

## Section 368.—Definitions Relating to Corporate Reorganizations

26 CFR 1.368-2: Definition of terms.  
(Also §§ 351, 7805; 1.351-1, 301.7805-1.)

Rev. Rul. 2015-09

### ISSUE

Is a transaction in which (1) a domestic corporation transfers all of the stock of its foreign operating subsidiary to its foreign holding company subsidiary in exchange for additional stock, (2) the foreign operating subsidiary and three foreign subsidiaries of the foreign holding company transfer substantially all of their assets to a newly-formed foreign subsidiary of the foreign holding company in exchange for stock of the new subsidiary, and (3) the subsidiaries that transfer their assets are liquidated, properly treated for federal income tax purposes as a transfer of the foreign operating subsidiary's stock in an exchange governed by § 351 of the Internal Revenue Code (Code) followed by reorganizations under § 368(a)(1)(D) of the Code?

## FACTS

*P*, a domestic corporation, owns all of the stock of *S-1* and *S-2*, both of which are incorporated in foreign country *R*. *S-1* is an operating company. *S-2* is a holding company that owns all of the stock of *X*, *Y*, and *Z*, which are operating companies incorporated in foreign country *R*.

All of the operating companies in country *R* are to be combined into a new subsidiary of *S-2* to be formed in country *R* in accordance with the following plan:

- (a) *S-2* will organize *N* corporation, in foreign country *R*, solely for the purpose of participating in the proposed transaction.
- (b) *P* will then transfer all of the stock of *S-1* to *S-2* in exchange for additional shares of voting common stock of *S-2* (*P*'s transfer).
- (c) Immediately after *P*'s transfer, *X*, *Y*, and *Z*, as well as *S-1*, will transfer substantially all of their assets (subject to liabilities) to *N*, in exchange for additional shares of common stock of *N* (*X*, *Y*, and *Z*'s transfers and *S-1*'s transfer).
- (d) *X*, *Y*, *Z*, and *S-1* will liquidate and distribute all of their *N* stock to *S-2* (*X*, *Y*, and *Z*'s liquidations and *S-1*'s liquidation).

Following the transaction, *N* will continue to conduct the businesses formerly conducted by *S-1*, *X*, *Y*, and *Z*.

To avoid recognizing gain under § 367(a)(1) and § 1.367(a)-3(a) on the transfer of the *S-1* stock to *S-2*, *P* will properly enter into a gain recognition agreement pursuant to § 1.367(a)-8 with respect to that transfer and will satisfy the applicable exceptions to triggering events resulting from the other exchanges that occur in the transaction. *P* will

also take into account the application of § 1.367(b)-4, which may require shareholders that exchange stock of a foreign corporation in certain nonrecognition exchanges (including §§ 351 and 354) to include in income as a deemed dividend the § 1248 amount attributable to the exchanged stock.

## LAW

Section 351(a) provides that no gain or loss will be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock in such corporation and immediately after the exchange such person or persons are in control (as defined in § 368(c)) of the corporation.

Section 368(c) defines “control” to mean the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

Section 368(a)(1)(D) provides that the term “reorganization” includes a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor, or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, is in control of the corporation to which the assets are transferred; but only if, in pursuance of the plan, stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under § 354, 355, or 356.

Section 354(a) provides, in general, that no gain or loss will be recognized if stock or securities in a corporation 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 368(b)(2) provides that “a party to a reorganization” includes both corporations, in the case of a reorganization resulting from the acquisition by one corporation of stock or property of the other.

Section 354(b)(1) provides, in general, that § 354(a) will not apply to an exchange in pursuance of a plan of reorganization under § 368(a)(1)(D) unless (A) the corporation to which the assets are transferred acquires substantially all of the assets of the transferor of such assets; and (B) the stock, securities, and other properties received by such transferor, as well as the other properties of such transferor, are distributed in pursuance of the plan of reorganization.

Section 368(a)(2)(H) provides that for purposes of determining whether a nondivisive transaction qualifies under § 368(a)(1)(D), the term “control” has the meaning given such term by § 304(c).

