November 12, 2026

Internal Revenue Service
CC:PA:01:PR (REG-103844-26)
Room 5503
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: National Foreign Trade Council Comments on Section 987 Proposed Regulations (REG-103844-26)

The National Foreign Trade Council (the "NFTC") is writing to provide comments on REG-103844-26, "Foreign Currency Gain or Loss of Controlled Foreign Corporations" (the "Proposed Regulations"), released by the Department of the Treasury ("Treasury") and the Internal Revenue Service ("IRS") on August 14, 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. We value work that focuses on establishing and maintaining international tax and transfer pricing norms that provide certainty to enterprises conducting cross-border operations.

General Comments

NFTC appreciates the opportunity to comment on the Proposed Regulations addressing the controlled foreign corporation ("CFC") exemption election and the related rules for inbound nonrecognition transactions. We support the election, which will substantially reduce the compliance burden and income basket volatility associated with CFC-owned section 987 qualified business units ("QBUs"), and we appreciate the reliance and timing relief provided in the Proposed Regulations.

Our comments focus on areas where additional clarity and flexibility are warranted: (i) procedural aspects of the election, including the consistency and revocation rules, and (ii) the inbound gain-recognition rule under proposed §1.987-16, which in its current form would reintroduce much of the compliance and administrative burden the election is intended to eliminate.

Specific Comments

I. *CFC Election — Request for Substantive and Procedural Guidance*

We encourage Treasury to issue final regulations that reflect taxpayer comments as soon as practicable, as there are certain matters for which taxpayers require more clarity for purposes of

tax return preparation and business planning. Specifically, the method for computing section 987 gain in the case of inbound nonrecognition transactions will determine the administrative and compliance burden of tracking this gain for taxpayers that have multiple CFCs that own section 987 QBUs, even before any inbounding transaction takes place.

Therefore, we urge Treasury, to the extent that regulations are not finalized in 2026, to provide interim guidance allowing taxpayers to apply the equity and basis pool method under the 1991 proposed regulations in lieu of the lookback methodology described in proposed §1.987-16(c)(2). As indicated in the preamble to the Proposed Regulations, approximation is appropriate in the context of the inbound nonrecognition transaction rules, given the compliance and administrative burden that more precise approaches would entail.

In addition, we request that Treasury and the IRS confirm the mechanics and timing for making the election on Form 8964-ELE (including the attached election statement). Specifically, additional details are needed on how the election is to be filed for 2025 under the extended deadline available through October 15, 2027. We request that, unless the election materially changes the taxable income of the US shareholder (such as by changing the ARE amount for 2025), a simplified procedure for making the election is available that doesn't require filing an amended return. For example, Treasury can allow taxpayers to attach a statement or a new Form 8964-ELE with their regular tax return instead. Under current guidance, this would be the 2027 tax return. However, if final guidance is issued after October 15, 2027, we would request additional time to file amended returns for prior years. For example, if final guidance is issued in December 2027, we request the ability to make the election for prior years by attaching a statement with the 2028 tax return.

We also request that the CFC exemption election be permitted on a CFC-by-CFC basis, consistent with the entity-level election framework under proposed §1.988-7. The blanket consistency requirement is overbroad and not justified because, other than for the transition years (2025 to 2027), the election has to be made in the preceding taxable year to the year in which it applies, which eliminates the possibility of tax planning into foreign exchange ("FX") gain/losses because of the inherent unpredictability of FX movements.

We further request that the rules for revoking the CFC exemption election be consistent with the rules for other section 987 elections, such as the current rate election ("CRE"), the annual recognition election ("ARE"), and the section 988 mark-to-market election. Under §1.987-1(g)(3)(ii)(B), those elections can be revoked without the Commissioner's consent for taxable years beginning more than 60 months after the first day of the taxable year for which the election was made. The CFC exemption election should be subject to the same revocation rules. Any concern that taxpayers could manipulate taxable income or loss by making and revoking the election is addressed by the existing restriction on making a new election within 60 months after an initial election has been revoked without the Commissioner's consent.

