



International Tax

United States Tax Alert

August 7, 2015

Notice 2015-54 limits ability to transfer property to a partnership tax free

Contacts

Chris Trump
ctrump@deloitte.com

Mark Opper
markopper@deloitte.com

Gretchen Sierra
gretchensierra@deloitte.com

Erich Hahn
ehahn@deloitte.com

Jim Calzaretta
jcalzaretta@deloitte.com

Joe Tobin
jtobin@deloitte.com

On August 6, 2015, the IRS and Treasury published Notice 2015-54 (the Notice), modifying the rules applicable to the contribution of built-in gain property to a partnership.

Under the Notice, a U.S. transferor is required to recognize any built-in gain on the transfer of property to the partnership, irrespective of section 721(a), unless certain conditions are satisfied (gain deferral method, or GDM), including that the partnership adopt the remedial allocation method with respect to the built-in gain property, and that the partnership allocate any section 704(b) book items attributable to the contributed property proportionately between (and among) its partners.

In general, the Notice applies if the following three conditions are met:

- (i) a U.S. person (or persons) contributes property with a built-in gain of greater than \$1 million to a partnership;
- (ii) a related foreign person is a direct or indirect partner in such partnership; and
- (iii) the U.S. transferor and related foreign person own more than fifty percent of the interest in partnership capital, profits, deductions, or losses.

These provisions of the Notice are effective for transfers occurring on or after August 6, 2015.

Gain deferral method

In order to avoid recognizing gain upon the contribution of built-in gain property (section 721(c) property) the U.S. transferor must apply the gain deferral method. In order to satisfy the GDM:

- (i) the partnership must adopt the remedial allocation method under section 704(c) with respect to section 721(c) property;
- (ii) the partnership must allocate all items of section 704(b) income, gain, loss, and deduction with respect to a contributed built-in gain property in the same proportions as any other such items from that property;
- (iii) the partnership must meet certain new reporting requirements;
- (iv) the U.S. transferor must recognize remaining pre-contribution built-in gain

- upon certain acceleration events; and
- (v) the partnership must adopt the GDM for all subsequent built-in gain property contributed by U.S. transferors within certain time periods.

Acceleration events

An acceleration event is any transaction that (i) would reduce the amount of built-in gain that a U.S. transferor would recognize under the GDM if that transaction had not occurred, or (ii) could defer the recognition of that built-in gain.

Upon an acceleration event, the U.S. transferor must recognize gain in an amount equal to the remaining built-in gain that would have been allocated to the U.S. transferor if the partnership had sold the section 721(c) property immediately before the acceleration event for its fair market value. Acceleration events include:

- (i) distributing the section 721(c) property to another partner;
- (ii) the U.S. transferor selling part or all of its interest in a partnership owning section 721(c) property; or
- (iii) having a basis adjustment, such as under section 734(b), attach to the property as a result of a distribution of other property, among other events.

Certain transfers are not treated as acceleration events including, among others:

- (i) transfers of partnership interests by U.S. transferors to domestic corporations in section 351(a) and 381(a) transfers, so long as the parties continue to apply GDM after the transfers;
- (ii) transfers by partnerships of section 721(c) property to a domestic corporation in a section 351(a) exchange; and
- (iii) transfers by partnerships of section 721(c) property to foreign corporations in a section 351(a) exchange to the extent the property is treated as transferred by the U.S. partners to the foreign corporation in an outbound transfer under Treas. Reg. §1.367(a)-1T(c)(3)(i) or (ii).

Section 482 guidance, reporting requirements and statute of limitations considerations

The Notice also includes additional reporting requirements and requires the U.S. transferor to extend the statute of limitations for assessment on items related to the built-in gain property through the close of the eighth full taxable year following the taxable year of contribution. Further, the Notice states that the IRS and Treasury intend to issue guidance under section 482 applying the principles of Treas. Reg. §1.482-7 to contributions of built-in gain property to partnerships. Specifically, the IRS and Treasury indicate that the new rules will provide guidance on application of the specified methods outlined in Treas. Reg. §1.482-7(g) to transfers to partnerships. The Notice states that the IRS and Treasury believe that under current law the commensurate-with-income rules of section 482 apply with respect to the allocation of items by a partnership among its partners. Thus, the Notice states that the IRS and Treasury will also issue guidance on application of the periodic adjustment provisions in Treas. Reg. §1.482-7(i)(6) to transfers to partnerships. However, any provisions related to reporting, the statute of limitations, or the application of section 482 will only be effective following the issuance of regulations incorporating the rules of the Notice.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. Please see www.deloitte.com/about for a more detailed description of DTTL and its member firms. Certain services are not available to attest clients under the rules and regulations of public accounting.

Deloitte provides audit, consulting, financial advisory, risk management, tax and related services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries and territories, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. Deloitte’s more than 210,000 professionals are committed to becoming the standard of excellence.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the “Deloitte network”) is, by means of this communication, rendering professional advice or services. No entity in the Deloitte network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

© 2015. For information, contact Deloitte Touche Tohmatsu Limited.