

Transfers to avoid tax

488.1 Acquisition of corporation and subsidiaries; control; attribution. An acquired corporation owned all the stock of two subsidiary corporations. The acquiring corporation, owning 45 percent of the stock of the acquired corporation before the merger, did not have control of the acquired corporation under section 269 where the acquiring corporation's sole stockholder also owned 10 percent of the stock of the acquired corporation since the attribution rules of constructive ownership do not apply. The acquiring corporation has acquired control of the acquired corporation's subsidiaries. §1.269-1. (Sec. 269, '86 Code.)
Rev. Rul. 80-46, 1980-1 C.B. 62.

488.2 Acquisition of corporation's assets for preferred stock. Although voting preferred stock issued in a reorganization by a publicly held corporation in exchange for all the assets of a closely held corporation was section 306 stock, the issuance of the stock was not pursuant to a plan having the avoidance of tax as its principal purpose. Accordingly, section 306(a) will not apply to disposition of any part of the preferred stock. §1.306-2. (Sec. 306, '86 Code.)
Rev. Rul. 57-103, 1957-1 C.B. 113.

488.3 Acquisition of loss corporation. In May of 1964, the taxpayer, a manufacturer of yarns, hosiery, and knit products who was looking for a new supply source for flat fabric, acquired substantially all the stock of a hosiery manufacturer that had suffered net operating losses in three of five taxable years preceding 1964. After the takeover, the taxpayer converted 26 of the acquired corporation's full-fashioned hosiery knitting machines for use in making flat fabric and the acquired corporation continued to make hosiery on its 91 seamless knitting machines until the end of 1965. *Held*, the acquired corporation was not barred by section 382(a)(1) from utilizing pre-acquisition net operating loss carryover deductions because it engaged in substantially the same business before and after the takeover, or by section 269(a)(1) since the acquiring corporation's purpose in purchasing the stock was not tax avoidance but was for a valid business reason. (Secs. 269, 382; '86 Code.)

Glen Raven Mills, Inc., 59 T.C. 1, Acq. in result, 1973-1 C.B. 1.

488.4 Acquisition of loss corporation. A corporation, engaged in the book business, sustained losses for a number of years. After the members of a partnership operating a successful corrugated container business purchased the corporation's accounts payable, all of the sole owner's stock was transferred to the partners who then terminated the partnership, transferred its assets and liabilities to the corporation, and carried forward the earlier losses from the book business. *Held*, the continuing corporation was entitled to use the net operating loss carryovers. (Sec. 129, '39 Code; Sec. 269, '86 Code.)

A.B. & Container Co., 14 T.C. 842, Nonacq., 1960-2 C.B. 8.

488.5 Acquisition of loss corporation. A tax free exchange of property for stock, not made to avoid tax and that increases a corporation's ownership from 25 percent to 85 percent of the outstanding stock of another corporation, is not a purchase for purposes of section 382(a)(4) and the corporation whose stock was acquired is permitted to include net operating loss carryovers in its net operating loss deduction for the year of exchange and subsequent years. §§1.269-2, 1.351-1,

1.358-1, 1.382(a)-1. (Secs. 269, 351, 358, 382; '86 Code.)

Rev. Rul. 75-248, 1975-1 C.B. 125.

488.6 Acquisition of parent; pre-existing disallowance of surtax exemption to subsidiary. The disallowance of a separate surtax exemption claimed by a wholly owned subsidiary will be continued for taxable years following the parent corporation's acquisition in a reorganization where the parent remains in existence and is in control of the subsidiary. Furthermore, the fact that the acquiring corporation may choose to liquidate the parent does not alter the holding. The holdings are equally applicable in situations where a surtax exemption is denied under section 269. §§1.269-3, 1.1551-1. (Secs. 269, 1551; '86 Code.)
Rev. Rul. 70-628, 1970-2 C.B. 180.

488.7 Appreciated property; transfer in trust. The transfer of appreciated property to a foreign trust is not subject to the tax imposed by section 1491 of the Code if the grantor is treated as the owner of the trust under sections 673 through 679. Rev. Rul. 69-450 revoked. §§1.671-1, 1.872-1, 1.1491-1, 1.1492-1, 1.1494-1, 301.7805-1. (Secs. 671, 872, 1491, 1492, 1494, 7701, 7805; '86 Code.)
Rev. Rul. 87-61, 1987-2 C.B. 219.