Section 304(c)(1) provides that “control” means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote, or at least 50 percent of the total value of shares of all classes of stock. If a person (or persons) is in control (within the meaning of the preceding sentence) of a corporation, which in turn owns at least 50 percent of the total combined voting power of all stock entitled to vote of another corporation or owns at least 50 percent of the total value of the shares of all classes of stock of another corporation, then such person (or persons) will be treated as in control of such other corporation.

## ANALYSIS

A transfer of property may be respected as a § 351 exchange even if it is followed by subsequent transfers of the property as part of a prearranged, integrated plan. See Rev. Rul. 77-449, 1977-2 C.B. 110, *amplified by* Rev. Rul. 83-34, 1983-1 C.B. 79, and Rev. Rul. 83-156, 1983-2 C.B. 66; see *also* Rev. Rul. 2003-51, 2003-1 C.B. 938. However, a transfer of property in an exchange otherwise described in § 351 will not qualify as a § 351 exchange if, for example, a different treatment is warranted to reflect the substance of the transaction as a whole. See Rev. Rul. 54-96, 1954-1 C.B. 111; Rev. Rul. 70-140, 1970-1 C.B. 73; see *also* Rev. Rul. 2015-10, this Bulletin (holding that the transfer by a corporation to its wholly-owned subsidiary of all of the interests in an entity classified as a corporation for federal income tax purposes, followed by the entity's planned election to be disregarded as separate from its owner for federal income tax purposes, is more properly characterized as a § 368(a)(1)(D) reorganization than as a § 351 transfer followed by a § 332 liquidation).

Under the facts of this revenue ruling, *P*'s transfer satisfies the formal requirements of § 351, including the requirement that *P* control *S-2* within the meaning of § 368(c) immediately after the exchange. Moreover, even though *P*'s transfer and *S-1*'s transfer and liquidation are steps in a prearranged, integrated plan that has as its objective the consolidation of *S-1* and the other operating companies in *N*, an analysis of the transaction as a whole does not dictate that *P*'s transfer be treated other than in accordance with its form in order to reflect the substance of the transaction. Accordingly, *P*'s transfer is respected as a § 351 exchange, and no gain or loss is recognized by *P* on the transfer of all of the stock of *S-1* to *S-2*.

S-1's transfer followed by S-1's liquidation is a reorganization under § 368(a)(1)(D). X, Y, and Z's transfers followed by X, Y, and Z's liquidations are also reorganizations under § 368(a)(1)(D).

#### HOLDING

A transaction in which (1) a domestic corporation transfers all of the stock of its foreign operating subsidiary to its foreign holding company subsidiary in exchange for additional stock, (2) the foreign operating subsidiary and three foreign subsidiaries of the foreign holding company transfer substantially all of their assets to a newly-formed foreign subsidiary of the foreign holding company in exchange for stock of the new subsidiary, and (3) the subsidiaries that transfer their assets are liquidated, is properly treated for federal income tax purposes as a transfer of the foreign operating subsidiary's stock in an exchange governed by § 351 followed by reorganizations under § 368(a)(1)(D).

#### EFFECT ON OTHER REVENUE RULING

Rev. Rul. 78-130, 1978-1 C.B. 114 is revoked.

#### PROSPECTIVE APPLICATION

Under the authority of § 7805(b)(8), the Internal Revenue Service will not apply this revenue ruling to challenge a position taken by a taxpayer that reasonably relied on the conclusions in Rev. Rul. 78-130 prior to May 5, 2015 with respect to a transaction that occurs on or before such date, or a transaction that is effected pursuant to a written agreement (subject to customary conditions) that is binding on May 5, 2015 and at all times thereafter until the date the transaction is completed, provided that none of the purported acquiring corporation, issuing corporation, and transferor corporation (and

each of their shareholders) treated the transaction inconsistently for federal income tax purposes. See § 601.601(d)(2)(v)(c) of the Statement of Procedural Rules.

#### DRAFTING INFORMATION

The principal author of this revenue ruling is Stephanie D. Floyd of the Office of Associate Chief Counsel (Corporate). For further information regarding this revenue ruling, contact Stephanie D. Floyd at (202) 317-6848 (not a toll-free call).