

LB&I International Practice Service Transaction Unit

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Shelf	N/A	Business Outbound	–	–
Volume	1	Income Shifting	Level 1 UIL	9411
Part	1.8	Gain Exportation (through contribution or reorg)	Level 2 UIL	9411.08
Chapter	1.8.2	Outbound Transfers of Stock	Level 3 UIL	N/A
Sub-Chapter	N/A	N/A	–	–

Unit Name	Outbound Transfer of Domestic Stock
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Issue and Transaction Overview

Outbound Transfer of Domestic Stock

- A U.S. corporation can transfer shares of a domestic corporation (“domestic stock”) to another corporation in a wide variety of nonrecognition transactions. For example, a U.S. corporation can transfer domestic stock to another U.S. corporation in a nonrecognition transaction that qualifies as a tax free reorganization under IRC 368(a)(1)(B). However, when such normal nonrecognition transactions result in a transfer of property to a Foreign Corporation (FC), U.S. tax law imposes restrictions on the tax free transfer of certain types of property by overriding normal nonrecognition rules. IRC 367(a)(1) is the Code section that overrides the normal nonrecognition rules. Without an override of the nonrecognition provisions, the gain on the appreciated property may permanently escape U.S. tax upon the outbound (O/B) transfer of the property to a FC.
- This Practice Unit focuses on the O/B stock exception to the general rule of IRC 367(a)(1) relating to O/B transfers of domestic stock.
- If certain criteria and reporting requirements are met, a U.S. person may be allowed to avoid gain recognition on the O/B transfer of domestic stock in the year of transfer. This Practice Unit provides general information on the reporting requirements in order to meet the stock exception. In certain circumstances, a U.S. person may enter into a Gain Recognition Agreement (GRA) to avoid immediate recognition of the gain on an O/B transfer of domestic stock to a FC. A GRA is subject to an annual certification requirement for each of the five full taxable years following the taxable year of the initial transfer. The annual certification essentially must state whether any subsequent event, commonly known as a “triggering event”, would require recognition of the GRA’s gain.



CAUTION: Other O/B transfers of property from a U.S. person to a FC that may be subject to IRC 367 will not be covered in this Practice Unit. If the O/B transfer by a U.S. person to a FC involves property other than domestic stock or securities, see the following related Practice Units: “Outbound Transfers of Property to Foreign Corporation – IRC 367 Overview,” DCN: ISO/9411.08_01(2013); “Outbound Transfer of Foreign Stock,” DCN: ISO/9411.08_04(2014); and “Outbound Transfer of Foreign Stock followed by CTB Election,” DCN: ISO/9411.08_05(2013). For O/B transfers of intangible property, see related Practice Unit, “Deemed Annual Royalty Income Under IRC 367(d),” DCN: ISO/9411.02_01(2013).

Transaction and Fact Pattern

Outbound Transfer of Domestic Stock

Diagram of Transaction	Facts
<p>The diagram illustrates the transaction structure. On the left, a box labeled 'USP' is connected by a solid line to a box labeled 'USC'. On the right, a box labeled 'FP' is connected by a solid line to a box labeled 'FAC'. Below 'FAC' is a dashed box also labeled 'USC'. A red dashed arrow points from the 'USC' box on the left to the 'FAC' box on the right, with the text 'USC stock' next to it. Another red dashed arrow points from the 'FAC' box back to the 'USP' box, with the text '20% FAC Stock' next to it.</p>	<p>Facts:</p> <ul style="list-style-type: none"> ▪ USP owns 100% of USC, a U.S. domestic corporation. ▪ USC has a fair market value (FMV) of \$15M. ▪ USP has a basis of \$5M in USC stock resulting in a potential built-in gain of \$10M. ▪ Foreign Parent (FP) is unrelated to USP and owns 100% of foreign acquiring corporation (FAC). <p>Transaction:</p> <ul style="list-style-type: none"> ▪ USP transfers 100% of USC to FAC in exchange for 20% of FAC's voting stock (\$10M FMV). <p>Results of Transaction:</p> <ul style="list-style-type: none"> ▪ After the transfer, FAC is owned 20% by USP and 80% by FP. ▪ Since FAC is a foreign corporation, IRC 367(a) must be considered on the O/B transfer of any appreciated property by USP to FAC. ▪ USC is no longer part of the USP consolidated return and becomes a wholly owned foreign controlled U.S. corporation of FAC.

Effective Tax Rate Overview

Outbound Transfer of Domestic Stock

ETR of Company

- The effective tax rate (ETR) of USP may show an increase in the year of the O/B domestic stock transfer due to current taxation of the transaction, triggering deferred income on USC's leaving a tax consolidation or due to a tax accrual created for an uncertain tax position(s) related to the transfer of the stock. In the subsequent years, USC's operations will not impact USP's ETR as the 20% ownership of FAC would generally be reported on the equity method for U.S. GAAP purposes.

ETR Impact of Adjustment

- An O/B transfer of domestic stock that fails to meet the stock exception to IRC 367(a)(1) will result in the recognition of gain and will be subject to immediate U.S. taxation, thus increasing ETR.
- An O/B transfer of domestic stock that is covered by a GRA under the stock exception rule will not cause an increase to ETR; however, if the GRA is triggered by a subsequent event, the U.S. person will be required to include the gain in income, thus increasing ETR.

Summary of Potential Issues

Outbound Transfer of Domestic Stock	
Issue 1	Does USP's transfer of USC stock to FAC qualify as a tax-free reorganization (prior to a possible override by IRC 367(a)(1) in Issue 2)?
Issue 2	Is USP's transfer of USC stock to FAC subject to IRC 367(a)(1), potentially resulting in a taxable exchange?
Issue 3	Does the stock exception in Treas. Reg. 1.367(a)-3(c) prevent immediate gain recognition in this transaction despite the general taxability rule of IRC 367(a)(1) in Issue 2?
Issue 4	Has USP properly complied with the regulatory reporting requirements to secure non-recognition treatment under the stock exception in Issue 3?

All Issues, Step 1: Initial Factual Development

Outbound Transfer of Domestic Stock

The general purpose of IRC 367(a)(1) is to tax the built-in gain on USC stock that is transferred in an O/B transaction. Specifically, IRC 367(a)(1) imposes taxation on the O/B transfer of USC stock by USP to FAC in what would otherwise be a nontaxable exchange. If the stock exception to IRC 367(a)(1) is applicable, including the timely filing of a GRA, when warranted, then the built-in gain on the appreciated USC stock that is transferred in an O/B transaction will not be taxable in the year of transfer.