488.8 Appreciated stock; transfer to foreign corporation for annuity. Section 1491 does not apply to the transfer of appreciated stock by a U.S. citizen to a foreign corporation in an arm's-length exchange for an annuity, the present value of which was equal to the fair market value of the stock. §1.1491-1. (Sec. 1491, '86 Code.)
Rev. Rul. 78-356, 1978-2 C.B. 226.

488.9 Appreciated stock; transfer to foreign partnership for annuity. A U.S. citizen transferred appreciated stock in 1974 to a foreign partnership in which the individual owned a one-half interest in exchange for an annuity with a present value less than the fair market value of the stock. The transaction was a taxable exchange under section 707(a) to the extent the stock's fair market value equaled the annuity's present value. The excess of the stock's fair market value over the annuity's present value was a nontaxable contribution of property to the partnership. The transferor was liable at the time of transfer for the tax imposed by section 1491 on the stock's value in excess of its adjusted basis. §§1.707-1, 1.721-1, 1.1491-1. (Secs. 707, 721, 1491; '86 Code.)
Rev. Rul. 78-357, 1978-2 C.B. 227.

488.10 Asset acquisitions; section 338 procedures. Procedures are provided for applying for relief from the asset consistency rules under section 338. §1.338-4T. (Sec. 601.105, S.P.R.; Sec. 338, '86 Code.)
Rev. Proc. 89-40, 1989-2 C.B. 453.

488.11 Assets of controlled foreign subsidiary; failure to secure clearance. A domestic parent of a wholly owned foreign subsidiary is not entitled to a stepped-up basis in the assets of the subsidiary upon receipt of such assets pursuant to liquidation of the subsidiary in what would be a section 332 nontaxable transaction except for failure to apply for and obtain clearance under section 367. §§1.332-1, 1.367-1. (Secs. 332, 367; '86 Code.)
Rev. Rul. 64-177, 1964-1 (Part 1) C.B. 141.

488.12 Controlled businesses; related activities. Two corporations and two partnerships were owned or controlled directly or indirectly by the same interests. The Commissioner contended the partnerships were shams and allocated their income and deductions to the corporations. *Held*, each partnership was organized and operated as a separate business entity to perform activities functionally distinguished from the activities engaged

in or retained by the controlling corporations and is taxed separately. (Secs. 22(a), 45, '39 Code; Secs. 61, 482, '86 Code.)

National Hosiery Mills Inc. (Grenada Industries, Inc.), 17 T.C. 231, Acq., 1952-2 C.B. 2, 1972-1 C.B. 2.

488.13 Controlled corporations; beneficial ownership; family members. Section 269(a)(2) is inapplicable in a statutory merger where a majority of the stock of the acquiring corporation was owned by family members, either legally or beneficially as beneficiaries of a trust, and the stock of the acquired corporation was owned by a trust the beneficiaries of which were the same as those owning the stock of the acquiring corporation. §1.269-1. (Sec. 269, '86 Code.)
Rev. Rul. 70-638, 1970-2 C.B. 71.

488.14 Controlled corporations; consolidation and liquidation. Section 269(a) does not apply to a transaction in which the sole shareholder of two corporations, actively engaged in business for 5 years and sustaining losses in the last 3, contributed all his stock in one corporation to the other corporation, which was about to realize a large gain, and the acquired corporation was liquidated 5 days later. The net operating losses will carry over provided the transaction qualifies as a reorganization and was for a valid business purpose. §§1.269-2, 1.368-1. (Secs. 269, 368; '86 Code.)
Rev. Rul. 67-202, 1967-1 C.B. 73.

488.15 Controlled corporations; property leased to subsidiary. Where pursuant to a lease agreement a parent corporation transfers its property for use to a newly formed wholly owned subsidiary (owning no physical assets), the lease of such property is considered a "transfer of property". The subsidiary was not entitled to the surtax exemption or the accumulated earnings credit. §1.1551-1. (Sec. 1551, '86 Code.)
Rev. Rul. 57-202, 1957-1 C.B. 297.

488.16 Controlled corporations; transfers; liabilities assumed. In exchange for stock of a newly formed corporation which he then controlled, taxpayer transferred assets having a fair market value considerably in excess of his basis, which, in turn, was slightly in excess of the amount of liabilities transferred with the assets. *Held*, the taxpayer had the corporation assume the liabilities for a bona fide business purpose, not tax avoidance. (Secs. 351, 357; '86 Code.)

