

New Regulations Expand Reach Of Anti-Inversion Ownership Rules

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The Treasury Department and the Internal Revenue Service (the “IRS”) yesterday released [temporary regulations](#) (the “Temporary Regulations”) incorporating and expanding upon the rules set forth in [2009 guidance](#) (the “Notice”) under Section 7874 of the Internal Revenue Code, as amended (the “Code”). The Temporary Regulations make it more difficult for a non-U.S. corporation (the “Non-U.S. Corporation”) to count stock issued in exchange for cash, marketable securities and certain other assets, in a transaction that also involves the acquisition of a U.S. corporation (the “U.S. Corporation”) by the Non-U.S. Corporation, in determining whether the Non-U.S. Corporation satisfies the ownership tests (the “Ownership Test”) under Section 7874 that apply for purposes of determining whether a U.S. Corporation has successfully inverted. Given their narrow focus, the Temporary Regulations generally do not affect inversion transactions involving the combination of a non-U.S. corporation and a U.S. corporation that both are in active operating businesses, like Actavis-Warner Chilcott, Applied Materials-Tokyo Electron and Omnicom-Publicis. However, in a development that may have wider ramifications, the preamble to the Temporary Regulations asks for comments as to the potential application of Section 7874 to a common leveraged buyout structure.

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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