



TaxNewsFlash

United States

No. 2024-001
January 2, 2024

Effect of group membership on arm's length interest rate on intragroup loans (Chief Counsel legal advice memorandum)

The IRS publicly released a legal advice memorandum¹ (from the Office of Chief Counsel) concerning the IRS's position on the effect of group membership in determining the arm's length rate of interest chargeable for intragroup loans under section 482.

The IRS concluded that if an unrelated lender would consider group membership in establishing financing terms available to the borrower (i.e., "implicit support") even in the absence of a formal guarantee, then the IRS may adjust the interest rate in a controlled lending transaction to reflect that implicit support. The memorandum includes an example in which accounting for implicit support decreased the interest rate to be paid by a U.S. subsidiary of a foreign-parented group.

The IRS also clarified that its analysis would apply equally in the context of loans between controlled parties with relationships other than parent-subsidary (e.g., between sister subsidiaries of a corporate group) which might include implicit support from the group, including from the lender.

Read [AM 2023-008](#) [PDF 238 KB] (release date of December 29, 2023, and dated December 19, 2023)

¹ Legal advice memoranda are signed by executives in the National Office of the Office of Chief Counsel and issued to Internal Revenue Service personnel who are national program executives and managers. The memos are issued to assist IRS personnel in administering their programs by providing authoritative legal opinions on certain matters, such as industry-wide issues. The memos cannot be used or cited as precedent.

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