W.H.B. Simpson, 43 T.C. 900, Acq., 1965-2 C.B. 6.

488.17 Domestic and foreign corporation; stapled entities. Guidance is provided concerning a domestic corporation and a foreign corporation that are stapled entities.

Notice 89-94, 1989-2 C.B. 416.

488.18 Farmland and leaseholds to controlled corporations. Taxpayers formed two corporations to conduct their farming operations, conveying to them land and leaseholds planted in mature but unharvested crops. The Commissioner allocated the corporate income and deductions to the shareholders. *Held*, the corporations were entities distinct from their shareholders and were taxable as such. (Sec. 269, '86 Code.)

John F. Nutt, 39 T.C. 231, Acq., 1964-1 (Part 1) C.B. 5.

488.19 Foreign and domestic corporation; stapled stock domestication. The deemed conversion of a foreign corporation to a domestic corporation pursuant to the stapled stock provisions of section 269B qualifies as a reorganization under section 368(a)(1)(F). (Secs. 269B, 367, 368, 897, '86 Code.)
Rev. Rul. 89-103, 1989-2 C.B. 65.

488.20 Foreign and domestic subsidiaries; parents exchange of stock. Where an unrelated

domestic and foreign corporation each form a subsidiary in their native country and exchange 49 percent of their stock interest in the subsidiaries, there is no tax-free exchange of property under section 351 and no advance ruling under section 367 is required. Gain or loss, if any, will be recognized to the domestic corporation for the exchange of its 49 percent stock interest in its subsidiary. §§1.351-1, 1.367-1, 1.368-2. (Secs. 351, 367, 368; '86 Code.)

Rev. Rul. 70-522, 1970-2 C.B. 81.

488.21 Foreign corporation; advance rulings. Guides are set forth regarding the issuance of advance rulings under section 367 to the effect that certain described exchanges or distributions involving foreign corporations are not in pursuance of a plan having tax avoidance as one of its principal purposes. Amplified by Rev. Procs. 75-29, 76-20 and 80-14; modified by Rev. Proc. 77-17. §1.367-1. (Sec. 601.201, S.P.R.; Sec. 367, '86 Code.)

Rev. Proc. 68-23, 1968-1 C.B. 821.

488.22 Foreign corporation; advance rulings. Section 3.03(1)(c) of Rev. Proc. 68-23, providing conditions for the issuance of favorable rulings under section 367 where the assets of a controlled foreign corporation are acquired by another foreign corporation, is inapplicable to the mere reincorporation of the business of a single foreign corporation. However, the combination of two or more operating corporations satisfying the requirements of Rev. Rul. 75-561, and thereby qualifying under section 368(a)(1)(F), will continue to be subject to the provisions of section 3.03(1)(c). Rev. Proc. 68-23 amplified. §§1.367-1, 1.368-2. (Sec. 601.201, S.P.R.; Secs. 367, 368, '86 Code.)

Rev. Proc. 76-20, 1976-1 C.B. 560.

488.23 Foreign corporation; advance rulings. The guidelines used by the Service in considering requests for rulings under section 367 are modified to reflect the repeal of section 954(b)(1) which provided an exclusion from foreign base company income with respect to certain less developed country income. Rev. Proc. 68-23 modified. §1.367-1. (Sec. 601.201, S.P.R.; Sec. 367, '86 Code.)

Rev. Proc. 77-17, 1977-1 C.B. 577.

488.24 Foreign corporation; advance rulings; capital contributions. A domestic corporation's wholly owned domestic or foreign subsidiary that transfers machinery without consideration to a 40-percent owned foreign subsidiary, the balance of whose stock is owned by the domestic parent, is treated as owning the parent's stock for purposes of section 367(d) and the machinery will be a contribution to capital provided that prior to the transfer a favorable ruling letter is obtained. §§1.318-1, 1.367-1. (Secs. 318, 367; '86 Code.)

Rev. Rul. 76-240, 1976-1 C.B. 101.

488.25 Foreign corporation; advance rulings request; penalties of perjury statement. Language is set forth to be used for the penalties of perjury statement required in connection with requests for rulings. §§1.367-1, 1.1492-1. (Sec. 601.201 S.P.R.; Secs. 367, 1492, '86 Code.)

Rev. Proc. 76-2, 1976-1 C.B. 542.

