

Part III - Administrative, Procedural, and Miscellaneous

Announcement of rule to be included in final regulations under section 367(a) regarding certain exchanges of securities for stock or securities

Notice 2005-6

This notice announces that Treasury and the Internal Revenue Service (“the Service”) will amend Treas. Reg. §1.367(a)-3 regarding certain exchanges under section 354 by U.S. persons of securities of a foreign corporation in a reorganization described in section 368(a)(1)(E) or securities of a domestic or foreign corporation pursuant to an asset reorganization described in section 368(a)(1).

BACKGROUND

Section 354(a)(1) provides that no gain or loss shall be recognized by a shareholder if stock or securities in a corporation that is a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization. Section 354 further provides that a security holder may surrender securities and receive securities in the same principal amount or in a lesser principal amount without the recognition of gain or loss.

Under section 367(a), gain is recognized if a U.S. person transfers property to a foreign corporation in connection with an exchange described in section 354 unless an exception applies. Treasury Reg. §1.367(a)-3(a) provides, in part, that if in an

exchange described in section 354, a U.S. person exchanges stock of a foreign corporation in a reorganization described in section 368(a)(1)(E), or a U.S. person exchanges stock of a domestic or foreign corporation for stock of a foreign corporation pursuant to an asset reorganization described in section 368(a)(1)(C), (D) or (F) that is not treated as an indirect stock transfer under Treas. Reg. §1.367(a)-3(d), such section 354 exchange is not a transfer to a foreign corporation subject to section 367(a). This language excludes from the scope of section 367(a) certain stock-for-stock exchanges under section 354 by U.S. persons, but does not address whether exchanges of securities for stock or exchanges of securities for securities, that would qualify for nonrecognition under section 354, are subject to section 367(a).

DISCUSSION

The Treasury Department and the Service will issue regulations under Treas. Reg. §1.367(a)-3 to provide that an exchange described in section 354 by a U.S. person of securities of a foreign corporation for stock or securities of the foreign corporation in a reorganization described in section 368(a)(1)(E) will not be subject to section 367(a). The regulations will further provide that an exchange described in section 354 by a U.S. person of securities of a domestic or a foreign corporation for stock or securities of a foreign corporation pursuant to an asset reorganization described in section 368(a)(1), that is not treated as an indirect transfer described in Treas. Reg. §1.367(a)-3(d), will not be subject to section 367(a). Conforming amendments to other portions of the regulations under sections 367 and 6038B will be made as well.

EFFECTIVE DATE

Regulations to be issued incorporating the guidance set forth in this notice will apply to transfers of securities after January 5, 2005. Until such regulations are issued, taxpayers may rely on this notice. Taxpayers also may apply the provisions of this notice to transfers of securities occurring on or after July 20, 1998 (the effective date of Treas. Reg. §1.367(a)-3(a)) and on or before January 5, 2005. Taxpayers applying this notice, however, must do so consistently to all transactions within its scope.

COMMENTS

Written comments on the issues addressed in this notice may be submitted to the Office of Associate Chief Counsel International, Attention: Mark R. Pollard (Notice 2004-6), room 4555, CC:INTL:BR3, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, 20224. Alternatively, taxpayers may submit comments electronically to Notice.Comments@m1.irs.counsel.treas.gov. Comments will be available for public inspection and copying. Treasury and the IRS request comments by April 28, 2005.

DRAFTING INFORMATION

The principal author of this notice is Mark R. Pollard of the Office of Associate Chief Counsel (International). For further information regarding this notice contact Mr. Pollard at (202) 622-3860 (not a toll-free call).