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Proposed Changes on Loss Carryforwards Are a (R)BIG Deal for M&A

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On September 9, 2019, the Internal Revenue Service released proposed regulations that, if finalized in their current form, would in many cases dramatically reduce the portion of a company's net operating loss carryforward that is available to be used following a so-called ownership change of the company. Critically, the proposed regulations would eliminate an approach for computing the recognized built-in gain (RBIG) of a company's assets that often had the effect of increasing the amount of taxable income that companies could offset with their pre-ownership change net operating loss carryforwards. The proposed regulations would be effective for ownership changes occurring after they are finalized, and they could chill M&A activity with respect to targets with significant net operating loss carryforwards.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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