Fact Element	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Review global organization tax organizational charts for ownership of USC. <ul style="list-style-type: none"> - Compare org chart at the beginning and end of the tax year that includes USC. - Does USC disappear from the org chart? - Does FAC ownership appear on org chart? 	<ul style="list-style-type: none"> ▪ Tax Organizational Charts – Beginning of Year and Ending of Year for each year under examination. 	
<ul style="list-style-type: none"> ▪ If USP and USC filed a U.S. consolidated tax return, compare Form 851 – Affiliations Schedule to see if any domestic affiliate left the consolidated group. This may also trigger deferred intercompany gains and losses when USC leaves the group. 	<ul style="list-style-type: none"> ▪ Form 851 – Affiliations Schedule 	

All Issues, Step 1: Initial Factual Development (cont'd)

Outbound Transfer of Domestic Stock

The general purpose of IRC 367(a)(1) is to tax the built-in gain on USC stock that is transferred in an O/B transaction. Specifically, IRC 367(a)(1) imposes taxation on the O/B transfer of USC stock by USP to FAC in what would otherwise be a nontaxable exchange. If the stock exception to IRC 367(a)(1) is applicable, including the timely filing of a GRA, when warranted, then the built-in gain on the appreciated USC stock that is transferred in an O/B transaction will not be taxable in the year of transfer.

Fact Element	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Review disclosures or forms on U.S. tax return for any statement related to the transfer of USC stock. 	<ul style="list-style-type: none"> ▪ IRC 351 or 368 Disclosures ▪ Statement on Plan for Liquidation (per Treas. Reg. 1.332-6) ▪ Form 926, Part III and IV ▪ IRC 6038B Disclosure ▪ GRA, if applicable <ul style="list-style-type: none"> - Related Form 8838 	
<ul style="list-style-type: none"> ▪ Did USP report any gains or losses resulting from the O/B transfer of USC stock? <ul style="list-style-type: none"> - Capital Gain? - Any losses claimed? 	<ul style="list-style-type: none"> ▪ Form 1120 ▪ Form 1120, Schedule D ▪ Form 1120, Schedule C 	

Issue 1, Step 2: Review Potential Issues

Outbound Transfer of Domestic Stock

Issue 1

Does USP's transfer of USC stock to FAC qualify as a tax-free reorganization (prior to a possible override by IRC 367(a)(1) in Issue 2)?

Explanation of Issue	Resources
<p>Reorganization - Nonrecognition Provisions:</p> <p>There are two types of reorganizations (reorg) defined in IRC 368(a)(1) – stock reorg (B reorg) and asset reorgs (A, C, D, F or G). When there is a valid reorganization as defined in IRC 368(a)(1), certain non-recognition provisions may apply at the S/H level (IRC 354/356) or at the corporate transferor's level (IRC 361).</p> <p>To qualify as a valid “B” stock reorganization, USP must exchange USC stock (target corporation) solely for voting stock of FAC (acquiring corporation) under IRC 354. In addition, immediately after the exchange, FAC must control USC (80% of vote and shares).</p> <ul style="list-style-type: none"> ▪ Note: An IRC 356 exchange exists at USP's level if USP receives property (boot) in addition to FAC stock in exchange for the stock of USC. However, boot is not permitted in a B reorg. <p>If USP sold USC stock to FAC for property, such transaction would be treated as a sale, i.e., not as a “B” reorganization.</p>	<ul style="list-style-type: none"> ▪ IRC 354 - <i>Exchanges of stock and securities in certain reorganizations</i> ▪ IRC 356 - <i>Receipt of additional consideration</i> ▪ IRC 361 - <i>Nonrecognition of gain or loss to corporations; treatment of distributions</i> ▪ IRC 368 - <i>Definitions relating to corporate reorganizations</i> ▪ IRC 367 – <i>Foreign Corporations</i>

Issue 1, Step 3: Additional Factual Development

Outbound Transfer of Domestic Stock

Issue 1

Does USP's transfer of USC stock to FAC qualify as a tax-free reorganization (prior to a possible override by IRC 367(a)(1) in Issue 2)?

Fact Element	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Did USP transfer 80% or more of USC stock to FAC in exchange solely for FAC voting stock (no boot received)? ▪ Did FAC control USC, immediately after the transfer? (80% or more of vote and shares) 	<ul style="list-style-type: none"> ▪ Organizational Chart ▪ Step Plan, if any ▪ Tax Opinion, if any ▪ IRC 368 Disclosure ▪ Form 926, Part III and IV ▪ IRC 351 Disclosure or IRC 368 Reorg Disclosure ▪ IRC 6038B Disclosure ▪ GRA, if applicable ▪ Form 8838 	

Issue 1, Step 4: Develop Arguments

Outbound Transfer of Domestic Stock

Issue 1

Does USP's transfer of USC stock to FAC qualify as a tax-free reorganization (prior to a possible override by IRC 367(a)(1) in Issue 2)?

Explanation of Adjustment	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Exam must determine whether the transaction in question is similar to the Fact Pattern illustrated in this Unit and, thus, qualifies as a tax-free reorganization. ▪ In our Fact Pattern, USP transferred USC stock, to FAC in an IRC 354 exchange. USP has exchanged USC stock for 20% voting stock in FAC, and immediately after the transfer FAC controls USC. Therefore, the transaction in our Fact Pattern qualifies as an O/B “B” reorg. 	<ul style="list-style-type: none"> ▪ IRC 367(a) – <i>Transfers of property from the United States</i> ▪ Treas. Reg. 1.367(a)-1T – O/B Transfer of Property – IRC 367(a) General Rules ▪ Treas. Reg. 1.367(a)-3 – O/B Stock Exception Rules ▪ IRC 7701(a)(30) – Definition of U.S. Person 	

Issue 1, Step 4: Develop Arguments (cont'd)

Outbound Transfer of Domestic Stock

Issue 1

Does USP's transfer of USC stock to FAC qualify as a tax-free reorganization (prior to a possible override by IRC 367(a)(1) in Issue 2)?

Explanation of Adjustment	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Alternatively, if in this Fact Pattern both USP and FP had transferred property to FAC in exchange for FAC stock, then IRC 351 (as well as IRC 368(a)(1)(B)) would apply to USP's exchange because both USP and FP were in control of FAC after the exchange. Regardless of whether the exchange is viewed as an IRC 351 transfer or an IRC 368(a)(1)(B) reorganization, USP would receive nonrecognition treatment on the exchange (before considering whether IRC 367(a)(1) would apply). 	<ul style="list-style-type: none"> ▪ IRC 367(a) – <i>Transfers of property from the United States</i> ▪ Treas. Reg. 1.367(a)-1T – O/B Transfer of Property – IRC 367(a) General Rules ▪ Treas. Reg. 1.367(a)-3 – O/B Stock Exception Rules ▪ IRC 7701(a)(30) – Definition of U.S. Person 	

Issue 2, Step 2: Review Potential Issues

Outbound Transfer of Domestic Stock

Issue 2

Is USP's transfer of USC stock to FAC subject to IRC 367(a)(1), potentially resulting in a taxable exchange?

