

**MEMO# 31133**

March 15, 2018

## **Draft Letter on Proposed Section 988 Mark-to-Market Election -- Comments Requested**

[31133]

March 15, 2018 TO: Tax Committee RE: Draft Letter on Proposed Section 988 Mark-to-Market Election -- Comments Requested

Attached for your review is a draft letter to the Treasury Department and the Internal Revenue Service (IRS) seeking guidance on the mark-to-market election for section 988 transactions included in recently proposed regulations.[\[1\]](#)

The Institute requests three clarifications to the mark-to-market election in Prop. Reg. § 1.988-7. We believe that applying the proposed regulations in this manner would be appropriate absent additional guidance, but confirmation by the government would be welcome. Specifically, we ask the Treasury Department and the IRS to clarify in the final regulations:

1. The application of the netting rule of section 988(b) and Treas. Reg. § 1.988-2(b)(8) in the taxable year in which section 988 gain or loss would be recognized, by including the examples suggested in the letter (or similar examples reflecting the same principles);
2. That the straddle rules are inapplicable (or otherwise without effect) if a taxpayer that makes the Treas. Reg. § 1.988-7 mark-to-market election has a section 988 transaction that diminishes currency risk on one or more other section 988 transactions; and
3. That the 988-7 Mark-to-Market Election can be applied with respect to the full amount of section 988 gain or loss on all section 988 transactions held during or following the taxable year in which the 988-7 Mark-to-Market Election is made.

In addition, the draft letter confirms our understanding that taxpayers may make the proposed mark-to-market election for tax years ending on or after December 19, 2017.

Please provide any comments on the draft letter to me ([kgibian@ici.org](mailto:kgibian@ici.org) or (202) 371-5432) **no later than 11:00 a.m. ET on Monday, March 19, 2018.**

Karen Lau Gibian  
Associate General Counsel

[Attachment](#)

**endnotes**

[1] The proposed regulations can be found in the Federal Register at:  
<https://www.gpo.gov/fdsys/pkg/FR-2017-12-19/pdf/2017-27320.pdf>.

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