

Section 367.— Foreign Corporations

26 CFR 1.367(b)–12: *Subsequent treatment of amounts attributed or included in income.*

T.D. 8937

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1 and 7

Stock Transfer Rules: Transition Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations addressing distributions with respect to, or a disposition of, certain stock that was subject to prior temporary regulations under section 367(b). Section 367(b) addresses the application of non-recognition exchange provisions in Subchapter C of the Internal Revenue Code to transactions that involve one or more foreign corporations.

DATES: *Effective Date.* These regulations are effective as of January 11, 2001.

Applicability Dates. These regulations apply to distributions or dispositions that occur on or after January 11, 2001.

FOR FURTHER INFORMATION CONTACT: Mark D. Harris, (202) 622-3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 24, 2000, the IRS and Treasury issued final regulations under section 367(b) of the Internal Revenue Code (Code). At the same time, the IRS and Treasury also modified temporary regulation §7.367(b)–12(a). The final regulations and modified temporary regulation were effective as of February 23, 2000.

As modified, §7.367(b)–12(a) addresses distributions with respect to, or a disposition of, stock that was subject to certain provisions of the temporary section 367(b) regulations that were in effect before February 23, 2000. This document finalizes the rule stated in §7.367(b)–12(a) in order to insure its continued application. See section 7805(e)(2) (stating a “sunset rule” applicable to temporary regulations).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small

Business Administration for comment on the impact of the proposed regulations on small business.

Drafting Information

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

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 7 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

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

Section 1.367(b)–12 also issued under 26 U.S.C. 367(a) and (b). * * *

Par. 2. Section 1.367(b)–0 is amended by revising the introductory text and adding entries for §1.367(b)–12 to read as follows:

§1.367(b)–0 Table of contents.

This section lists the paragraphs contained in §§1.367(b)–1 through 1.367(b)–6 and 1.367(b)–12.

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§1.367(b)–12 Subsequent treatment of amounts attributed or included in income.

- (a) In general.
- (b) Applicable rules.
- (c) Effective date.

Par. 3. Section 1.367(b)–12 is added to read as follows:

§1.367(b)–12 Subsequent treatment of amounts attributed or included in income.

(a) *In general.* This section applies to distributions with respect to, or a disposition of, stock—

(1) To which, in connection with an exchange occurring before February 23, 2000, an amount has been attributed pursuant to §7.367(b)–9 or 7.367(b)–10 of this chapter (as in effect prior to February 23, 2000, see 26 CFR part 1 revised as of April 1, 1999); or

(2) In respect of which, before February 23, 2000, an amount has been included in income or added to earnings and profits pursuant to §7.367(b)–7 or 7.367(b)–10 of this chapter (as in effect prior to February 23, 2000, see 26 CFR part 1 revised as of April 1, 1999).

(b) *Applicable rules.* See §7.367(b)–12(b) through (e) of this chapter (as in effect prior to January 11, 2001, see 26 CFR part 1 revised as of April 1, 2000) for purposes of applying paragraph (a) of this section.

(c) *Effective date.* This section applies to distributions or dispositions that occur on or after January 11, 2001.

PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

Par. 4. The authority citation for part 7 is amended by removing the entry for §7.367(b)–12 and continues to read in part as follows:

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

§7.367(b)–12 [Removed]

Par. 5. Section 7.367(b)–12 is removed.

Robert E. Wenzel,
*Deputy Commissioner of
Internal Revenue.*

Approved December 28, 2000.

Jonathan Talisman,
*Acting Assistant Secretary
of the Treasury.*

(Filed by the Office of the Federal Register on January 10, 2001, 8:45 a.m., and published in the issue of the Federal Register for January 11, 2001, 66 F.R. 2256)