Explanation of Issue	Resources
<ul style="list-style-type: none">▪ Generally, when USP transfers appreciated property (USC stock) O/B to FAC in an otherwise nontaxable exchange (e.g., IRC 351, 354, 356, or 361), IRC 367(a)(1) trumps the nonrecognition provision and requires immediate taxation on the gain realized in the exchange.▪ In order for the O/B transfer of USC stock to be subject to IRC 367, three elements must exist:<ol style="list-style-type: none">1. USP must be a U.S. person (the transferor);2. a transfer of USC stock to FAC, a FC; and3. an exchange described in one of the following nonrecognition code sections: IRC 351, 354, 356 or 361.	<ul style="list-style-type: none">▪ IRC 367(a) – <i>Transfers of property from the United States</i>▪ Treas. Reg. 1.367(a)-1T – O/B Transfer of Property – IRC 367(a) General Rules▪ Treas. Reg. 1.367(a)-3 – O/B Stock Exception Rules▪ IRC 7701(a)(30) – Definition of U.S. Person▪ IRC 351, 354, 356 and/or 361

Issue 2, Step 2: Review Potential Issues (cont'd)

Outbound Transfer of Domestic Stock

Issue 2

Is USP's transfer of USC stock to FAC subject to IRC 367(a)(1), potentially resulting in a taxable exchange?

Explanation of Issue	Resources
<ul style="list-style-type: none">▪ IRC 367(a) is applicable to an O/B transfer of USC stock to FAC in an otherwise nonrecognition exchange (e.g., IRC 351, 354, 356, or 361) if USC stock has appreciated in value prior to the transfer.▪ Thus, if the O/B transfer of USC stock does not have a built-in gain, IRC 367 does not apply to the transaction, and no further analysis is required on the transaction.▪ IRC 367(a) does not operate to permit the recognition of a built-in loss on a transfer of USC stock.	<ul style="list-style-type: none">▪ IRC 367(a) – <i>Transfers of property from the United States</i>▪ Treas. Reg. 1.367(a)-1T – O/B Transfer of Property – IRC 367(a) General Rules▪ Treas. Reg. 1.367(a)-3 – O/B Stock Exception Rules▪ IRC 7701(a)(30) – Definition of U.S. Person▪ IRC 351, 354, 356 and/or 361

Issue 2, Step 3: Additional Factual Development

Outbound Transfer of Domestic Stock

Issue 2

Is USP's transfer of USC stock to FAC subject to IRC 367(a)(1), potentially resulting in a taxable exchange?

Fact Element	Resources	6103 Protected Resources
<ul style="list-style-type: none">▪ Is USP (the transferor), the person/entity that is transferring USC stock, a U.S. person?▪ Is USP (the transferor) a U.S. Corporation?	<ul style="list-style-type: none">▪ IRC 7701(a)(30) – Definition of U.S. person▪ IRC 7701(a)(3) – Definition of a Corporation▪ IRC 7701(a)(4) – Definition of Domestic▪ Articles of Incorporation of USP under relevant state law	

Issue 2, Step 3: Additional Factual Development (cont'd)

Outbound Transfer of Domestic Stock

Issue 2

Is USP's transfer of USC stock to FAC subject to IRC 367(a)(1), potentially resulting in a taxable exchange?

Fact Element	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Determine the type of transaction that occurred that involved a transfer of USC stock to FAC. ▪ Review the disclosures (e.g., GRAs and Form 926 and Form 5471, Schedule O (for FAC)) to determine if USP has transferred USC stock O/B to FAC in a transaction that is subject to IRC 367(a). <ul style="list-style-type: none"> – A review of such documents will provide a basic understanding of the transactions that have occurred. Multiple transactions may be part of a much larger restructuring transaction. ▪ Organizing the transaction steps in a chronological order will assist in the analysis of the transaction. ▪ A clear understanding of the type of transaction is key in determining the tax consequences. When warranted, request taxpayer to provide a step-by-step presentation of the transaction to the audit team. 	<ul style="list-style-type: none"> ▪ Organizational Charts (preferably step by step) ▪ Step Plan, if any ▪ Tax Opinion, if any ▪ Taxpayer Presentation of the Transaction 	

Issue 2, Step 3: Additional Factual Development (cont'd)

Outbound Transfer of Domestic Stock

Issue 2

Is USP's transfer of USC stock to FAC subject to IRC 367(a)(1), potentially resulting in a taxable exchange?

Fact Element	Resources	6103 Protected Resources
<ul style="list-style-type: none">▪ Is FAC, which receives USC stock in the O/B transfer, treated as a FC for U.S. tax purposes?<ul style="list-style-type: none">- A FC or- An eligible foreign business entity classified as a corporation for U.S. tax purposes, pursuant to a CTB election.	<ul style="list-style-type: none">▪ IRC 7701(a)(5) – Definition of foreign▪ Treas. Reg. 301.7701-2 – <i>Business entities definitions</i>▪ Treas. Reg. 301.7701-3 – CTB regulations and related Form 8832	

Issue 2, Step 3: Additional Factual Development (cont'd)

Outbound Transfer of Domestic Stock

Issue 2

Is USP's transfer of USC stock to FAC subject to IRC 367(a)(1), potentially resulting in a taxable exchange?

Fact Element	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Does the transferred stock have a potential built-in gain? (Gain = FMV over stock basis) <ul style="list-style-type: none"> - To make this determination, request supporting documentation from the taxpayer and review the relevant return items. 	<ul style="list-style-type: none"> ▪ Listing of USC shares of stock transferred (FMV and basis) ▪ Valuation study on the O/B transfer of USC stock ▪ Form 926, Part III attached to the return ▪ GRA ▪ IRC 351 or 368 Disclosure 	

Issue 2, Step 4: Develop Arguments

Outbound Transfer of Domestic Stock

Issue 2

Is USP's transfer of USC stock to FAC subject to IRC 367(a)(1), potentially resulting in a taxable exchange?

Explanation of Adjustment	Resources	6103 Protected Resources
<p>The three Factors of IRC 367(a)(1) are satisfied in our Fact Pattern:</p> <ul style="list-style-type: none"> ▪ USP is a person and, thus, is a U.S. transferor. ▪ USP transferred USC stock to a FAC, a FC. ▪ The transfer qualifies under IRC 354. 	<ul style="list-style-type: none"> ▪ IRC 367(a) – <i>Transfers of property from the United States</i> ▪ Treas. Reg. 1.367(a)-1T – O/B Transfer of Property – IRC 367(a) General Rules ▪ Treas. Reg. 1.367(a)-3 – O/B Stock Exception Rules ▪ IRC 7701(a)(30) – Definition of U.S. Person ▪ IRC 351, 354, 356 and/or 361 	
 <p>DECISION POINT: If the transfer is not described in IRC 351, 354, 356 or 361, then IRC 367(a)(1) is not applicable. The international examiner should consider other code sections in the analysis.</p>		

Issue 2, Step 4: Develop Arguments (cont'd)

Outbound Transfer of Domestic Stock

Issue 2

Is USP's transfer of USC stock to FAC subject to IRC 367(a)(1), potentially resulting in a taxable exchange?

