



New Rules to Obtain IRS Consent for Intercompany Transaction Treatment in Consolidated Return

The consolidated return regulations generally require that intercompany transactions be treated in a manner that produces the effect of transactions between divisions of a single corporation (that is, the regulations treat intercompany transactions on a “single entity basis.”). The single entity approach for intercompany transactions is an integral part of the overall tax treatment of affiliated groups filing consolidated returns (consolidated groups) under § 1502 of the Internal Revenue Code. Treating intercompany transactions on a single entity basis is required to clearly reflect consolidated taxable income (CTI) and consolidated tax liability (CTL).

The IRS issued Rev. Proc. 2009-31 which provides the procedures by which a taxpayer may:

- (1) obtain IRS consent to treat some or all intercompany transactions on a separate entity basis under Regs. §1.1502-13(e)(3)
- (2) revoke such consent, or have such consent revoked by the IRS
- (3) obtain the IRS's consent to change from separate entity reporting to single entity reporting where a valid consent from the IRS to report intercompany transactions on a separate entity basis was not previously obtained.

Under § 1.1502-13(e)(3), in certain circumstances the IRS may exercise discretion and grant consent to a consolidated group, to treat some or all intercompany transactions (other than intercompany transactions with respect to stock or obligations of members of a consolidated group) on a separate entity basis (that is, without the application of § 1.1502-13). Consent under § 1.1502-13(e)(3) may require changes in the methods of accounting for intercompany transactions of members of a consolidated group.

Rev. Proc. 2009-31 identifies certain factors and guidelines the IRS will use in considering requests for consent under § 1.1502-13(e)(3). It also provides a checklist to facilitate the filing and handling of requests under § 1.1502-13(e)(3) by specifying the information that should be included so that applications will be as complete as possible when originally filed. However, because the information necessary to rule on a particular case depends upon all the facts and circumstances, information in addition to that listed in this revenue procedure may be requested by the IRS prior to determining whether consent will be granted.

The IRS stated that requests for consent must be filed with it on or before the consolidated return's due date for the first taxable year for which the consent is applicable. Rev. Proc. 2009-31 is effective for taxable years ending on or after July 6, 2009.