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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9585]

RIN 1545-BI41

Treatment of Gain Recognized With Respect to Stock in Certain Foreign Corporations Upon Distributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the characterization of gain recognized with respect to stock in certain foreign corporations upon distributions.

The regulations finalize proposed regulations and remove temporary regulations that characterize gain recognized with respect to stock in foreign corporations upon distributions as a deemed dividend in certain situations. The regulations affect certain persons that recognize gain with respect to stock in connection with the receipt of a distribution of property from a foreign corporation.

DATES: Effective Date: These regulations are effective on **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

Applicability Date: These regulations apply to distributions occurring on or after February 10, 2009.

FOR FURTHER INFORMATION CONTACT: Ryan A. Bowen, (202) 622-3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On February 11, 2009, the IRS and the Department of the Treasury (the Treasury Department) published temporary and proposed regulations in the **Federal Register** (REG-147636-08, 74 FR 6824; TD 9444, 2009-1 CB 603) (the temporary or proposed regulations, as applicable, and collectively, the 2009 regulations). The 2009 regulations, in part, provide that for purposes of section 1248(a), gain recognized under section 301(c)(3) in connection with the receipt of a distribution of property from a foreign corporation with respect to its stock shall be treated as gain from the sale or exchange of the stock of such foreign corporation (2009 section 1248 regulations).

The 2009 regulations also addressed the application of section 367 to certain related party stock transactions that are recharacterized under section 304. As described in Notice 2012-15 (2012-9 IRB 495 (February 27, 2012)) (see §601.601(d)(2)(ii)(b) of this chapter), the IRS and the Treasury Department intend to amend the regulations under section 367 to provide that the section 351 exchange that is deemed to occur in a section 304 transaction is subject to section 367(a) and (b), as applicable. Accordingly, this Treasury decision does not finalize the portions of the 2009 regulations that address the interaction of sections 304 and 367. Those portions of the 2009 regulations will be withdrawn in separate published guidance (REG-104400-12).

No public hearing on the 2009 section 1248 regulations was requested or held and no written comments were received. This Treasury decision adopts the 2009 section 1248 regulations, with one modification to remove a deadwood provision, as

final regulations under section 1248(a). This Treasury decision also removes the temporary regulations under section 1248(a).

Explanation of Provisions

The final regulations provide that gain recognized under section 301(c)(3) on the receipt of a distribution of property from a foreign corporation with respect to its stock shall be treated for purposes of section 1248(a) as gain from the sale or exchange of the stock of such corporation. For purposes of section 1248(a), a sale or exchange also includes a distribution that gives rise to gain with respect to stock under section 302(a) or 331(a). The final regulations ensure that the earnings and profits of lower-tier foreign subsidiaries described in section 1248(c)(2) are taken into account when gain is recognized with respect to stock of a controlled foreign corporation.

The 2009 section 1248 regulations incorporated a provision from the prior final regulations under section 1248 providing that section 1248(a) applies to gain recognized with respect to stock under section 331(a)(2) by reason of a partial liquidation of a corporation. The final regulations remove the reference to partial liquidations under section 331(a)(2) in order to reflect amendments made in 1982 by the Tax Equity and Fiscal Responsibility Act of 1982 (Public Law 97-248, 96 Stat. 324 (1982)), which repealed section 331(a)(2) and provided new rules regarding redemptions in partial liquidation under section 302. See section 302(b)(4) and (e).

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 also has been determined that 5 U.S.C. 553(b) and (d) do not apply to

these regulations. Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. These regulations primarily will affect large domestic corporations. Thus, the number of affected small entities will not be substantial. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small business.

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

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 as follows:

Authority: 26 U.S.C. 7805* * *

Par. 2. Section 1.1248-1 is amended by:

1. Revising paragraphs (b) and (g)(2).
2. Removing paragraph (h).

The revisions read as follows.

§1.1248-1 Treatment of gain from certain sales or exchanges of stock in certain foreign corporations.

* * * * *

(b) Sale or exchange. For purposes of section 1248(a), the term sale or exchange includes the receipt of a distribution which is treated as in exchange for stock under section 302(a) (relating to distributions in redemption of stock) or section 331(a) (relating to distributions in complete liquidation of a corporation). For purposes of section 1248(a), gain recognized by a shareholder under section 301(c)(3) in connection with a distribution of property by a corporation with respect to its stock shall be treated as gain from the sale or exchange of stock of such corporation.

* * * * *

(g) * * *

(2) Paragraph (b) of this section applies to distributions that occur on or after February 10, 2009.

§1.1248-1T [Removed]

Par. 3. Section 1.1248-1T is removed.

Steven T. Miller

Deputy Commissioner for Services and Enforcement.

Approved: April 13, 2012

Emily S. McMahon

Acting Assistant Secretary of the Treasury (Tax Policy).

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