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TAX ALERT

January 2009

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IRS Notice Extends Time for Tax-Free CFC Loans in Some Cases and for Subpart F Relief for Marketable Securities

The Internal Revenue Service (IRS) issued Notice 2009-10 on January 14, 2009, providing extensions for two measures aimed at ameliorating the liquidity crunch and economic market crisis. Notice 2009-10 is scheduled for publication in Internal Revenue Bulletin 2009-5 dated February 2, 2009.

Notice 2008-91 temporarily extended the duration for which certain loans from a controlled foreign corporation (CFC) to its US parent could remain outstanding tax-free from 30 to 60 days. It also increased the number of days during a calendar year that a CFC could hold such an obligation tax-free from 60 to 180 days.

Notice 2009-10 extends the application of Notice 2008-91 for up to an additional taxable year. Specifically, Notice 2008-91 originally applied to only the first two taxable years of a CFC ending after October 3, 2008, but Notice 2009-10 extends this period for up to a third taxable year of a CFC ending after October 3, 2008 and on or before December 31, 2009. This change can provide a benefit if a CFC has a short taxable year before December 31, 2009.

Despite pressure from commentators, Notice 2009-10 neither expands the 60-day lending window nor provides guidance as to the time period that would be appropriate between 60-day loans. More information about Notice 2008-91 can be found in our [Tax Alert](#) on Notice 2008-91.

Notice 2009-10 also provides a one-year extension of the applicability of Rev. Proc. 2008-26, which provides temporary relief from potential inclusion in Subpart F of certain securities held by CFCs due to turmoil in the economic market.

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Contacts:

[James D. Gray](#)
+1.216.479.8682

[Steven F. Mount](#)
+1.614.365.2727

[Terrence G. Perris](#)
+1.216.479.8647

[Mitchell S. Thompson](#)
+1.216.479.8794

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The liquidity crunch and economic market turmoil resulted in uncertainty as to whether certain CFC securities, such as particular mortgage-backed and corporate debt securities, were "readily marketable" and so not treated as investments in US property. In response to taxpayer concerns that such CFC securities would not qualify for the "readily marketable securities" exception due to current market conditions, the IRS issued Rev. Proc. 2008-26 providing that during calendar years 2007 and 2008 it would not challenge whether a security was readily marketable for this purpose if such security was readily marketable at any time within the three years prior to May 12, 2008. Notice 2009-10 extends the application of Rev. Proc. 2008-26 from the end of calendar year 2008 to the end of calendar year 2009.

For more information, please contact your principal Squire Sanders lawyer or one of the individuals listed in this alert.

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January 2009

Squire, Sanders & Dempsey L.L.P., 4900 Key Tower, 127 Public Square, Cleveland, Ohio 44114