

Notice of Proposed Rulemaking and Notice of Public Hearing

Certain Transfers of Domestic Stock or Securities by U.S. Persons to Foreign Corporations

INTL-9-95

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In *** [T.D. 8638, page 5, this Bulletin], the IRS is issuing temporary regulations revising the rules under section 367(a) with respect to certain transfers of stock or securities of domestic corporations by United States persons pursuant to the corporate organization, reorganization or liquidation provisions of the Internal Revenue Code. 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 March 25, 1996. Outlines

of topics to be discussed at the public hearing scheduled for April 11, 1996, at 10 a.m. must be received by March 21, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (INTL 0009-95), 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-0009-95), 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, Christina Vasquez 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. Comments on the collection of information should be received by February 26, 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 is in §1.367(a)-3T(c)(4). 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 section 367(a)(1). This information will be used to determine whether a tax-

payer properly qualifies for a claimed exception. The respondents generally will be U.S. corporations, probably U.S. multinationals, that are acquired by foreign companies pursuant to non-recognition exchanges or that engage in joint ventures with foreign companies. Responses to this collection of information by the relevant U.S. corporations are required in order for the shareholders of such corporations to qualify for an exception to the general rule under section 367(a)(1).

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: 1,000 hours. The estimated annual burden per respondent varies from 1 hour to 20 hours, depending on individual circumstances, with an estimated average of 10 hours.

Estimated number of respondents: 100.

Estimated annual frequency of responses: Once.

Background

The temporary regulations published in the *** [T.D. 8638, page 00, this Bulletin] amend the Income Tax Regulations (26 CFR part 1) relating to section 367(a). The temporary regulations contain rules relating to the transfer of stock or securities by a United States person to a foreign corporation in an exchange described in section 367(a).

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations. Final regulations under section 367(a) regarding transfers of stock or securities will integrate the proposed regulations herein with the notice of proposed rulemaking published on August 26, 1991, in the Federal Register (56 FR 41993). Thus, the proposed regulations herein supplement and, where inconsistent with, supersede, the 1991 proposed regulations.

Special Analyses

It has been determined that this

notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that this regulation does not have a significant impact on a substantial number of small entities. Thus, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to these regulations, and therefore, a Regulatory Flexibility Analysis 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 April 11, 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 March 25, 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 March 21, 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), Internal Revenue Service. However, other personnel

from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income tax, Reporting and recordkeeping requirements.

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. New §1.367-9 is added to read as follows:

§1.367(a)-9 Transfers by U.S. persons of stock or securities of domestic corporations to foreign corporations.

[The text of this proposed section is the same as the text of paragraphs (a), (c), (d), (e), (f), (g)(1) and (h)(1) of §1.367-3T published elsewhere in *** [T.D. 8638, this Bulletin].]

Margaret Milner Richardson,
*Commissioner of
Internal Revenue.*

(Filed by the Office of the Federal Register on December 22, 1995, 8:45 a.m., and published in the issue of the Federal Register for December 26, 1995, 60 F.R. 66771)