488.26 Foreign corporation; advance rulings; stock for stock. An advance ruling under section 367 is not necessary where a foreign corporation transfers stock to a domestic corporation pursuant to a plan that meets the requirements of a reorganization under section 368(a)(1)(B) and an exchange under section 351. §§1.351-1, 1.354-1, 1.367-1, 1.368-1. (Secs. 351, 354, 367, 368; '86 Code.)

Rev. Rul. 70-433, 1970-2 C.B. 82.

488.27 Foreign corporation; advance rulings; technical "know-how" or "computer software" for stock. Conditions or circumstances are set forth under which an advance ruling will be issued under section 367 that an agreement which purports to furnish technical "know-how" to a foreign corporation in exchange for its stock is a transfer of property within the meaning of section 351. Amplified to apply to advance ruling requests where the transferee is a domestic corporation or where "computer software" is transferred in exchange for stock. §§1.351-1, 1.367-1. (Sec. 601.201, S.P.R.; Secs. 351, 367, '86 Code.)

Rev. Proc. 69-19, 1969-2 C.B. 301; Rev. Proc. 74-36, 1974-2 C.B. 491.

488.28 Foreign corporation; branch with initial losses. A favorable ruling under section 367 will be issued concerning the transfer by a domestic corporation of the assets of its foreign branch, which incurred losses during each of the initial three years of its existence, to a newly created foreign subsidiary that has not income from U.S. sources only if the transferor recognizes as gain on the transfer an amount of ordinary foreign source income equal to the sum of the losses previously incurred by the foreign branch and deducted by such transferor. The basis of the stock received will be the same as the basis of the assets transferred increased by the amount of gain recognized. Amplified by Rev. Ruls. 80-163, 80-246, 80-247, 80-293, 81-82, and 81-89. §1.367-1. (Sec. 367, '86 Code.)

Rev. Rul. 78-201, 1978-1 C.B. 91.

488.29 Foreign corporation; branch with initial losses. The amount of gain that a domestic corporation must recognize as ordinary foreign source income pursuant to Rev. Rul. 78-201 on the incorporation of its foreign branch that had incurred annual losses since its creation is reduced by the amount of taxable income realized and recognized by the domestic corporation on the transfer of assets to the new foreign corporation. Rev. Rul. 78-201 amplified. §§1.351-1, 7.367(a)-1. (Secs. 351, 367, 904; '86 Code.)

Rev. Rul. 80-246, 1980-2 C.B. 125.

488.30 Foreign corporation; branch with initial losses. Losses that must be recaptured under Rev. Rul. 78-201, as a result of the incorporation of a foreign branch operation, include expenses directly related to branch property not transferred but abandoned as worthless. Rev. Rul. 78-201 amplified. §7.367(a)-1. (Sec. 367, '86 Code.)

Rev. Rul. 80-247, 1980-2 C.B. 127.

488.31 Foreign corporation; branch with initial losses. Rev. Rul. 80-163, concerning the amount of ordinary foreign source income that a United States transferor must include in its income, is revoked. §7.367(a)-1. (Sec. 367, '86 Code.)

Rev. Rul. 82-146, 1982-2 C.B. 84.

488.32 Foreign corporation; branch with losses; affiliated corporations. To determine the amount of loss a domestic parent corporation must recapture under Rev. Rul. 78-201, the profits and losses of affiliated corporations' foreign branches in the same country that are transferred to a new foreign corporation may be combined for the period the affiliated corporations filed consolidated returns if the branches' operations were completely integrated during that period. Rev. Rul. 78-201 amplified. §7.367(a)-1. (Sec. 367, '86 Code.)

Rev. Rul. 81-89, 1981-1 C.B. 129.

488.33 Foreign corporation; branches with losses; offsetting gains and losses. To determine the amount of loss to recapture under Rev. Rul. 78-201, a domestic transferor may not combine profits and losses of divisions that are separate business operations. Further, the transferor must

recapture the losses of all divisions that comprise a business operation, even if the assets of all the divisions are not transferred. Rev. Rul. 78-201 amplified. §7.367(a)-1. (Sec. 367, '86 Code.)

Rev. Rul. 81-82, 1981-1 C.B. 127.

