

Section 367.—Foreign Corporations

26 CFR 1.367(e)-2: Distributions described in section 367(e)(2).

T.D. 9066

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Outbound Liquidations into Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance regarding the application of section 367(e)(2)

to certain outbound liquidations. The regulations amend the anti-abuse rule of §1.367(e)-2(d) by narrowing the scope of the rule to apply only to outbound transfers to a foreign corporation in a complete liquidation of a domestic corporation in which a principal purpose of the liquidation is the avoidance of U.S. tax. The regulations also clarify the application of the anti-abuse rule in §1.367(e)-2(b)(2)(iii)(C)(I).

DATES: *Effective Date:* July 2, 2003.

Applicability Date: These regulations apply to distributions occurring on or after September 7, 1999, or, if the taxpayer has elected to apply the final regulations issued pursuant to T.D. 8834 to such distributions, to distributions in taxable years ending after August 8, 1999.

FOR FURTHER INFORMATION CONTACT: Milton M. Cahn, (202) 622-3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On August 9, 1999, the IRS and Treasury published final regulations (T.D. 8834, 1999-2 C.B. 251 [64 FR 43072]) in the **Federal Register** under section 367(e)(2) regarding distributions of property in a complete liquidation under section 332 by a domestic corporation to a foreign parent corporation (outbound liquidation) and by a foreign corporation to a foreign parent corporation (foreign-to-foreign liquidations). On November 20, 2002, the IRS and Treasury published a notice of proposed rulemaking (REG-127380-02, 2002-2 C.B. 969 [67 FR 70031]) in the **Federal Register** that would amend an anti-abuse rule in the final regulations to limit its application only to outbound liquidations of domestic corporations, and to clarify what constitutes a principal purpose of tax avoidance for purposes of the anti-abuse rule.

Explanation of Provisions

The final regulations published in 1999 included an anti-abuse rule providing that the Commissioner may require a foreign or domestic liquidating corporation to recognize gain (or treat the liquidating corporation as if it had recognized a loss) on a

liquidating distribution if a principal purpose of the liquidation is the avoidance of U.S. tax. §1.367(e)-2(d). The notice of proposed rulemaking proposed amending the anti-abuse rule under §1.367(e)-2(d) to limit the application of this rule to outbound liquidations of domestic corporations. The notice of proposed rulemaking also proposed clarifying what constitutes a principal purpose for purposes of the anti-abuse rules in §1.367(e)-2(d) and §1.367(e)-2(b)(2)(iii)(C)(I). One written comment responding to the notice of proposed rulemaking was received, but this comment did not request any changes. The public hearing was canceled because no requests were received to speak at the hearing. Accordingly, the proposed regulations are adopted by this Treasury decision without change.

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 has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Drafting Information

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

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is 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. Section 1.367(e)-2, is amended as follows:

1. Paragraph (b)(2)(iii)(C)(I) is amended by removing the parenthetical “(taken together or separately)” and adding “when taken together” in its place.

2. Paragraph (d) is revised.

The revision reads as follows:

§1.367(e)-2 Distributions described in section 367(e)(2).

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(d) *Anti-abuse rule.* The Commissioner may require a domestic liquidating corporation to recognize gain on a distribution in liquidation described in paragraph (b) of this section (or treat the liquidating corporation as if it had recognized loss on a distribution in liquidation), if a principal purpose of the liquidation is the avoidance of U.S. tax (including, but not limited to, the distribution of a liquidating corporation's earnings and profits with a principal purpose of avoiding U.S. tax). A liquidation may have a principal purpose of tax avoidance even though the tax avoidance purpose is outweighed by other purposes when taken together.

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David A. Mader,
*Assistant Deputy Commissioner
of Internal Revenue.*

Approved June 23, 2003.

Pamela F. Olson,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on July 1, 2003, 8:45 a.m., and published in the issue of the Federal Register for July 2, 2003, 68 F.R. 39452)