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BY E-MAIL AND REGULAR MAIL

Mr. Stephen Schaeffer
Office of Associate Chief Counsel (Procedure & Administration)
CC:PA:LPD:PR (REG-101896-09)
Courier's Desk
Internal Revenue Service
1111 Constitution Avenue NW
Washington, DC 20224

Re: The Prioritization of Guidance for Reporting of Customer's Basis in Securities Transactions

As we suggested to you and your colleagues at our meeting last week, we believe the guidance pending in the proposed regulations should be prioritized. Please find enclosed our recommendations.

These recommendations have been prepared on behalf of Wolters Kluwer Financial Services by Stevie D. Conlon, Tax Director, GainsKeeper, Wolters Kluwer Financial Services, with assistance from Dale Collinson, Director, Financial Institutions and Products, KPMG Washington National Tax, and Steven M. Rosenthal, Esq., Ropes & Gray LLP.

We look forward to continuing to work with you towards a successful implementation of the basis reporting regulations.

Best regards,


Steven M. Rosenthal

Enclosure

cc: Eric San Juan, U.S. Department of the Treasury
Jeanne F. Ross, U.S. Department of the Treasury
Stevie D. Conlon, Wolters Kluwer Financial Services
Dale S. Collinson, KPMG

WOLTERS KLUWER FINANCIAL SERVICES

**COST BASIS PROPOSED REGULATION COMMENTS
TO INTERNAL REVENUE SERVICE AND TREASURY
ON PRIORITIZATION OF GUIDANCE**

JANUARY 20, 2010

As we suggested at our meeting at Treasury on January 13, 2010, we believe that several pieces of guidance in the proposed regulations for cost basis reporting should be prioritized. The prioritization is necessary to develop technology and operations systems to process cost basis reporting information given the statutory effective date. Reprogramming and testing these systems may take a year or more, and immediate guidance is needed in certain areas.

We acknowledge that both the Service and the brokerage industry desire and will benefit from the rapid issuance of comprehensive guidance. However, we believe that temporary or final guidance on certain issues relating to cost basis reporting is more critical than others. Our concern is that the timing of the Feb. 8, 2010 comment deadline and the Feb. 17, 2010 public hearing, along with the necessary review of comments on the proposed regulations by the Service could delay the issuance of final or revised proposed regulations until June of this year or even later, which may be insufficient time for some critical decisions.

Accordingly, we recommend:

1. Subdivide the regulation package for review, revision and release so that guidance that is needed sooner as a matter of priority can be released without reference to potential delays regarding other aspects of the proposed regulations.
 - a. The basis determination (lot relief) method rules of Prop. Reg. 1.1012-1(c) and definition of DRP rules of Prop. Reg. 1.1012-1(e)(6) should be separated from the detailed rules relating to averaging set forth in Prop. Reg. 1.1012-1(e). We believe the general basis determination rules and the definition of DRP is vital for applying rules to covered stock beginning on Jan. 1, 2010. The many issues relating to averaging may delay the finalization of these rules.
 - b. The general transfer reporting rules of Prop. Reg. 1.6045A-1 should be separated from the detailed rules relating to inheritance and gift transfers set forth in Prop. Reg. 1.6045A-1(b)(3) and (4). We are concerned that issues relating to inheritance and gift transfers could delay finalization of these rules. This is a particular concern because

transfer reporting could be required as early as Jan. 15, 2011 (not taking into account weekend and holiday conventions) under the law. We expect that inheritance and gift transfers will be a comparatively small portion of transfers.

- c. The corporate action issuer reporting rules of Prop. Reg. 1.6045B-1 may be deferred. Although we acknowledge that these rules are effective for actions relating to identified stocks occurring on or after Jan. 1, 2011, we believe that any issues relating to these rules should not delay the release of other portions of the proposed regulations. As a general matter, brokers today typically rely on corporate action services for most corporate actions and we believe that this reduces the immediate need for such guidance.
 - d. The rules relating to short sales set forth in Prop. Reg. 1.6045-1(c)(3)(xi) (and related examples) along with Prop. Reg. 31.3406(b)(3)-2 could be released separately and the applicable effective date should be delayed from Jan. 1, 2010 to Jan. 1, 2011 given that calendar 2010 has already begun. Note the significance of these rules due to the impact on systems that are used to comply with the current reporting of short sales when short sales are opened.
 - e. Other rules that could also be separated and released later if necessary to avoid delaying the release of guidance on key cost basis reporting questions include: Prop. Regs 1.6039-2; 1.6042-4; 1.6044-5; 1.6045-2; 1.6045-3; 1.6045-4; 1.6045-5; 1.6049-6; 301.6721-1; and 301.6722-1
2. Release temporary regulations or revenue procedures providing guidance that brokers can rely on in the interim so that brokers can take interim steps to comply with the new rules if final regulations are delayed.
 3. Provide penalty relief for interim broker actions taken to comply with cost basis reporting rules to the extent that the interval between the date final or temporary regulations are released and the date brokers are required to be in compliance is less than one year. Documented steps taken by a broker to comply within one month of the release of such guidance could be a prerequisite for qualifying for such penalty relief.