Explanation of Adjustment	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ USC stock has a built-in gain at the time of the O/B transfer. <p> DECISION POINT: Taxation under IRC 367(a) is based upon a property-by-property determination and is only relevant if USC stock has a built-in gain. If USC stock has a built-in loss, IRC 367(a) does not apply to the transfer. No loss is allowed, and the nonrecognition provision continues to apply.</p> <p>NOTE: If other assets were transferred in addition to USC stock, the international examiner must consider IRC 367 for the transfer of the other property. This Practice Unit only addresses the O/B transfer of USC stock. See related Practice Unit, "Outbound Transfer of Property to Foreign Corporation – IRC 367 Overview," DCN: ISO/9411.08_01(2013) for further analysis of IRC 367 on the O/B transfer of other assets.</p>	<ul style="list-style-type: none"> ▪ IRC 367(a) – <i>Transfers of property from the United States</i> ▪ Treas. Reg. 1.367(a)-1T – O/B Transfer of Property – IRC 367(a) General Rules ▪ Treas. Reg. 1.367(a)-3 – O/B Stock Exception Rules ▪ IRC 7701(a)(30) – Definition of U.S. Person ▪ IRC 351, 354, 356 and/or 361 	

Issue 3, Step 2: Review Potential Issues

Outbound Transfer of Domestic Stock

Issue 3

Does the stock exception in Treas. Reg. 1.367(a)-3(c) prevent immediate gain recognition in this transaction despite the general taxability rule of IRC 367(a)(1) in Issue 2?

Explanation of Issue	Resources
<ul style="list-style-type: none">▪ Based upon the analysis of the Fact Pattern, it has been determined that:<ul style="list-style-type: none">- USP transferred USC stock to FAC in an IRC 354 exchange, pursuant to an O/B “B” reorganization, thus subjecting the transaction to potential taxation under IRC 367(a).- USP received 20% of FAC voting stock in the exchange.- USP has a built-in gain of \$10M in its USC stock.▪ The next step is to determine if USP’s O/B transfer of USC stock may qualify for the stock exception under Treas. Reg. 1.367(a)-3(c) to avoid immediate gain recognition pursuant to the general rule of IRC 367(a)(1).	<ul style="list-style-type: none">▪ IRC 367(a)(1) – <i>General rule</i>▪ Treas. Reg. 1.367(a)-3(c) – Stock exception for O/B transfer of domestic stock

Issue 3, Step 2: Review Potential Issues (cont'd)

Outbound Transfer of Domestic Stock

Issue 3

Does the stock exception in Treas. Reg. 1.367(a)-3(c) prevent immediate gain recognition in this transaction despite the general taxability rule of IRC 367(a)(1) in Issue 2?

Explanation of Issue	Resources
<ul style="list-style-type: none"> ▪ Under IRC 367(a)(1), when USP (“Transferor”) transfers USC stock O/B to FAC (“Transferee”), then USP will recognize gain on the USC shares transferred to FAC equal to the excess of FMV over its stock basis. Treas. Reg. 1.367(a)-3(c) provides an exception on the O/B transfer of USC stock if all of the following tests are met: <ol style="list-style-type: none"> 1. The U.S. transferors (including USP), in the aggregate, receive 50% or less of FAC (transferee) stock (total voting and value) in the exchange; 2. Immediately after such transfer the total ownership held by the U.S. officers, U.S. directors and 5% shareholders of USC (collectively “U.S. persons”) is 50% or less of shares (vote & value) of FAC (transferee); 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.367(a)-3(c) – Stock exception for O/B transfer of domestic stock ▪ Treas. Reg. 1.367(a)-3(c)(1)(i) and (ii) – 50% or less stock criteria ▪ Treas. Reg. 1.367(a)-3(c)(1)(iii)(B) – GRA filing requirement ▪ Treas. Reg. 1.367(a)-3(c)(5) – Definitions relating to O/B Transfer of Domestic Stock Exception ▪ Treas. Reg. 1.367(a)-3(c)(5)(iii) – Definition of 5% <i>target S/H</i> ▪ Treas. Reg. 1.367(a)-3(c)(5)(ii) – Definition of 5% <i>transferee S/H</i> ▪ Treas. Reg. 1.367(a)-8 – <i>GRA requirements</i>

Issue 3, Step 2: Review Potential Issues (cont'd)

Outbound Transfer of Domestic Stock

Issue 3

Does the stock exception in Treas. Reg. 1.367(a)-3(c) prevent immediate gain recognition in this transaction despite the general taxability rule of IRC 367(a)(1) in Issue 2?

Explanation of Issue	Resources
<p>Tests (cont'd):</p> <ol style="list-style-type: none"> 3. If USP is a 5% or more (vote or value) S/H of FAC, then USP must enter into a five-year GRA with respect to the transfer of USC stock (if less than 5% - no GRA is required); 4. FAC (transferee) must have been actively engaged in a trade or business outside of the U.S. for at least 36 months before the transaction (active trade or business exception), and it must have a FMV at least equal to the FMV of USC (the U.S. target corporation) (substantiality test); and 5. The reporting requirement under Treas. Reg. 1.367(a)-3(c)(6) is met by USC. <p>If any of requirements 1, 2, 4, or 5 are not met, then the stock exception in Treas. Reg. 1.367(a)-3(c) to IRC 367(a)(1) will be unavailable for all U.S. transferors, including USP. In that case, USP will be required to recognize full gain under section 367(a), and no GRA may be filed to avoid this gain recognition.</p>	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.367(a)-3(c) – Stock exception for O/B transfer of domestic stock ▪ Treas. Reg. 1.367(a)-3(c)(1)(i) and (ii) – 50% or less stock criteria ▪ Treas. Reg. 1.367(a)-3(c)(1)(iii)(B) – GRA requirement ▪ Treas. Reg. 1.367(a)-3(c)(5) – Definitions relating to O/B Transfer of Domestic Stock Exception ▪ Treas. Reg. 1.367(a)-3(c)(5)(iii) – Definition of 5% target S/H ▪ Treas. Reg. 1.367(a)-3(c)(5)(ii) – Definition of 5% transferee S/H ▪ Treas. Reg. 1.367(a)-8 – GRA requirements

Issue 3, Step 2: Review Potential Issues (cont'd)

Outbound Transfer of Domestic Stock

Issue 3

Does the stock exception in Treas. Reg. 1.367(a)-3(c) prevent immediate gain recognition in this transaction despite the general taxability rule of IRC 367(a)(1) in Issue 2?

