheet requirement for taxpayers making both CRE and equity and basis pool method elections while still providing a reasonable proxy for the remittance proportion

A. Equity Pools

Treatment of Negative Equity Pools

We request clarification regarding the calculation of the remittance proportion under Section 3.10(1)(a) of the Notice when the denominator is negative. Specifically, when the sum of the equity pool, liabilities, and remittance amount is negative (due to a negative equity pool where liabilities exceed assets), the Notice does not specify how the remittance proportion should be calculated. We recommend that Treasury clarify that in such situations, the remittance proportion should be treated as zero, similar to the alternative calculation in Treas. Reg. §1.987-5(c)(2). When a QBU has negative net equity (liabilities exceed assets), there is no positive net investment from which a remittance can economically occur. Treating the remittance proportion as zero in this situation would prevent the recognition of section 987 gain or loss when the QBU lacks positive net equity, which is appropriate because the economic substance of the transaction does not reflect a distribution from accumulated earnings or positive capital.

However, when a QBU is terminated, the remittance proportion should be treated as 1 (100%), regardless of whether the equity pool is negative. This ensures that all accumulated Section 987 gain or loss is recognized upon termination, which is consistent with the principle that termination represents a complete disposition of the QBU's net investment.

This treatment is consistent with the approach under the Proposed 1991 regulations and would provide clarity and prevent computational anomalies that could arise from applying the remittance proportion formula mechanically when the denominator is negative, while ensuring appropriate recognition of gain or loss upon QBU termination.

Entity Eligibility

The NFTC requests that the IRS expand eligibility for the equity and basis pool method to include QBUs owned by or through controlled foreign partnerships. The Notice provides that the simplified "equity and basis pool method" generally does not apply to QBUs owned by or through partnerships. This creates a

structural penalty for taxpayers using CFPs rather than DREs. There is no impact where the partners are members of the same US consolidated group or are CFCs controlled by the same US taxpayer.

In order to provide guardrails for CFPs, Treasury could propose a conditional eligibility test requiring: (i) All partners holding, directly or indirectly, a 10% or greater interest are members of the same US consolidated group or are CFCs controlled by such members within the meaning of IRC § 957(a); and (ii) The partnership files a Form 8865 (Return of U.S. Persons With Respect to Certain Foreign Partnerships). This narrowly tailored administrative accommodation should address concerns with information asymmetry.

IV. Loss Suspension Threshold Changes (Section 4.02)

Under Section 4.02, the CRE loss suspension rule (§1.987-11(c)(1)) and partnership loss suspension rule (§1.987-7(d)(1)(ii)) apply only in a taxable year in which either: (1) the remittance proportion exceeds 5%, or (2) the total amount of net unrecognized section 987 loss or deferred section 987 loss that would become suspended exceeds $5 million. While this provides relief compared to the 2024 Final Regulations, the thresholds may be too low for large multinationals. We request that thresholds be increased (e.g., remittance proportion to 10%, suspended loss to $25 million) and also that the test loss suspension rule be triggered based on the "greater of" the USD threshold and the remittance or indexed to the taxpayer's overall section 987 QBU portfolio size by increasing the USD threshold based on the net book value or tax basis of the QBU.

We request clarification that the $5 million threshold applies at the individual QBU or grouped QBU level—not aggregated across the entire US consolidated group. Additionally, we request clarification that the threshold should be measured in US dollars using the annual average exchange rate (Treas. Reg. §1.987-1(c)(1)(ii)).

V. Recognition Grouping Simplification (Section 4.03)

Under Section 4.03(1), all of an owner's section 987 gain or loss is treated as being in a single recognition grouping for purposes of the loss-to-the-extent-of-gain rule in §1.987-11(e). This is a significant simplification, though we note the groupings for CFCs remain more restrictive than for domestic corporations. We continue to request that the loss-to-the-extent-of-gain rule in §1.987-11(e) be expanded so that suspended section 987 loss may be recognized to the extent of the owner's taxable gain (not just section 987 gain) with the same source and character. Treasury should also consider providing ability to carry back section 987 losses to address timing differences.

VI. Other Comments

We also continue to request that Treasury address the permanent loss suspension rule under §1.987-13(g) for inbound QBU terminations, which is unduly punitive and inconsistent with the broader loss-to-the-extent-of-gain framework. We request that this rule be replaced with a principal purpose test or a rule limiting usage of inbound section 987 losses to offset inbound section 987 gains of the same owner.

We request clarification and examples regarding the modified successor deferral QBU standard in Section 4.04, including administrable metrics for determining when a 'significant portion' of assets is reflected on the successor QBU's books and records.

We also request issuing final regulations that adopt the recurring transfer group ("RTG") election in Proposed Section 987 Regulations [REG-117213-24], with the following changes aimed at simplifying the accounting and tracking routine intercompany transactions:

1. Include routine intercompany lending transactions, such as intercompany cash-pooling, between QBUs and their owners or between QBUs under the same owner in the definition of RTG.

2. Include any recurring "ordinary course of business" transactions between QBUs and their owners or between QBUs of the same owner within the scope of the RTG election, not just the limited transactions listed in Prop. Treas. Reg. §1.987-2(f)(2).