We have also identified the following specific issues that we believe need immediate clarification as a programming matter:

1. Holding period versus holding date. Prop. Reg. 1.6045-1(d)(7) requires brokers to determine whether any gain or loss on the sale of security is long-term or short-term within the meaning of Sec. 1222 with regard only to items occurring within the account plus certain specified additional items,

including specifically information reported on transfer statements and issuer statements. Prop. Reg. 1.6045A-1(b) sets forth required information that a transferor must deliver to a transferee in connection with transfer reporting. Prop. Reg. 1.6045A-1(b)(1)(vii) requires the transferor to provide in part "...the date for computing whether any gain or loss with respect to the security is long-term or short-term..." This requirement seems to focus on a deemed "holding date" for the security that may have pre-dated the actual acquisition date for the security.

We believe that there can be significant computational differences between the determination of whether gain or loss is long-term or short-term based on an earlier holding date imputed from a prior security in the case of a wash sale adjustment and a determination based on the actual days the prior security and the adjusted security were held by the taxpayer (a holding period based computation) due to gaps between the date the prior security was sold and the date the adjusted security was acquired.

Such a gap can readily occur because the wash sale rule of Sec. 1091 takes into account purchases of substantially identical [merely identical securities under the simplifying assumptions of the cost basis reporting law] that occur up to 30 days after the date of the sale at a loss. If a gap occurs and the original acquisition date of the loss security is used to determine whether gain or loss is long-term or short-term, such a determination could be considered incorrect. Alternatively, the actual days the prior security was held could be tracked and added to the record for the new security if a wash sale occurs. The additional days could be factored in when the new security is sold to determine whether gain or loss is long-term or short-term. This approach is referred to as a holding period approach. Existing guidance on the detail of holding date versus holding period is not clear.

If a transferor provides a "holding date" relating to a wash sale adjusted security that does not account for a gap between the sale date of the related loss security and the related adjusted security, the recipient may be unable to accurately determine whether gain or loss on disposition of the transferred security is long-term or short-term. There is a significant difference between architecting and developing a system that tracks holding date (if understood to mean prior acquisition date) versus holding period. Thus, guidance on this issue would be necessary as soon as possible so that the proper information is tracked in cost basis related computer systems.

2. **DRP and Non-DRP identical CUSIP shares wash sales issues.** Under Prop. Reg. 1.1012-1(e)(4) stock within a DRP plan is not considered identical to stock with an identical CUSIP that is outside the DRP plan even if both sets of stock are within a single customer account. This rule applies for purposes of paragraph (e) of the proposed regulation. Separately, brokers must compute wash sales and adjust basis of acquired shares for wash sales under

Prop. Reg. 1.6045-1(d)(6)(iii). The broker wash sale rule does not provide for the separation of DRP and non-DRP identical CUSIP shares. Due to the complexities of architecting and developing cost basis computer systems, guidance on whether such shares are commingled for wash sale computation purposes is also necessary as soon as possible.

- 3. Transfer statements and wash sale rules.** As stated above, brokers must compute wash sales and adjust basis of acquired shares for wash sales under Prop. Reg. 1.6045-1(d)(6)(iii). A key limitation is that the wash sale rules are only applied if the sale and purchase transaction occur within the same account. The impact of this limitation in the context of transfers of securities from one account to another should be considered. Additional information on transfer statements may be needed to implement the limitation, as well as guidance on the treatment of transferred shares under the wash sale basis adjustment rules.

For example, if Taxpayer A has a loss on Jan. 30, 2012 with regard to 100 shares of Acme stock while it is in Old Account with Broker A and then transfers his holdings to New Account with Broker B, the acquisition of another 100 shares of Acme stock in New Account on Feb. 1, 2012 would presumably not trigger a reportable wash sale because the sale at a loss and the purchase of identical shares did not occur within the same account. Without additional information regarding stocks sold (and that were therefore not transferred), Broker B would not be able to make basis adjustments or notify Broker A that a wash sale loss has occurred that should be reported. Thus, the within an account limitation makes sense.

However, even within a single account, transferred securities raise concerns regarding the application of the wash sale rule. For example, assume that taxpayer acquires three separate lots of Acme stock in New Account between Jan. 20 and Jan. 30, 2012, and then transfers an additional lot of Acme stock from Old Account on Feb. 1, 2012. Assume a wash sale then occurs in New Account on February 10, 2012. The wash sale rule provides for first-in/first-out (FIFO) selection of the lots/shares to which the wash sale loss deferral basis adjustment is applied. See Treas. Reg. Sec. 1.1091-1(c) and (d). Is the transferred lot ignored because it was not purchased in the New Account? If it is not ignored, what is the relevant acquisition date of the transferred lot for purposes of applying the FIFO selection rule and determining which shares of the four lots are subject to the wash sale related basis adjustment?

Treas. Reg. 1.1091-1(e) may also be significant. It provides that shares (or a tax lot) that has already been subject to a wash sale basis adjustment is not adjusted again. To the extent transferred shares are considered in wash sale calculations in the New Account, it would be necessary to know whether the transferred shares were previously subject to wash sale related basis adjustments. Additional information indicating this fact would need to be

included in transfer reporting in order to properly apply Treas. Reg. 1.1091-1(e) in the New Account. Due to the complexities of architecting and developing cost basis computer systems, guidance on whether transferred shares are considered for wash sale computation purposes subsequent to transfer is also necessary as soon as possible.

We sincerely appreciate the opportunity to provide you these limited priority related comments. We are continuing our review of the proposed regulations and hope to provide you with additional comments as soon as possible. If you have any questions, please contact us.

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