

Notice of Proposed Rulemaking and Notice of Public Hearing

Treatment of Section 355 Distributions by U.S. Corporations to Foreign Persons

REG-209827-96

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In *** TD 8682, page 4, this Bulletin, the IRS is issuing temporary regulations revising the final regulations under section 367(e)(1) with respect to section 355 distributions of stock or securities by domestic corporations to foreign persons. The IRS is also modifying the temporary regulations under section 6038B to provide that distributions described under section 367(e)(1) are subject to rules under section 6038B. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by November 7, 1996. Outlines of topics to be discussed at the public hearing scheduled for November 20, 1996, at 10 a.m. must be received by October 31, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (INTL 0020-96), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (INTL-0020-96), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave. NW., Washington, DC. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Philip L. Tretiak at (202) 622-3860; concerning submissions and the hearing, Evangelista Lee at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. Comments on the collection of information should be received by October 15, 1996.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information under section 367(e)(1) is in § 1.367(e)-1T(c)(1)(ii), (2)(i)(C) and (3). The temporary regulations provide that in order for taxpayers to qualify for either the "U.S. real property holding corporation exception" or the "publicly traded corporation" exception, taxpayers must comply with the reporting requirements contained in § 1.367(e)-1T(c)(1)(ii) and § 1.367(e)-1T(c)(2)(i)(C), respectively. The temporary regulations also modify the reporting requirements under the "gain recognition agreement" exception (§ 1.367(e)-1T(c)(3)). Under the temporary regulations, the controlled corporation, in addition to the distributing corporation, must sign the gain recognition agreement (§ 1.367(e)-1T(c)(3)(ii)(F) and (iii)), extend the statute of limitations accordingly (§ 1.367(e)-1T(c)(3)(ii)(F) and (iv)), and annually report its distributees to the distributing corporation but not the Service (§ 1.367(e)-1T(c)(3)(v)(B)). This information is required by the IRS as a condition for a taxpayer to qualify for an exception to the general rule of taxation under sec-

tion 367(e)(1), and to avoid the penalties contained under section 6038B. This information will be used to determine whether a taxpayer properly qualifies for a claimed exception. The respondents generally will be U.S. corporations, probably subsidiaries of foreign multinationals, that are either distributing another corporation or being distributed under section 355, pursuant to a corporate restructuring.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Estimated total annual reporting burden: 2,124 hours. (This equals the sum of (i) the prior burden of 1,604 hours, and (ii) the additional burden of 520 hours contained in the new regulations.) The estimated annual burden per respondent varies from 1 hour to 8 hours, depending on individual circumstances, with an estimated average of 2 hours.

Estimated number of respondents: 462.

Estimated annual frequency of responses: Once (in the case of taxpayers that qualify for the U.S. real property holding company exception and the publicly traded company exception). Annually (in the case of taxpayers that qualify for the gain recognition agreement exception).

Background

The *** T.D. 8682, page 4 in this Bulletin, amends the Income Tax Regulations (26 CFR part 1) under section 367(e)(1). The temporary regulations under section 367(e)(1) contain rules relating to the distribution of stock or securities under section 355 by a domestic corporation to a person that is not a U.S. person.

The text of T.D. 8682 also serves as the text of these proposed regulations. The preamble to T.D. 8682 explains the reasons for the modifications to the final regulations contained in the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO

12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect large multinational corporations with foreign shareholders. The regulations do not significantly alter the reporting or recordkeeping duties of small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Notice of Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the Internal Revenue Service. All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 20, 1996, at 10 a.m. in the IRS Auditorium. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by November 7, 1996, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by October 31, 1996.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Philip L. Tretiak of the Office of Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.367(e)–1 is added to read as follows:

§ 1.367(e)–1 Treatment of section 355 distributions by U.S. corporations to foreign persons.

[The text of this proposed section is the same as the text of § 1.367(e)–1T published in T.D. 8682, page 4 of this Bulletin].

Par. 3. Section 1.6038B–1, as proposed on May 16, 1986, at 51 FR 17990, is amended by revising the second sentence of paragraph (b)(2)(i) and adding the text of paragraph (e) to read as follows:

§ 1.6038B–1 Reporting of transfers described in section 367.

[The text of proposed paragraphs (b)(2)(i) and (e) are the same as the text of § 1.6038B–1T(b)(2)(i) and (e) published in T.D. 8682, page 4 of this Bulletin].

Margaret Milner Richardson,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on August 9, 1996, 12:19 p.m., and published in the issue of the Federal Register for August 14, 1996, 61 F.R. 42217)