It would also be helpful to clarify how the three-year average asset test under proposed §1.987-15(e)(2)(iii)(B) applies when a taxpayer has a short taxable year resulting from a year-end change. Specifically, we request guidance on whether a short period counts as a separate taxable year in the three-year lookback or if it is based on a 36-month period.

Finally, the proposed regulations provide that an exempt CFC would recognize pre-election section 987 gain or loss ratably over a period of 120 months beginning with the first day of the first taxable year in which the election applies. Proposed § 1.987-15(e)(3)(i). We suggest that the final regulations permit an electing taxpayer to recognize in full its pre-election Section 987 gain

with respect to a QBU in the first taxable year to which the election applies—or any remaining gain in a subsequent election year—in lieu of ratable recognition over 120 months. This would aid in providing administrative ease. Taxpayers would therefore elect accelerated recognition of de minimis amounts rather than shouldering the burden of tracking these amounts over 10 years.

II. *Request for Interim Guidance and Transitional Relief*

If guidance or final regulations are issued after October 15, 2027, we request that the guidance or final regulations include transition rules that would afford taxpayers additional time to analyze the impact and file elections for tax years commencing after December 31, 2024 and through the transition period.

III. *Inbound Nonrecognition Transactions (Proposed §1.987-16)*

A. Scope of the rule

We reiterate our request that the inbound gain-recognition rule be removed or, in the alternative, narrowed to a targeted anti-avoidance rule or principal purpose test. As proposed, the rule captures non-tax-motivated commercial restructurings. For example, companies routinely liquidate or reorganize foreign subsidiaries that are no longer operative or are winding down as part of entity simplification initiatives intended to reduce compliance and filing costs. If the rule is retained in its current form, taxpayers will have to continue tracking section 987 gains and losses for every CFC that owns a section 987 QBU, defeating the stated simplification purpose of the Proposed Regulations.

B. Symmetrical loss treatment and netting of losses from multiple QBUs

If the rule is retained, we reiterate the request in our letter dated April 27, 2026, that it apply symmetrically so that net unrecognized section 987 losses are recognized on the same basis as gains. Such losses would have been recognized had the taxpayer not made the CFC exemption election, and taxpayers should not be treated more adversely simply because they chose to make the CFC exemption election and subsequently had to restructure or liquidate a CFC for valid business reasons, such as entity simplification.

It should in any case be made clear that, in a non-recognition inbounding transaction, the gain that is required to be recognized should be net of the losses of all QBUs that are owned by transferor CFCs that are party to the transaction. We recommend expanding the existing examples in the proposed regulations to address and clarify treatment of the above fact patterns. Specifically, Treasury should include an example involving the inbounding of a single CFC with multiple QBUs and an example involving the inbounding of multiple CFCs with multiple QBUs. In both examples, some QBUs should have unrecognized section 987 gains and other QBUs should have unrecognized section 987 losses, to illustrate the netting mechanics both within QBUs owned by one CFC and between QBUs of separate CFCs involved in an inbounding transaction.

We believe that in all cases, the losses of one inbounded QBU should reduce the gain of another inbounded QBU to, at minimum, only require recognition of the net FX gain on an inbounding transaction, even if recognition of net FX loss is not allowed.

C. Computation of section 987 asset basis

We have several comments on the methods for determining section 987 asset basis under proposed §1.987-16(c).

C.1. Option to use Equity and Basis Pool Method

We request that taxpayers that made the equity and basis pool election be clearly permitted to use the equity and basis pool method to determine section 987 asset basis under proposed §1.987-16(c), instead of the "lookback" or the "excess asset basis" ("EAB") methodologies that are in the Proposed Regulations for inbounding QBUs. The lookback method still requires a tax-basis balance sheet which is unduly burdensome for taxpayers. In turn, the EAB methodology does not provide a mechanism for isolating the section 987 FX portion of the total CFC-level excess asset basis. Applying these methodologies would be inconsistent for taxpayers that have already elected the equity and basis pool method.

