

Final and Temporary Section 385 Regulations

October 14, 2016 | Client Update

On October 13, the IRS and the Treasury Department released [final and temporary regulations under](#) section 385 relating to the classification of certain intercompany loans as debt or equity for U.S. federal income tax purposes. The regulations make a number of significant changes to the proposed regulations that were released in April, including (i) a number of new exceptions that apply to, among other things, cash pooling and similar short-term arrangements, transactions between foreign subsidiaries of U.S. companies, and transactions between members of regulated financial groups, (ii) expanded exceptions for ordinary course transactions, distributions out of earnings and profits and distributions that can be netted against capital contributions, and (iii) revised effective date and transition rules. However, the basic structure of the regulations remain unchanged, including the inclusion of the so-called funding and per se funding rules.

This memorandum, which assumes general familiarity with the proposed regulations, summarizes certain of the most important aspects of the regulations (which, together with the preamble, are over 500 pages). Early next week, we will circulate a more detailed memorandum on the regulations. Register for our upcoming webcast [here](#).

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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