Explanation of Issue	Resources
<ul style="list-style-type: none"> ▪ If requirements 1, 2, 4, and 5 are satisfied, then the stock exception in Treas. Reg. 1.367(a)-3(c) will be available to USP. ▪ Accordingly, if USP complies with requirement 3, then USP will not be required to recognize gain under section 367(a). ▪ If USP is required to file a GRA, such GRA will be subject to an annual certification requirement for the next 5 years to certify that no triggering event has occurred that would require gain recognition. Assuming that the 5-year certification period expires with no triggering events, the GRA terminates, and USP will not be required to recognize gain under section 367(a). 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.367(a)-3(c) – Stock exception for O/B transfer of domestic stock ▪ Treas. Reg. 1.367(a)-3(c)(1)(i) and (ii) – 50% or less stock criteria ▪ Treas. Reg. 1.367(a)-3(c)(1)(iii)(B) – GRA requirement ▪ Treas. Reg. 1.367(a)-3(c)(5) – Definitions relating to O/B Transfer of Domestic Stock Exception ▪ Treas. Reg. 1.367(a)-3(c)(5)(iii) – Definition of 5% <i>target S/H</i> ▪ Treas. Reg. 1.367(a)-3(c)(5)(ii) – Definition of 5% <i>transferee S/H</i> ▪ Treas. Reg. 1.367(a)-8 – <i>GRA requirements</i>

Issue 3, Step 3: Additional Factual Development

Outbound Transfer of Domestic Stock

Issue 3

Does the stock exception in Treas. Reg. 1.367(a)-3(c) prevent immediate gain recognition in this transaction despite the general taxability rule of IRC 367(a)(1) in Issue 2?

Fact Element	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Based upon the analysis so far, it has been confirmed that USP was a 5% S/H of USC (i.e., USP owned 100% of USC) and received 20% (i.e., less than 50%) of FAC (transferee foreign corporation). ▪ Determine if USP filed a GRA with its return. 	<ul style="list-style-type: none"> ▪ GRA Statement attached to the Form 1120 ▪ Sch D, if no GRA was filed ▪ Treas. Reg. 1.367(a)-3(c)(1)(iii)(B) – GRA Requirement 	
<ul style="list-style-type: none"> ▪ Determine if any other U.S. persons also received stock in FAC as a result of the transaction. 	<ul style="list-style-type: none"> ▪ Stock Register of FAC ▪ Treas. Reg. 1.367(a)-3(c)(1)(i) – 50% or Less Stock Receipt Test 	
<ul style="list-style-type: none"> ▪ Identify the U.S. persons that were officers or directors of USC, the target domestic corporation, and determine if such officers/directors have any ownership in FAC, immediately after the transfer. 	<ul style="list-style-type: none"> ▪ Board of Director Minutes of USC to determine directors ▪ Personnel chart of upper management of USC to determine officers of USC ▪ Stock Register of FAC ▪ Treas. Reg. 1.367(a)-3(c)(1)(ii) – 50% or Less Ownership Test 	

Issue 3, Step 3: Additional Factual Development (cont'd)

Outbound Transfer of Domestic Stock

Issue 3

Does the stock exception in Treas. Reg. 1.367(a)-3(c) prevent immediate gain recognition in this transaction despite the general taxability rule of IRC 367(a)(1) in Issue 2?

Fact Element	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Determine if FAC, the transferee FC, was in an active trade or business outside the U.S. for at least 36 months prior to the transfer. 	<ul style="list-style-type: none"> ▪ Public records of FAC describing its activities ▪ Websites of FP or FAC 	
<ul style="list-style-type: none"> ▪ Determine if FAC has a FMV equal to or greater than the FMV of USC at the time of the transfer. 	<ul style="list-style-type: none"> ▪ Financial statement of FAC ▪ Valuation study of USC, target U.S. corporation ▪ Valuation study or other documentation to verify FAC's FMV at the time of the transfer 	
<ul style="list-style-type: none"> ▪ Confirm the filing requirements in Treas. Reg. 1.367(a)-3(c)(6) were met. 	<ul style="list-style-type: none"> ▪ "Section 367(a) – Reporting of Cross-Border Transfer Under Reg. 1.367(a)-3(c)(6)" statement attached to USC's U.S. tax return. 	

Issue 3, Step 4: Develop Arguments

Outbound Transfer of Domestic Stock

Issue 3

Does the stock exception in Treas. Reg. 1.367(a)-3(c) prevent immediate gain recognition in this transaction despite the general taxability rule of IRC 367(a)(1) in Issue 2?

Explanation of Adjustment	Resources	6103 Protected Resources
<p>Based upon the verification of the additional facts of the Fact Pattern, it has been determined that:</p> <ul style="list-style-type: none"> ▪ The first ownership test has been met since USP received 50% or less stock in FAC (20%), and no other U.S. person was involved in the transaction. ▪ No officers or directors of USC owned stock in FAC after the transaction. No other 5% target S/H's existed, since USC was wholly owned by USP. As a result, the second stock ownership test has been met. ▪ The active trade or business test (as well as the substantiality test) has been met since FAC conducted an active trade or business outside of the U.S. for more than 36 months prior to the transaction and has a FMV greater than USC's. ▪ USP, as a 5% transferee S/H, filed a GRA. See Issue 4 for further analysis of the filing requirement of the GRA and the reporting requirement under Treas. Reg. 1.367(a)-3(c)(6). 	<ul style="list-style-type: none"> ▪ IRC 367(a)(1) – General rule for O/B Transfers – Gain Recognition ▪ Treas. Reg. 1.367(a)-3(c) – O/B Stock Exception for Domestic Stock ▪ Treas. Reg. 1.367(a)-3(c)(1)(i) – (iv) – Required Tests for O/B Domestic Stock Exception 	

Issue 4, Step 2: Review Potential Issues

Outbound Transfer of Domestic Stock

Issue 4

Has USP properly complied with the regulatory reporting requirements to secure non-recognition treatment under the stock exception in Issue 3?

Explanation of Issue	Resources
<ul style="list-style-type: none"> ▪ Because the stock exception in Treas. Reg. 1.367(a)-3(c) applies to the O/B transfer of USC stock, USP must meet certain filing requirements. <p>Requirements of a GRA:</p> <ul style="list-style-type: none"> ▪ In order to meet the stock exception, USP (the U.S. transferor) may be required to timely file a complete and valid GRA that contains the required information listed in Treas. Reg. 1.367(a)-8(c)(2). The failure to materially comply with the content requirements of a GRA may cause the GRA to be invalid. ▪ The GRA is an agreement in which USP agrees to report the realized gain, but not recognized, that is subject to the GRA in the case of a subsequent triggering event within the next 5 taxable years (the certification period). ▪ In addition, USP must also file annual certifications for the next five years certifying that no triggering event has occurred. The failure to file the annual certification is a triggering event requiring gain recognition. 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.367(a)-3 – O/B Transfer of Stock ▪ Treas. Reg. 1.367(a)-3(c) – O/B Transfer of DC stock – GRA Requirement ▪ Treas. Reg. 1.367(a)-8 – <i>GRA Requirements</i> ▪ Treas. Reg. 1.367(a)-8(c) – Contents of a GRA ▪ Treas. Reg. 1.367(a)-8(g) – <i>Annual Certification</i> ▪ Treas. Reg. 1.367(a)-8(j) – <i>Triggering Events</i>

Issue 4, Step 2: Review Potential Issues (cont'd)

Outbound Transfer of Domestic Stock

Issue 4

Has USP properly complied with the regulatory reporting requirements to secure non-recognition treatment under the stock exception in Issue 3?