Indeed, the existing regulatory framework already supports the ability to use the equity and basis pool method.[1] A taxpayer that has elected to use the equity and basis pool method more broadly should already be permitted to use it to determine the section 987 asset basis on an inbound nonrecognition transaction, as the elected methodology should apply consistently to all section 987 QBUs.[2] Not permitting this goes against the purpose of Notice 2026-17, which was expressly to "reduce compliance and administrative burden" of taxpayers by allowing the equity and basis pool method, and may additionally result in taxpayers being required to use different methods to calculate section 987 gain or loss of QBUs that are in the same affiliated group. The equity and basis pool method could similarly apply for the 72-month period contemplated under the "lookback" methodology.

If the lookback methodology is kept, we request that taxpayers be allowed to 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 and roll forward the OFCNV to later years by taking into account only transfers to and from the QBU and the QBU's net income (*i.e.*, without preparing a full tax-basis balance sheet for each year). Doing so would make the lookback consistent with the simplification purpose of the Proposed Regulations.

C.2. Netting across the lookback period and among QBUs of the same owner under the lookback method.

We request confirmation that the lookback methodology under proposed §1.987-16(c)(2) computes section 987 asset basis by netting annual gains and losses across the entire 72-month lookback period. The proposed regulations refer to the "aggregate net amount of unrecognized section 987 gain" and to the "sum of the transferor CFC's annual unrecognized section 987 gain or loss . . . for each pre-transaction taxable year," but it is unclear whether loss years reduce the aggregate. For example, if a QBU generates $800 of unrecognized section 987 gain in Year 1 and $500 of unrecognized section 987 loss in Year 2, the section 987 asset basis should be $300 (the net across both years), not $800 (ignoring the Year 2 loss). The example in proposed §1.987-16(f) does not address this point because both years produce gains. Failing to net across

[1] 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 provides the equity and basis pool method "in lieu of" the alternative calculation method of Treas. Reg. §1.987-4(e)(2)(iii).

[2] A taxpayer that has elected the equity and basis pool method under section 3 of Notice 2026-17 is required under §1.987-1(g)(2)(ii) to apply that election consistently to all section 987 QBUs within its electing group.

years overstates the gain recognized on an inbound transaction and does not accurately reflect the taxpayer's cumulative section 987 position over the lookback period. As indicated in B above, we also request confirmation that losses of one QBU offset gains of another QBU owned by the same transferor CFC, regardless of whether a QBU grouping election is made for such QBUs. We recommend expanding the existing examples in the proposed regulations to address and clarify treatment of the above fact patterns.

C.3. EAB method in multi-entity structures.

The excess asset basis method captures the total excess of asset basis over the §1.367(b)-3(g)(2)(i) amount but does not isolate the portion of that excess attributable to foreign currency fluctuations. When a transferor CFC owns lower-tier CFC subsidiaries and multiple QBUs with different functional currencies, the EAB will reflect basis increases driven by non-FX factors. We request that Treasury provide guidance on how taxpayers should isolate the FX-related component of the EAB in multi-entity structures, together with a more realistic example illustrating the computation where the transferor CFC owns multiple QBUs and lower-tier entities.

C.4 Partial Inbounding of a Transferor CFC's Section 987 QBUs

We request guidance on the application of the inbound gain-recognition rule under proposed §1.987-16 when only a portion of a transferor CFC's section 987 QBU assets is inbounded in a nonrecognition transaction — for example, in a divisive reorganization under section 368(a)(1)(D) in which a CFC transfers the assets of one QBU to a domestic corporation while retaining the remaining one or more other QBUs.

As drafted, proposed §§1.987-16(c)(2)(iii) and (d)(1) operate to require the transferor CFC to compute and recognize section 987 gain with respect to all of its QBUs, rather than only those whose assets are actually transferred. When only a portion of the CFC's QBU assets are inbounded, this produces gain recognition attributable to QBUs whose assets remain with the transferor CFC and have not been imported into the U.S. tax base — a result inconsistent with the policy objective of targeting basis importation associated with the transferred assets.

The problem is compounded when a QBU grouping election is in effect. Under a grouping election, pool balances are computed on a combined basis for the entire grouped QBU and are not separately tracked for each member QBU. Because the grouped QBU is the "section 987 QBU" for regulatory purposes, the lookback computation would apply to the entire grouped QBU's unrecognized section 987 gain or loss — potentially triggering gain recognition attributable to member QBUs that have not been inbounded.

