



C[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9614]

RIN 1545-AM97

Certain Outbound Property Transfers by Domestic Corporations; Certain Stock Distributions by Domestic Corporations; Correcting Amendment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains a correction to a Treasury Decision 9614, which was published in the **Federal Register** on Tuesday, March 19, 2013. Treasury Decision 9614 contained final regulations that apply to transfers of certain property by a domestic corporation to a foreign corporation in certain nonrecognition exchanges, or to distributions of stock of certain foreign corporations by a domestic corporation in certain nonrecognition distributions.

DATES: *Effective date:* These corrections are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

*Applicability date:* March 19, 2013.

FOR FURTHER INFORMATION CONTACT: Logan M. Kincheloe at (202) 317-6937 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

**Background**

The final regulations (TD 9614) that are the subject of this correction are issued under section 367 of the Internal Revenue Code.

### **Need for Correction**

As published on March 19, 2013 (53 FR 17024), the final regulations (TD 9614; FR Doc. 2013-05700), contained errors that need to be corrected.

### **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

### **Correction of Publication**

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

### **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.** Section 1.367(a)-3 is amended by adding paragraph (g)(1)(v)(A) and (B) to read as follows:

### **§ 1.367(a)–3 Treatment of transfers of stock or securities to foreign corporations.**

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \*

(v) \* \* \*

(A) Except as provided in paragraphs (g)(1)(v)(B) of this section and § 1.367(a)–3T(g)(1)(ix), the rules of paragraph (d)(2)(vi) of this section apply only to transactions

occurring on or after January 23, 2006. See § 1.367(a)–3(d)(2)(vi), as contained in 26 CFR part 1 revised as of April 1, 2005, for transactions occurring on or after July 20, 1998, and before January 23, 2006.

(B)(1) For purposes of paragraph (d)(2)(vi)(B)(1) of this section as contained in 26 CFR part 1 revised as of April 1, 2007, except as provided in paragraph (g)(1)(v)(B)(3) of this section, the following conditions must be satisfied for transactions occurring on or after December 28, 2007, and before March 18, 2013: The conditions and requirements of section 367(a)(5) and paragraph (g)(1)(v)(B)(2) of this section must be satisfied with respect to the domestic acquired corporation's transfer of assets to the foreign acquiring corporation and those conditions and requirements apply before the application of the exception under paragraph (d)(2)(vi)(B)(1) of this section as contained in 26 CFR part 1 revised as of April 1, 2007.

(2) The domestic acquired corporation is controlled (within the meaning of section 368(c)) by five or fewer (but at least one) domestic corporations (controlling domestic corporations) immediately before the reorganization, appropriate basis adjustments under section 367(a)(5) are made to the stock received by the controlling domestic corporations in the reorganization, and any other conditions as provided in regulations under section 367(a)(5) are satisfied. For purposes of determining whether the domestic acquired corporation is controlled by five or fewer domestic corporations, all members of the same affiliated group within the meaning of section 1504 are treated as one corporation. Any adjustments to stock basis required under section 367(a)(5) must be made to the stock received by the controlling domestic corporation in the reorganization so the appropriate amount of built-in gain in the property transferred by

the domestic acquired corporation to the foreign acquiring corporation in the section 361 exchange is reflected in the stock received. The basis adjustment requirement cannot be satisfied by adjusting the basis in stock of the foreign acquiring corporation held by the controlling domestic corporation before the reorganization. To the extent the appropriate amount of built-in gain in the property transferred by the domestic acquired corporation to the foreign acquiring corporation in the section 361 exchange cannot be preserved in the stock received by the controlling domestic corporation in the reorganization, the domestic acquired corporation's transfer of property to the foreign acquiring corporation is subject to section 367(a) and (d).

(3) For transactions occurring on or after August 19, 2008, and before March 18, 2013, the following condition also applies: To the extent any of the retransferred assets constitute property to which section 367(d) applies, the exception under paragraph (d)(2)(iv)(B)(1) of this section, as contained in 26 CFR part 1 revised as of April 1, 2007, applies only if the property to which section 367(d) applies is treated as property subject to section 367(a) for purposes of satisfying the conditions and requirements of section 367(a)(5).

\* \* \* \* \*

### **§ 1.367(a)-7 [Amended]**

**Par. 3.** In § 1.367(a)-7 amend paragraph (f)(10) by removing “§ 1.367(a)-1T(d)(4)” and adding in its place “§ 1.367(a)-1(d)(4)”.

Martin V. Franks  
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