488.34 Foreign corporation; controlled; liquidation and reorganization. The transfer of all the assets and liabilities of a wholly owned foreign subsidiary to its domestic parent's wholly owned domestic subsidiary qualifies as a reorganization within the meaning of section 368(a)(1)(D), provided the business purpose and continuity of interest requirements are met, and is a transaction for which an advance ruling is required under section 367. Rev. Rul. 74-598 amplified. §§1.354-1, 1.361-1, 1.367-1, 1.368-2. (Secs. 354, 361, 367, 368; '86 Code.)

Rev. Rul. 75-383, 1975-2 C.B. 127.

488.35 Foreign corporation; deemed in corporation; Nigerian Decree. Section 367 of the Code does not apply to the deemed incorporation of domestic corporations affected by Nigerian "Decree No. 51"; before property is transferred pursuant to a formal incorporation, an advance ruling is required under section 367. §1.367-1. (Sec. 367, '86 Code.)

Rev. Rul. 69-16, 1969-1 C.B. 103.

488.36 Foreign corporation; incorporation of partnership; losses; U.S. partners. The amount of ordinary foreign source income that domestic partners are required to include in their income upon the incorporation of their foreign partnership is limited to the amount of losses incurred by the partnership after the domestic partners acquired their partnership interests. Rev. Rul. 78-201 amplified. §7.367(a)-1. (Sec. 367, '86 Code.)

Rev. Rul. 80-293, 1980-2 C.B. 128.

488.37 Foreign corporation; liquidations; transfers; aggregate stock ownership rules. Two situations illustrate the effect of special aggregate stock ownership rules of reg. 1.1502-34 in determining whether section 332(b) applies to the liquidation of a foreign subsidiary corporation and section 351(a) applies to a transferor property to a foreign corporation by members of an affiliated group. §§1.332-2, 1.351-1, 1.367-1, 1.1502-34. (Secs. 332, 351, 367, 1502; '86 Code.)

Rev. Rul. 70-141, 1970-1 C.B. 76.

488.38 Foreign corporation; merger of domestic subsidiaries. Where a plan of reorganization is proposed for bona fide business reasons providing for a statutory merger of two domestic corporations which are wholly owned subsidiaries of a foreign corporation, it is not necessary to establish prior to the merger that such transaction is not in pursuance of a plan of tax avoidance under section 367. The plan is a nontaxable section 368(a)(1)(A) reorganization. (Secs. 354, 358, 361, 362, 367, 368, 381, 1223; '86 Code.)

Rev. Rul. 55-45, 1955-1 C.B. 34.

488.39 Foreign corporation; merger of unrelated domestic corporation into domestic subsidiary. The merger of an unrelated domestic corporation into the wholly owned domestic subsidiary of a foreign corporation through an exchange of the parent corporation's stock, meeting the business purpose and continuity requirements of section 368(a)(1)(A), qualifies as a reorganization by reason of the application of section 368(a)(2)(D). However, for the nonrecognition of gain provisions of section 354 and 361 to apply, an advance ruling under section 367 is necessary. §§1.367-1, 1.368-2. (Secs. 367, 368; '86 Code.)

Rev. Rul. 74-297, 1974-1 C.B. 84.

488.40 Foreign corporation; notice requirement. Failure of any shareholder to file a required notice will not prevent a foreign corporation from being treated as a corporation with respect to those shareholders of the foreign corporation who do

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satisfy the requirement. §7.367(b)-1. (Sec. 601.201, S.P.R.; Sec. 367, '86 Code.)

Rev. Proc. 78-27, 1978-2 C.B. 526.

488.41 Foreign corporation; obsolete rulings. Rev. Ruls. 64-156, 66-171, and 72-420, concerning the application to certain exchanges of stock in a foreign corporation of the advance ruling requirement of section 367 prior to its amendment by the Tax Reform Act of 1976, are obsolete because present section 367(b) does not require a ruling with respect to such exchanges. §301.7805-1. (Sec. 7805, '86 Code.)

Rev. Rul. 78-381, 1978-2 C.B. 347.

488.42 Foreign corporation; property for stock. Where a domestic corporation transfers certain items of property to its wholly owned foreign subsidiary in an exchange described in section 351, without securing a ruling under section 367, the gain realized from each item of property transferred is recognized, and any realized loss will not be recognized under section 351. §§1.351-1, 1.367-1. (Secs. 351, 367, '86 Code.)

Rev. Rul. 67-192, 1967-2 C.B. 140.