We request that Treasury clarify the following:

(i) For ungrouped QBUs, the lookback computation and gain-recognition rule under proposed §1.987-16 should be limited to the QBU or QBUs whose assets are actually transferred in the inbound nonrecognition transaction, and should not extend to QBUs that remain with the transferor CFC.

(ii) For grouped QBUs, taxpayers can 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;

(iii) Any gain recognized in a partial inbounding should reduce the remaining section 987 asset basis of the transferor CFC (or the grouped QBU, as applicable) for purposes of any subsequent transaction.

(iv) Treasury should include an illustrative example in the final regulations addressing both the ungrouped and grouped QBU fact patterns described above.

D. Inbound gain-recognition method

We request that taxpayers be given optionality among the three recognition methods described in the preamble for inbound transactions: (i) immediate gain recognition, (ii) reduction of the acquiring corporation's asset basis, or (iii) adjustment to the unrecognized section 987 gain/loss pool.

E. De minimis rule

We request that the de minimis rule under proposed §1.987-16(e) be revised to align more closely with the framework established for the pre-election de minimis rule under proposed §1.987-15(e)(2)(iii). Specifically, we recommend that the threshold be (1) increased to $50 million and adjusted annually for inflation according to a reasonable method, (2) measured at the QBU level rather than the CFC level, (3) based on a three-year average of QBU net assets preceding the year of the inbound nonrecognition transaction, and (4) determined by reference to the QBU's U.S. GAAP balance sheet as reported on Form 8858, Schedule F.

The policy concern underlying this rule is the importation of excess basis attributable to exchange rate fluctuations that have not been subject to U.S. tax because of the CFC exemption election. That concern is specific to the assets of the section 987 QBU, not the CFC as a whole. A transferor CFC may hold many investments and assets entirely unrelated to its QBUs. Measuring the threshold at the CFC level inflates the relevant asset base with items that have no bearing on the basis importation concern, causing taxpayers with small QBU operations within larger CFCs to fail the test despite presenting minimal risk.

Adopting a three-year averaging period and U.S. GAAP balance sheet measurement — consistent with the approach under proposed §1.987-15(e)(2)(iii) — would provide a more stable and administrable threshold while leveraging information taxpayers already report on Form 8858. This alignment would also promote consistency across the two de minimis rules within the section 987 framework.

F. Sourcing and character of inbound gain

Consistent with our recommendation that taxpayers be permitted to use the equity and basis method to compute inbound gain, the source and character of that gain should be determined by reference to the assets of the section 987 QBU, not all assets of the transferor CFC, under the general rule of §1.987-6(b)(2)(i)(A).

A reasonable method, like the lookback methodology, computes inbound gain at the QBU level. The sourcing determination should follow accordingly. Using the CFC's entire asset base to source a gain that was computed by reference to a specific QBU's historical section 987 gain or loss creates an internal inconsistency and forces taxpayers to maintain a separate CFC-level asset model solely for sourcing purposes. To the extent the QBU has terminated before the inbound transaction, the QBU's assets immediately before termination can be used — an approach already contemplated by proposed §1.987-16(d)(1).

The CFC-level asset pool may be appropriate where the taxpayer uses the EAB methodology, which inherently operates at the CFC level under §1.367(b)-3. Accordingly, we recommend that the CFC-level sourcing rule apply only when the taxpayer computes inbound gain under the EAB methodology. We further request that taxpayers be permitted to elect the modified gross income method under §1.861-9(j) as an alternative to the asset method for this determination, which would reduce duplicative compliance burden for taxpayers already using that method for interest expense apportionment.

Conclusion

We value the Treasury's work to ensure the Proposed Regulations deliver meaningful simplification. We welcome the election, as it significantly eases the administrative burden and seeks to mitigate income basket volatility for CFC-owned section 987 QBUs. Thank you for considering our input. Please reach out to Anne Gordon (agordon@nftc.org) if you need additional details or clarification on these comments.