IRS Makes Permanent Its Fast-Track Corporate Private Letter Rulings

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On July 26, 2023, the Internal Revenue Service (IRS) Chief Counsel's Office announced that it would make permanent its pilot program of issuing "fast-track" private letter rulings for requests solely or primarily under the jurisdiction of the Office of the Associate Chief Counsel, Corporate (hereafter "Corporate").

That office has jurisdiction over ruling requests concerning many corporate tax-free and taxable acquisition and divestiture transactions, such as mergers and spin-offs, as well as ruling requests regarding corporate loss limitations (such as those under Section 382 of the Internal Revenue Code) and the consolidated return provisions.

Fast-track rulings were previously available under a pilot program announced in Revenue Procedure 2022-10 that expired earlier this month. The program becomes permanent, with certain minor modifications, under Revenue Procedure 2023-26 (the "Expedited Ruling Revenue Procedure").

How the Fast-Track Process Works

Where fast-track handling is available, the IRS will endeavor to issue a private letter ruling in a compressed time frame, generally about 12 weeks. Outside of the fast-track process, the IRS generally aims to respond to ruling requests within 180 days of receipt, though more complex issues can take more time.

As under the previous pilot program, the party seeking the expedited ruling must have a conference with attorneys in Corporate before filing the ruling request and must undertake to respond to the IRS' requests for additional information within seven business days. (This is a shorter period than the 21 calendar days allowed when not seeking faster handling.) IRS reviewers retain flexibility to grant extensions of the seven-business-days period for replying to requests for additional information.

Additionally, as under the pilot program, the Expedited Ruling Revenue Procedure requires taxpayers to include a proposed draft letter ruling with their initial submission. The inclusion of the draft letter ruling in a taxpayer's initial ruling request is a noted departure from the traditional "two-part" ruling procedure currently outlined in Section 7.02(3) of Revenue Procedure 2023-1. Under that procedure, a taxpayer typically first files a complete description of facts and other required materials, then files a statement of controlling facts in the form of a draft letter ruling following successful discussions with the IRS.

As under the pilot program, the party requesting the ruling must state its reasons for requesting fast-track treatment, but the Expedited Ruling Revenue Procedure makes explicit Corporate's previously expressed views that the request need not demonstrate a business need for the faster handling.

One new exception to this policy states that if the taxpayer requests a turnaround of fewer than 12 weeks, the taxpayer must demonstrate:

- a business exigency outside of the taxpayer's control,
- adverse tax consequences if a ruling is not issued within the specified time period, and
- prompt action on the part of the taxpayer to submit the request as soon as it becomes aware of the exigencies and adverse tax consequences.

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In general, scheduled transaction closing dates, board of director or shareholder meetings, or other corporate actions within the control of a taxpayer are not alone sufficient justification for a shorter time period. Fluctuations in market prices alone also will not be considered a sufficient justification for a shorter ruling timeline.

As before, the eligibility for fast-track treatment generally extends to all ruling requests solely under the jurisdiction of Corporate, other than requests for "9100 relief" (that is, permission to make a regulatory election after the due date). Fast-track treatment may also extend to ruling requests primarily under the jurisdiction of Corporate, if all other affected ruling groups agree to process the request on the faster timeline (if actual rulings are requested of the other group) or do not object to the faster timeline (if no actual rulings are requested of the other group).[1]

Twelve-Week Turnaround Not a Guarantee

Fast-track handling provides a useful timing benefit to taxpayers seeking the comfort of an IRS ruling in connection with significant, time-sensitive, corporate transactions. However, fast-track handling is not a guarantee of a 12-week turnaround. Under the pilot program, it was not unusual for Corporate to accept a ruling request intending a 12-week goal and then decide that it needed more time — whether because an issue was too difficult to resolve in that time frame or because it required the involvement of another subject matter group. If that happened, Corporate frequently handled the request as though it were a request under its normal procedures.

[1] In addition to Corporate, six other subject matter groups in the IRS Chief Counsel's Office issue private letter rulings: Financial Institutions & Products; Income Tax & Accounting; International; Passthroughs & Special Industries; Procedure & Administration; and Employee Benefits, Exempt Organizations & Employment Taxes.

Accordingly, the potential availability of fast-track handling should not be seen upfront as guaranteeing a faster transaction timeline or allowing the filing of a ruling request later in the course of the development of a transaction than would otherwise be the case.

As one illustration of potential impediments to fast-track processing that may arise, the Expedited Ruling Revenue Procedure contains an exception from fast-track treatment where the request for a ruling contains or becomes a request for a closing agreement. A ruling binds the IRS but not the taxpayer that receives the ruling. A closing agreement binds both sides.

Ruling requests generally do not result in closing agreements but, when they do, it is typically at the initiative of the IRS, often first expressed while the ruling request is being considered. For this, and several other reasons, expedited processing of a ruling request can be terminated even if Corporate initially agrees to it and a taxpayer complies with all requisite procedural undertakings.

Benefits of Expedited Rulings

Those cautions aside, the continued willingness of Corporate to issue faster rulings in many cases is a welcome development that significantly increases the utility and feasibility of pursuing a private letter ruling, particularly in the context of a transactional practice.

The fast-track process is expected to facilitate corporate transactions by offering taxpayers comfort on material tax issues arising in corporate separations and other fundamental transactions in a significantly shorter period of time.

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