488.43 Foreign corporation; property for stock. A domestic corporation that received a favorable ruling under section 367 and, at the time the transaction was consummated, transferred additional property and liability items not described in the ruling request, must treat the entire transaction as a series of separate transfers in which each gain, but none of the losses, is recognized. §§1.351-1, 1.367-1. (Secs. 351, 367, '86 Code.)

Rev. Rul. 76-333, 1976-2 C.B. 104.

488.44 Foreign corporation; protest of adverse determination. Procedures for the submission of requests for rulings under section 367, as amended by section 1042 of the Tax Reform Act of 1976, and the administrative remedies available to a taxpayer within the Service on such rulings are set forth. Rev. Proc. 73-5 superseded. §1.367-1. (Sec. 601.201, S.P.R.; Secs. 367, 7477, '86 Code.)

Rev. Proc. 77-5, 1977-1 C.B. 146.

488.45 Foreign corporation; recognition of corporate entity. The taxpayer, who engaged in the food brokerage business in the U.S., formed a Panamanian corporation which invested in a joint farming venture in Cuba. *Held*, there were bona fide business reasons for creating the corporation and the corporate entity could not be disregarded so as to attribute its income to the taxpayer. (Sec. 269, '86 Code.)

Sam Siegel, 45 T.C. 566, Acq., 1966-2 C.B. 7.

488.46 Foreign corporation; recognition of corporate entity. Taxpayer, the controlling shareholder of a domestic corporation, formed a Bahamian manufacturing corporation in the Philippines that provided the domestic with services, raw materials, finished products, and cash advances. *Held*, the Bahamian corporation was not a sham and income it generated from the Philippine operation was not attributable to the taxpayer. (Sec. 269, '86 Code.)

Ross Glove Co., 60 T.C. 569, Acq., 1974-1 C.B. 2.

488.47 Foreign corporations; ruling request; hand delivery. A request for a ruling regarding a transfer described in section 367(a)(1) will be considered timely filed if it is hand delivered to any Service office not later than the 183rd day after the beginning of the transfer. §7.367(a)-1. (Sec. 601.201, S.P.R.; Sec. 367, '86 Code.)

Rev. Proc. 78-28, 1978-2 C.B. 526.

488.48 Foreign corporation; stock exchange following amalgamation of tier corporations. Section 1248 does not apply to a distribution arising from the sale for cash by a domestic corporation's wholly owned foreign subsidiary of the

stock in its second tier foreign subsidiary to an unrelated party. However, section 1248 does not apply when wholly-owned first tier and second tier foreign subsidiaries amalgamate with out obtaining an advance ruling under section 367 and the domestic parent exchanges its stock in the first tier corporation for stock of the resulting new corporation. Rev. Rul. 73-373 superseded. §§1.367-1, 1.1248-1. (Secs. 367, 1248; '86 Code.)

Rev. Rul. 74-106, 1974-1 C.B. 237.

488.49 Foreign corporation; stock held as custodian by domestic bank. A domestic banking corporation that holds stock as custodian for a foreign corporation will not be subject to the tax imposed by section 1491 on the transfer of the custody of the stock, at the instruction of the owner, to another foreign corporation. The foreign owner of the stock is also not subject to the tax on such a transaction. §1.1491-1. (Sec. 1491, '86 Code.)

Rev. Rul. 78-334, 1978-2 C.B. 226.

488.50 Foreign subsidiary; appreciated foreign currency transferred by domestic parent.

A domestic corporation's transfer of appreciated foreign currency to its wholly owned foreign subsidiary as a capital contribution is deemed to have as one of its principal purposes the avoidance of federal income tax. The domestic corporation must recognize the gain realized on the currency's appreciation. §7.367(a)-1. (Sec. 367, '86 Code.)

Rev. Rul. 81-4, 1981-1 C.B. 126.

488.51 Foreign subsidiary; appreciated property transferred by domestic parent. Gain will be recognized on a contribution of appreciated property by a domestic parent to its wholly owned foreign subsidiary, even though additional stock is not received, unless it is previously established that tax avoidance is not a principal purpose of the transfer. §1.351-1, 1.367-1. (Secs. 351, 367; '86 Code.)

Rev. Rul. 64-155, 1964-1 (Part 1) C.B. 138.

488.52 Foreign subsidiary; stock transferred by domestic parent. The tax imposed by section 1491 does not apply if a domestic corporation makes a contribution to the capital of its wholly owned foreign subsidiary consisting of stock of the foreign subsidiary because such a transfer is described in section 367(b)(1). Rev. Rul. 70-291 amplified. §§1.1491-1, 7.367(c)-2. (Secs. 367, 1491; '86 Code.)

