

CLIENT ALERT

Notice 2008-91: The Internal Revenue Service Moves to Facilitate Liquidity

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The unprecedented events of the past few weeks have resulted in numerous efforts to ease the credit crisis crippling the U.S. credit markets and the broader global economy. Domestically, the President, Congress, the Federal Reserve, banking officials, private industry and various regulators have all been involved in attempts to bolster the credit markets; as the crisis has spread, foreign counterparts have joined in the stabilization attempts as well. With its release of Notice 2008-91, the Internal Revenue Service (IRS) joins the ranks of those promoting liquidity in the credit markets.

In Notice 2008-91, filed on October 3, 2008, the IRS announced an expansion of the short-term financing exception to Internal Revenue Code (IRC) Section 956 which allows corporations to access cash from their controlled foreign corporations (CFCs) without being subject to an income inclusion for U.S. tax purposes.

Generally, a loan from a CFC to its U.S. shareholder is treated as the acquisition of an obligation of a U.S. person by the CFC that may result in income to the U.S. shareholder under IRC Section 951. Notice 88-108 provided an exception for short term loans repaid within 30 days, as long as the CFC does not hold obligations that would be investments for more than 60 days during the year. Notice 2008-91 expands the earlier Notice by providing the short term financing exception to loans that are repaid within 60 days from the time incurred, as long as the CFC does not hold obligations that would be investments in U.S. property for 180 days or more during the tax year.

The IRS explicitly indicates that the Notice is intended to facilitate liquidity in the near term. Therefore, the exclusion applies only for the first two taxable years of a foreign corporation ending after October 3, 2008. For calendar year corporations the Notice will be applicable to tax years 2008 and 2009.

Recent turmoil in the credit markets and the economic instability it promotes necessitates the pursuit of all reasonable means to increase liquidity. The release of Notice 2008-91 is an indication that the IRS is taking steps in that direction.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.