Explanation of Issue	Resources
<p>Requirements of a GRA (cont'd):</p> <ul style="list-style-type: none"> ▪ As described in Issue #3, USP must timely file a complete GRA if it is a 5% or more S/H in FAC (the transferee FC) and the other tests in Treas. Reg. 1.367(a)-3(c) are also met. ▪ In addition, USC must also comply with the reporting requirements of Treas. Reg. 1.367(a)-3(c)(6) and file a statement “<i>Section 367(a)- Reporting of Cross-Border Transfer Under Reg. 1.367(a)-3(c)(6)</i>” if 10% or more of the domestic corporation is transferred. 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.367(a)-3(c) – O/B Transfer of DC stock – GRA Requirement ▪ Treas. Reg. 1.367(a)-8 – <i>GRA Requirements</i> ▪ Treas. Reg. 1.367(a)-8(c) – Contents of a GRA ▪ Treas. Reg. 1.367(a)-3(c)(6) – Reporting Requirements of Cross-Border Transfer of 10% or more of DC

Issue 4, Step 2: Review Potential Issues (cont'd)

Outbound Transfer of Domestic Stock

Issue 4

Has USP properly complied with the regulatory reporting requirements to secure non-recognition treatment under the stock exception in Issue 3?

Explanation of Issue	Resources
<p>Contents of a timely filed valid GRA:</p> <p>Some of the key items required in a valid GRA include, but are not limited to:</p> <ul style="list-style-type: none"> ▪ Agreement to recognize gain if a triggering event occurs within the certification period ▪ Description of the USC transferred stock <ul style="list-style-type: none"> – Calculation of the amount of the built-in gain – FMV and tax basis of the transferred stock ▪ Agreement to comply with all the conditions and requirements under Treas. Reg. 1.367(a)-8 (including the filing of annual certifications) 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.367(a)-3(c) – O/B Transfer of DC stock – GRA Requirement ▪ Treas. Reg. 1.367(a)-8 – <i>GRA Requirements</i> ▪ Treas. Reg. 1.367(a)-8(c) – Contents of a GRA

Issue 4, Step 2: Review Potential Issues (cont'd)

Outbound Transfer of Domestic Stock

Issue 4

Has USP properly complied with the regulatory reporting requirements to secure non-recognition treatment under the stock exception in Issue 3?

Explanation of Issue	Resources
<p>Filing of Form 8838:</p> <ul style="list-style-type: none"> ▪ In addition to the GRA, USP must also timely file a Form 8838, “Consent to Extend the Time to Assess Tax Under Section 367 – Gain Recognition Agreement”, that extends the statute of limitation for the assessment of tax with respect to the gain realized but not recognized on the initial transfer through the close of the eighth full taxable year following the taxable year of the initial transfer. ▪ The Form 8838 is required to be timely filed with USP’s tax return for the year of transfer along with the required GRA for O/B transfers of USC stock. ▪ Form 8838 extends the statute of limitation for only the tax associated with the gain on the GRA under IRC 367(a) and does not extend the statute of limitation for the entire tax return filed for the year of transfer. 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.367(a)-3(c) – O/B Transfer of DC stock – GRA Requirement ▪ Treas. Reg. 1.367(a)-8 – <i>GRA Requirements</i> ▪ Treas. Reg. 1.367(a)-8(c) – Contents of a GRA ▪ Treas. Reg. 1.367(a)-8(f) – Form 8838 Filing Requirement

Issue 4, Step 2: Review Potential Issues (cont'd)

Outbound Transfer of Domestic Stock

Issue 4

Has USP properly complied with the regulatory reporting requirements to secure non-recognition treatment under the stock exception in Issue 3?

Explanation of Issue	Resources
<p>Failure to timely file a GRA or failure to materially comply:</p> <ul style="list-style-type: none"> ▪ If USP is eligible to file a GRA, but fails to timely file the GRA or fails to comply in any material respect with the GRA regulations or the terms of a GRA, USP may request relief for such failure promptly after it becomes aware of such failure. ▪ USP may request relief under Treas. Reg. 1.367(a)-8(p) by filing an amended return with the Service Center that includes a statement explaining the reasons for the failure to properly file the GRA. USP must also provide a copy of the amended return to the audit team (if the U.S. transferor is under audit for any tax year) or to the Director of Field Operations (DFO), International, LB&I (if not under examination). The audit team will work from the copy of the amended return to make a recommendation to the DFO International for the final determination on the request for relief. 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.367(a)-8(p) – Request for relief for failure to file or materially comply ▪ Treas. Reg. 1.367(a)-3(c) – O/B Transfer of DC stock – GRA Requirement ▪ Treas. Reg. 1.367(a)-8 – <i>GRA Requirements</i> ▪ Treas. Reg. 1.367(a)-8(c) – Contents of a GRA ▪ Treas. Reg. 1.367(a)-8(f) – Form 8838 Filing Requirement ▪ Treas. Reg. 1.367(a)-8(g) – <i>Annual Certification</i>

Issue 4, Step 2: Review Potential Issues (cont'd)

Outbound Transfer of Domestic Stock

Issue 4

Has USP properly complied with the regulatory reporting requirements to secure non-recognition treatment under the stock exception in Issue 3?

Explanation of Issue	Resources
<p>Failure to timely file a GRA or failure to materially comply (cont'd):</p> <ul style="list-style-type: none"> ▪ If USP files its formal request for relief, the IRS must make a separate determination on whether relief should be granted or denied based upon all the facts and circumstances. ▪ The issues relating to a request for relief for failure to timely file a GRA or other related documents (i.e., annual certification or “new” GRA) is beyond the scope of this Practice Unit. 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.367(a)-8(p) – Request for relief for failure to file or materially comply ▪ Treas. Reg. 1.367(a)-3(c) – O/B Transfer of DC stock – GRA Requirement ▪ Treas. Reg. 1.367(a)-8 – <i>GRA Requirements</i> ▪ Treas. Reg. 1.367(a)-8(c) – Contents of a GRA ▪ Treas. Reg. 1.367(a)-8(f) – Form 8838 Filing Requirement

Issue 4, Step 2: Review Potential Issues (cont'd)

Outbound Transfer of Domestic Stock

Issue 4

Has USP properly complied with the regulatory reporting requirements to secure non-recognition treatment under the stock exception in Issue 3?

