

Foreign Liquidations and Reorganizations; Amendment

Announcement 98-69

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Amendment to notice of proposed rulemaking.

SUMMARY: This document removes from an existing (1991) notice of proposed rulemaking [INTL-54-91; INTL-178-86, 1991-2 C.B. 1070] the special (August 26, 1991) effective date rule for the definition of the all earnings and profits amount. The IRS and the Treasury Department believe that issues regarding the all earnings and profits amount should be studied; thus, when final regulations under section 367(b) are issued with respect to the all earnings and profits amount, such regulations will have a prospective effective date. This modification may affect domestic corporations in connection with an acquisition of a foreign corporation in a liquidation described in section 332 or in an asset acquisition described in section 368(a)(1).

DATES: Written comments must be received by September 17, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-209035-86), 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 (REG-209035-86), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Philip L. Tretiak at (202) 622-3860 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Section 367(b) was enacted in its current form by the Tax Reform Act of 1976. On December 27, 1977, proposed and temporary regulations §§7.367(b)-1 through 7.367(b)-12 were adopted (T.D.

7530, 1978-1 C.B. 92). Prior to the issuance of a notice of proposed rulemaking in 1991 (the 1991 proposed regulations), discussed below, the regulations under section 367(b) were amended on several occasions. The 1991 proposed regulations, which were published in the **Federal Register** on August 26, 1991 (56 F.R. 41993), propose to completely revise the regulations under section 367(b), as well as the rules under section 367(a) with respect to certain transfers of stock or securities by U.S. persons to foreign corporations.

Section 1.367(b)-6(a) of the proposed regulations provides that the rules contained in the section 367(b) proposed regulations will be effective for exchanges that occur on or after the date that is 30 days after final regulations are published. However, an exception to the general effective date provides that §1.367(b)-2(d) (relating to the definition and computation of the "all earnings and profits amount") is effective for exchanges that occur on or after August 26, 1991. T.D. 8770, a package of final regulations, published in 1998-27 I.R.B. 4, contains final rules with respect to the section 367(a) portion of the 1991 proposed regulations (to the extent that such rules were not previously finalized) and final rules with respect to the section 367(b) portion of the 1991 proposed regulations, but generally only to the extent that a particular transaction is subject to both sections 367(a) and (b). The final regulations do not address the all earnings and profits amount.

The IRS and the Treasury Department believe that issues regarding the all earnings and profits amount should be studied before final regulations are promulgated. Moreover, the IRS and the Treasury Department believe that the final regulations concerning the all earnings and profits amount should not be subject to a special effective date. Thus, this notice of proposed rulemaking removes from the 1991 proposed regulations the special (August 26, 1991) effective date rule for the definition of the all earnings and profits amount. When final regulations under section 367(b) are issued with respect to the all earnings and profits amount, such regulations will have a prospective effective date.

Special Analysis

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 small entities because this regulation, which only contains a limited effective date rule, impacts only U.S. corporations with investments in foreign corporations. 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 its impact on small business.

Comments

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.

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 the 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. * * *

§1.367(b)-6 [Amended]

Par. 2. Section 1.367(b)-6, as proposed to be added on Monday, August 26, 1991

(56 F.R. 42015), is amended by removing the last sentence of paragraph (a).

Michael P. Dolan,
*Deputy Commissioner of
Internal Revenue.*

(Filed by the Office of the Federal Register on June 18, 1998, 8:45 a.m., and published in the issue of the Federal Register for June 19, 1998, 63 F.R. 33595)