Rev. Rul. 82-112, 1982-1 C.B. 59.

488.53 Foreign subsidiary's stock sold to foreign parent. Notwithstanding the provisions of section 311, section 482 may be applied to allocate income to a foreign corporation's domestic subsidiary that, for the purpose of avoiding tax, sold the stock of its wholly owned foreign subsidiaries to its foreign parent at a price that was less than the domestic corporation's basis in the stock and was also less than the stock's fair market value. §§1.301-1, 1.311-1, 1.482-1. (Secs. 301, 311, 482; '86 Code.)

Rev. Rul. 77-83, 1977-1 C.B. 139.

488.54 Foreign subsidiary's stock sold to foreign subsidiary. A domestic corporation with two controlled foreign corporations proposes to sell the stock of its wholly owned subsidiary to its 75-percent-owned subsidiary. *Held*, the sale is governed by section 304(a) and the sale proceeds will be treated under section 304(a)(1) as having been transferred by the parent to its 75-percent-owned subsidiary as a contribution to capital. The proposed transfer will be subject to the excise tax imposed by section 1491 unless it has been previously established that it is not in pursuance of a plan having as one of its principal purposes the avoidance of tax. §§1.302-1, 1.304-2, 1.1491-1, 1.1492-1. (Secs. 302, 304, 1491, 1492; '86 Code.)

Rev. Rul. 70-111, 1970-1 C.B. 184.

488.55 Foreign trust; appreciated and depreciated stock offsets. A United States citizen who transfers stock in several corporations to a foreign trust may not offset the unrealized appreciation in one stock by the unrealized depreciation in another stock in computing the amount of excise tax under section 1491. The tax imposed by section 1491 may be abated, remitted or refunded after the transfer where it is determined that such transfer was not a plan for the avoidance of taxes. §1.1491-1. (Sec. 1491, '86 Code.)

Rev. Rul. 71-433, 1971-2 C.B. 325.

488.56 Property assigned to wholly owned corporation; business purpose. Taxpayer established and capitalized at \$1,000 each two wholly owned corporations. He transferred to each substantial inherited property, including royalty interests in oil and gas discovered on the land, for which he took an interest bearing note, but received neither interest nor principal payments. The corporations maintained separate books of account and borrowed and repaid substantial amounts from banks. *Held*, the corporations were formed for legitimate business purposes; the transfers of property effected to supply necessary capital and income earned by the corporations was taxable to them, not the taxpayer. (Sec. 22(a), '39 Code; Sec. 61, '86 Code.)

John Junker Spencer, 19 T.C. 727, Acq., 1953-1 C.B. 6.

488.57 Section 306 stock; proportionate disposition with part of common. Taxpayers who sell a proportionate part of their section 306 common stock, under an agreement entered into at the time the stocks were issued in a recapitalization under section 368(a)(1)(E), must establish that the transaction was not for tax avoidance purposes in order for section 306(a) not to apply by reason of section 306(b)(4)(B). §1.306-2. (Sec. 306, '86 Code.)

Rev. Rul. 75-247, 1975-1 C.B. 104.

488.58 Small business corporation; creation. The creation of a new domestic corporation to carry on a specific portion of the business of an existing domestic corporation for the primary purpose of gaining the benefits of subchapter "S" is not tax avoidance. §§1.269-2, 1.1372-1. (Secs. 269, 1372; '86 Code.)

Rev. Rul. 76-363, 1976-2 C.B. 9.

488.59 Stocks or securities; deficiency procedures. The statutory deficiency procedures described in sections 6211 through 6216 are not applicable to the tax imposed by section 1491 on transfers of stocks or securities to certain foreign entities to avoid income tax. §1.1494-1. (Sec. 1494, '86 Code.)

Rev. Rul. 72-29, 1972-1 C.B. 283.

488.60 Western Hemisphere corporation; creation. The creation of a new domestic corporation to carry on the business in Western Hemisphere, other than in the United States, of an existing domestic corporation for the principal purpose of gaining the benefits of section 922 is not tax avoidance. I.T. 3757 superseded. §1.269-2. (Sec. 269, '86 Code.)

Rev. Rul. 70-238, 1970-1 C.B. 61.