Explanation of Issue	Resources
<p>IRC 6038B Reporting Requirements:</p> <ul style="list-style-type: none">▪ Upon an O/B transfer of property by a U.S. transferor (USP) to a FC (FAC), certain filing requirements under IRC 6038B must be met. This requirement is for any O/B transferred property, including the transferred USC stock.▪ The general rule of Treas. Reg. 1.6038B-1(b) requires USP to timely file a Form 926 with its return for each transfer of property to a FC. The Form 926 will include the date of transfer, type of transfer, description of the property transferred (including FMV, basis) and any gain recognized.▪ The failure to comply with the reporting requirements under IRC 6038B is subject to a penalty equal to 10% of the FMV of transferred property (maximum \$100,000, unless the failure was due to intentional disregard).	<ul style="list-style-type: none">▪ IRC 6038B - <i>Notice of certain transfers to foreign persons</i>▪ Treas. Reg. 1.6038B-1 – <i>Reporting of certain transfers to foreign corporations</i>▪ Treas. Reg. 1.6038B-1(f) – 6038B penalty for failure to comply

Issue 4, Step 2: Review Potential Issues (cont'd)

Outbound Transfer of Domestic Stock

Issue 4

Has USP properly complied with the regulatory reporting requirements to secure non-recognition treatment under the stock exception in Issue 3?

Explanation of Issue	Resources
<p>IRC 6038B Reporting Requirements (cont'd):</p> <ul style="list-style-type: none"> ▪ Treas. Reg. 1.6038B-1(b)(2) provides special rules and exceptions for O/B transfers of stock. Under this section, USP was not required to file a Form 926 with respect to the transferred USC stock before November 19, 2014. ▪ Under recently issued final regulations, a Form 926 must be filed in all cases in which a GRA is filed. The new GRA and IRC 6038B regulations are effective on November 19, 2014. <p>Note: USP's failure to properly file a Form 926 has no impact upon whether USP qualifies for the stock exception.</p> <p>Note: The failure to properly file a Form 926 extends the period of limitations for assessment of tax upon the transfer of the property to the date that is 3 years after the date on which the information required to be reported is provided.</p> <p>Note: The transfer of built-in loss domestic stock is not subject to IRC 367(a) (and thus no GRA is required). Nevertheless, the transfer is described in IRC 6038B(a)(1) and, consequently, a U.S. transferor must file a Form 926 if the U.S. transferor owns 5% or more of the transferee FC immediately after the transfer.</p>	<ul style="list-style-type: none"> ▪ IRC 6038B – <i>Notice of certain transfers to foreign persons</i> ▪ Treas. Reg. 1.6038B-1 – <i>Reporting of certain transfers to foreign corporations</i> ▪ <i>Treasury Decision (TD) 9704</i> ▪ Treas. Reg. 1.6038B-1(f) – 6038B penalty for failure to comply ▪ Treas. Reg. 1.6038B-1(b)(2) – <i>Exceptions and Special Rules for Transfer of Stock under IRC 367(a)</i> ▪ Treas. Reg. 1.6038B-1(f)(1)(iii) – Extension of period of limitation on failure to comply with IRC 6038B. ▪ IRC 6501(c)(8) – <i>Failure to notify Secretary of certain foreign transfers</i>

Issue 4, Step 3: Additional Factual Development

Outbound Transfer of Domestic Stock

Issue 4

Has USP properly complied with the regulatory reporting requirements to secure non-recognition treatment under the stock exception in Issue 3?

Fact Element	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Determine if USP timely filed a GRA, Form 8838, and/or Form 926 ▪ Determine if USC filed the required statement under Treas. Reg. 1.367(a)-3(c)(6). 	<ul style="list-style-type: none"> ▪ GRA ▪ Form 8838 ▪ Form 926, if the O/B transfer of USC stock occurred on or after 11/19/2014 ▪ “Section 367(a) – Reporting of Cross-Border Transfer Under Reg. 1.367(a)-3(c)(6)” Statement 	

Issue 4, Step 4: Develop Arguments

Outbound Transfer of Domestic Stock

Issue 4

Has USP properly complied with the regulatory reporting requirements to secure non-recognition treatment under the stock exception in Issue 3?

Explanation of Adjustment	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ If USP has properly filed the required GRA and Form 8838 with its U.S. return for the year of the initial transfer to meet all the requirements for the O/B stock exception, no immediate gain recognition is required in the year of the transfer. Effective November 19, 2014, a Form 926 must be filed in all cases in which a GRA is filed. If USP fails to properly file a Form 926, then USP will be subject to a monetary penalty under section 6038B. Also, the failure to properly file a Form 926 extends the period of limitations for assessment of tax upon the transfer of the property to the date that is 3 years after the date on which the information required to be reported is provided. 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.367(a)-8 – <i>GRA Requirements</i> ▪ Treas. Reg. 1.367(a)-8(f) – Form 8838 Filing Requirement ▪ Treas. Reg. 1.367(a)-8(g) – Annual Certification Filing Requirement ▪ Treas. Reg. 1.6038B-1 – <i>Reporting of certain transfers to foreign corporations</i> ▪ Treas. Reg. 1.6038B-1(b)(2) – <i>Exceptions and Special Rules for Transfer of Stock under IRC 367(a)</i> ▪ TD 9704 – GRA Regs ▪ Treas. Reg. 1.6038B-1(f)(1)(iii) – Extension of period of limitation on failure to comply with IRC 6038B. ▪ IRC 6501(c)(8) – <i>Failure to notify Secretary of certain foreign transfers</i> 	

Issue 4, Step 4: Develop Arguments (cont'd)

Outbound Transfer of Domestic Stock

Issue 4

Has USP properly complied with the regulatory reporting requirements to secure non-recognition treatment under the stock exception in Issue 3?

Explanation of Adjustment	Resources	6103 Protected Resources
<p>Going forward, the international examiner needs to track the GRA over the next 5 years to determine whether</p> <ul style="list-style-type: none"> ▪ Annual certifications are timely filed for each of the next 5 years. Failure to file the annual certification is a triggering event requiring gain recognition. ▪ A subsequent event has occurred that constitutes a triggering event that would require gain recognition. ▪ A subsequent event has occurred that meets an exception to a triggering event that would require a new GRA to be filed to continue nonrecognition treatment of the original GRA. 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.367(a)-8 – <i>GRA Requirements</i> ▪ Treas. Reg. 1.367(a)-8(f) – Form 8838 Filing Requirement ▪ Treas. Reg. 1.367(a)-8(g) – Annual Certification Filing Requirement ▪ Treas. Reg. 1.6038B-1 – <i>Reporting of certain transfers to foreign corporations</i> ▪ Treas. Reg. 1.6038B-1(b)(2) – <i>Exceptions and Special Rules for Transfer of Stock under IRC 367(a)</i> ▪ TD 9704 – GRA Regs ▪ Treas. Reg. 1.6038B-1(f)(1)(iii) – Extension of period of limitation on failure to comply with IRC 6038B. ▪ IRC 6501(c)(8) – <i>Failure to notify Secretary of certain foreign transfers</i> 	

Issue 4, Step 4: Develop Arguments (cont'd)

Outbound Transfer of Domestic Stock

Issue 4

Has USP properly complied with the regulatory reporting requirements to secure non-recognition treatment under the stock exception in Issue 3?