3. Make the RTG election available when net value computations are used under Treas. Reg. §1.987-4(e)(2)(ii).

VII. Revocation of Prior 987 Elections

Taxpayers who early-adopted the proposed regulations may be locked into binding elections (*e.g.*, the Annual Recognition Election, the 10-Year Ratable Inclusion Election, and the QBU Grouping Election). While the Notice provides welcome changes, these taxpayers face a materially altered regulatory landscape.

The Notice fundamentally changes the cost-benefit analysis of each election by narrowing loss suspension rules and introducing the equity and basis pool method. Treas. Reg. §1.987-1(g)(5) generally requires Commissioner consent to revoke Section 987 elections. Therefore, we request a transitional rule granting automatic consent for early adopters to revoke or modify previously made Section 987 elections without a Private Letter Ruling ("PLR"). Such an administrative waiver could be provided in a Revenue Procedure or the forthcoming regulations to eliminate the need for individual Commissioner consent. We understand such a provision would require anti-abuse constraints such as consistency requirements and a defined narrow window for revocation under a structured, time-limited transition mechanism. Treasury can craft such a mechanism to allow granting automatic consent which does not "prejudice the interests of the Government" within the meaning of Treas. Reg. §301.9100-1. We can provide additional information on potential constraints upon request.

VIII. CFC Election Interaction with the 10-Year Ratable Transition

Taxpayers who elected to recognize pre-transition Section 987 gain/loss ratably over a 10-year (120-month) period face uncertainty if the CFC election is made. For instance, it is unclear what happens to unrecognized pre-transition Section 987 gain or loss subject to the 10-year amortization upon making the CFC election. The Notice previews that existing unrecognized gain/loss for the CFC election will be recognized ratably over 120 months under the forthcoming proposed regulations. We request that taxpayers who have already elected the 10-year ratable transition be permitted to continue their existing amortization schedule without acceleration upon making the CFC election. This preserves the status quo and aligns with the Notice's own 120-month policy (since the existing 10-year schedule is a 120-month schedule).

We further request confirmation that making the CFC election does not constitute a triggering event for acceleration.

IX. Transition Relief for Gap-Period Computations

Early adopters who applied the proposed regulations computed section 987 gain/loss under the 2024 Final Regulations as originally published during the "gap period" between adoption and the effective date of the Notice's modifications. The Notice changes the loss suspension mechanics. Without a safe harbor, taxpayers face the risk of having to amend returns for gap-period years—an enormous compliance burden contradicting the Notice's stated simplification objective.

We request confirmation that gain/loss computations for the gap period are respected as filed, with no obligation to amend prior-year returns. The Notice's modifications should apply only prospectively from the transition date.

X. Hedging Interaction Clarification

We appreciate the Notice's expansion of the section 987 hedging transaction definition and request illustrative examples to facilitate consistent application under the new framework. The interaction of the hedging rules with the forthcoming regulations requires additional clarity. We request that illustrative examples demonstrating how the IRS expects taxpayers to apply the existing hedging and integration rules to the new equity and basis pool method mechanics.

Examples addressing the following aspects are critical:

> (i) Timing (§1.446-4): A taxpayer that enters into a forward contract to hedge the foreign currency exposure of a QBU while using the equity pool method—how is the hedge gain/loss timed to match the deferred section 987 item?
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> (ii) Multi-currency (§1.446-4): A taxpayer with a multi-currency structure (CFC with a different-functional-currency DRE) that hedges at the CFC level—how does §1.446-4 matching interact with the QBU grouping election and the equity pool method?
>
> (iii) Integration (§1.988-5): A taxpayer that has integrated a hedge with an underlying section 988 transaction where the section 988 transaction relates to a QBU using the equity pool method—how does the synthetic instrument interact with the pool method's smoothing mechanics?

We also request details in relation to the proposed §1.988-5 carve-out. For integrated hedging transactions under Treas. Reg. §1.988-5, we propose that the synthetic instrument be carved out of the equity and basis pool computation entirely and remain subject to standard section 988 rules. Treas. Reg. §1.988-5(a)(9) provides that an integrated hedging transaction creates a "synthetic debt instrument." Because the regulation itself deems the integrated position a synthetic instrument, it should be treated as a non-QBU asset (or effectively separated from the QBU's equity pool) and accounted for purely under the section 988 regime in the owner's functional currency.

The equity pool method smooths gain/loss using annual averages, while §1.988-5 requires a tight, transaction-by-transaction synthesis. These two frameworks are fundamentally incompatible when combined. The carve-out preserves the ability to use §1.988-5 integration for transaction-specific hedges while keeping the equity pool method for the broader QBU-level computation.

Conclusion

We reiterate our appreciation for the Notice and look forward to working with Treasury to ensure the goal of simplification is fully met on this complex topic. As the 2025 tax filing season is upon us, we respectfully request that guidance be provided as soon as practicable for critical items such as automatic consent to revoke elections, immediate reliance on the CFC election and required CFC reporting, and safe harbors for gap-period computations. For further information or clarification on any of the comments, please contact Anne Gordon (agordon@NFTC.org).