

## **A New Year's Tax Gift: Additional Year for Short-Term Loan Exception to IRC Section 956**

**January 4, 2010**

On December 29, 2009, the Department of Treasury (the Treasury) and the IRS released Notice 2010-12, which extends the 60-day short-term loan exception to Internal Revenue Code (IRC) Section 956 for an additional taxable year. This extension was under discussion within the Treasury and the IRS for quite some time. There has been concern among taxpayers and practitioners that improving economic indicators might dissuade the government from further extension of the 60-day exception. Although late in issuance, Notice 2010-12 is nevertheless welcome news for taxpayers.

Notice 2008-91 first articulated the 60-day short-term loan exception to the term "obligation" as used in IRC Section 956. Although there is a longstanding exception for loans that are collected within 30 days, the 2008 notice expanded the exception to loans collected within 60 days in response to the difficulty many corporations experienced in finding financing, as a result of the financial crisis. That first Notice was limited in its application to the first two taxable years of a controlled foreign corporation (CFC) ending after October 3, 2008. Notice 2008-91 further clarified that the exception was not applicable to any taxable year beginning after December 31, 2009. The Treasury and the IRS subsequently issued Notice 2009-10, which extended the 60-day exception to the third consecutive taxable year of a CFC, if any, that ends after October 3, 2008 and before December 31, 2009.

Notice 2010-12 extends the application of the 60-day short-term loan exception to an additional taxable year from that articulated in Notice 2008-91. The 60-day exception is not applicable to a taxable year of a CFC beginning on or after January 1, 2011.

Notice 2010-12 cautions that the Treasury and the IRS do not anticipate further extending the 60-day short-term exception to IRC Section 956. This note of caution is likely in response to calls from taxpayers and practitioners to make the 60-day short-term loan exception permanent.

While the additional year provided by Notice 2010-12 is welcome news, there remain numerous traps for the unwary that should be carefully considered when structuring such loans. For example, what period of time must be maintained between two loans from the same CFC to avoid having such loans stepped together? Structural and documentation issues are critical in this area.

Notice 2010-12 also extends the application of Rev. Proc. 2008-26, which addresses whether securities should be considered “readily marketable” for purposes of IRC Section 956(c)(2)(J). Rev. Proc. 2008-26 applied with respect to determinations made in calendar years 2007 and 2008. That two-year period was subsequently extended to include 2009 by Notice 2009-10. Notice 2010-12 now extends the rules set forth in Rev. Proc. 2008-26 to include calendar year 2010 as well.

If you have any questions or would like more information on the issues discussed in this LawFlash, please contact the following Morgan Lewis attorneys:

**Palo Alto**

Barton W.S. Bassett

650.843.7567

[bbassett@morganlewis.com](mailto:bbassett@morganlewis.com)

**San Francisco**

Neal Gordon

415.442.1229

[ngordon@morganlewis.com](mailto:ngordon@morganlewis.com)

**About Morgan, Lewis & Bockius LLP**

With 22 offices in the United States, Europe, and Asia, Morgan Lewis provides comprehensive transactional, litigation, labor and employment, and intellectual property legal services to clients of all sizes—from global Fortune 100 companies to just-conceived startups—across all major industries. Our international team of attorneys, patent agents, employee benefits advisors, regulatory scientists, and other specialists—more than 3,000 professionals total—serves clients from locations in Beijing, Boston, Brussels, Chicago, Dallas, Frankfurt, Harrisburg, Houston, Irvine, London, Los Angeles, Miami, Minneapolis, New York, Palo Alto, Paris, Philadelphia, Pittsburgh, Princeton, San Francisco, Tokyo, and Washington, D.C. For more information about Morgan Lewis or its practices, please visit us online at [www.morganlewis.com](http://www.morganlewis.com).

**IRS Circular 230 Disclosure**

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. For information about why we are required to include this legend in emails, please see <http://www.morganlewis.com/circular230>.

This LawFlash is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered **Attorney Advertising** in some states. Please note that the prior results discussed in the material do not guarantee similar outcomes.

**© 2010 Morgan, Lewis & Bockius LLP. All Rights Reserved.**