Explanation of Adjustment	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ If USP has failed to timely file any of the required documents (GRA, Form 8838) with its U.S. return for the year of the initial transfer in order to meet all the requirements for the O/B stock exception, immediate gain recognition is required in the year of the transfer under the general rule of IRC 367(a)(1). All of the requirements to meet the stock exception in Treas. Reg. 1.367(a)-3(c) have not been met if USP failed to timely file such documents. ▪ If USP has not reported the full gain on the O/B transfer as income, then an adjustment is required. In addition, a penalty under IRC 6038B should be considered. 	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.367(a)-3(c) – O/B Transfer of DC stock – GRA Requirement ▪ Treas. Reg. 1.367(a)-8 – <i>GRA Requirements</i> ▪ Treas. Reg. 1.367(a)-8(c) – Contents of a GRA ▪ Treas. Reg. 1.367(a)-8(f) – Form 8838 Filing Requirement ▪ Treas. Reg. 1.367(a)-8(p) – <i>Request for relief for failure to file or materially comply</i> ▪ Treas. Reg. 1.6038B-1T(f)(3) – Request for relief for failure to comply under IRC 6038B 	

Issue 4, Step 4: Develop Arguments (cont'd)

Outbound Transfer of Domestic Stock

Issue 4

Has USP properly complied with the regulatory reporting requirements to secure non-recognition treatment under the stock exception in Issue 3?

Explanation of Adjustment	Resources	6103 Protected Resources
<p>NOTE: If USP has failed to timely file the documents, USP may elect to file for relief under the “not willful” provision of Treas. Reg. 1.367(a)-8(p) and under the “reasonable cause” for failure to comply provision of IRC 6038B pursuant to Treas. Reg. 1.6038B-1T(f)(3). At such time, the audit team will make a recommendation to the DFO International for a final determination on whether to grant or deny the relief request. Based upon the IRS’s determination, adjustments may be required to include the gain in taxable income and a possible IRC 6038B penalty.</p>	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.367(a)-3(c) – O/B Transfer of DC stock – GRA Requirement ▪ Treas. Reg. 1.367(a)-8 – <i>GRA Requirements</i> ▪ Treas. Reg. 1.367(a)-8(c) – Contents of a GRA ▪ Treas. Reg. 1.367(a)-8(f) – Form 8838 Filing Requirement ▪ Treas. Reg. 1.367(a)-8(p) – <i>Request for relief for failure to file or materially comply</i> ▪ Treas. Reg. 1.6038B-1T(f)(3) – Request for relief for failure to comply under IRC 6038B 	

Training and Additional Resources

Chapter 1.8.2 Outbound Transfer of Stock

Type of Resource	Description(s) and/or Instructions for Accessing	References
CENTRA sessions	2013 (TPO) & (IBC) CPE CENTRA - Hot Topics of IRC 367 2014 (TPO) CPE CENTRA - Outbound Transfer of Property to Foreign Corporation - IRC 367 Overview	
Reference Materials – Treaties	<ul style="list-style-type: none"> ▪ <i>BNA Tax Management Int'l Portfolio</i> 919-3rd <ul style="list-style-type: none"> - Sec. II – <i>Scope and General Operation of IRC 367(a)(1)</i> - Sec. IV – Para. B – <i>O/B Transfers of Stock</i> - Sec. IV – Para. C – <i>The “Anti-Expatriation” Rule for Certain Transfers of Domestic Stock or Securities</i> - Sec. IV – Para. F – <i>Gain Recognition Agreements</i> - Sec. VI – <i>Reporting of IRC 367(a) transfers under IRC 6038B</i> ▪ Dolan - <i>U.S. Tax. Int'l Mergers, Acquis. & Jt. Ventures</i> Para. 9 – <i>O/B Transfer of Stock</i> <ul style="list-style-type: none"> - Para. 9.02 – <i>Transfers of Domestic Stock</i> ▪ Dolan - <i>U.S. Tax. Int'l Mergers, Acquis. & Jt. Ventures</i> Treatises Para 10.02 – <i>General IRC 367(a) Rules</i> 	

Glossary of Terms and Acronyms

Term/Acronym	Definition
CFC	Controlled Foreign Corporation
CTB	Check-the-Box
DC	Domestic Corporation
DCN	Document Control Number
DE	Disregarded Entity
Domestic Stock	Shares or securities of a Domestic Corporation
E&P	Earnings and Profits
ETR	Effective Tax Rate
FAC	Foreign Acquiring Corporation
FC	Foreign Corporation
F-to-F	Foreign-to-Foreign
FMV	Fair Market Value
FP	Foreign Parent
GRA	Gain Recognition Agreement
IDR	Information Document Request
IRC	Internal Revenue Code

Glossary of Terms and Acronym (cont'd)

Term/Acronym	Definition
O/B	Outbound
P/S	Partnership
Reorg.	Reorganization described in IRC 368(a)(1)
S/H	Shareholder
U.S.	United States
USP	U.S. Parent
USC	U.S. Corporation

Index of Related Issues

Issue	Associated UIL(s)	References
Outbound Transfer of Property to Foreign Corporation – IRC 367 Overview	9411.08	Practice Unit, “Outbound Transfers of Property to Foreign Corporation – IRC 367 Overview,” DCN: ISO/9411.08_01(2013)
Outbound Transfer of Intangible Property to Foreign Corporation – IRC 367(d) Overview	9411.02; 9411.08	Practice Unit, “Deemed Annual Royalty Income Under IRC 367(d),” DCN: ISO/9411.02_01(2013)
Outbound Transfer of Foreign Stock	9411.08	Practice Unit, “Outbound Transfer of Foreign Stock,” DCN: ISO/9411.08_04(2014)
Outbound Transfer of Foreign Stock Followed by CTB Election	9411.08	Practice Unit, “Outbound Transfer of Foreign Stock Followed by CTB Election,” DCN: ISO/9411.08_05(2014)
Outbound Liquidation of a U.S. Corp to Foreign Parent - IRC 367(e)(2) Overview	9422.10	Practice Unit, “Outbound Liquidation of a U.S. Corp to Foreign Parent - IRC 367(e)(2) Overview,” DCN: ISI/9422.10_01(2013)