

## Part III - Administrative, Procedural, and Miscellaneous

### Treatment Under Section 367(b) of Property Used to Purchase Parent Stock from Parent Shareholders in Certain Triangular Reorganizations

Notice 2007-48

#### SECTION 1. OVERVIEW

On September 22, 2006, the Internal Revenue Service (IRS) and the Treasury Department (Treasury) issued Notice 2006-85 (2006-41 IRB 677) to address certain transactions involving foreign corporations where a subsidiary acquires stock of its parent from its parent for use in a triangular reorganization. Comments were requested in section 7 of that notice regarding similar transactions, including transactions where a subsidiary acquires stock of its parent from a person unrelated to its parent (such as from the public on the open market).

For reasons similar to those discussed in section 2 of Notice 2006-85, the IRS and Treasury believe that taxpayers' characterization of these transactions, as well as other transactions involving acquisitions from related parties, raises significant policy concerns. Accordingly, this notice amplifies Notice 2006-85 by announcing that the IRS and Treasury will issue regulations under section 367(b) of the Internal Revenue Code to address these and similar transactions.

#### SECTION 2. REGULATIONS TO BE ISSUED UNDER SECTION 367(b)

The definitions provided in section 1 of Notice 2006-85 also apply for purposes of this notice.

The regulations will apply to triangular reorganizations where P or S (or both) is foreign and, pursuant to the reorganization, S acquires from one or more P shareholders, in exchange for property, all or a portion of the P stock that is used to acquire the stock or assets of T (T could be either related or unrelated to P and S before the transaction). In such a case, the regulations under section 367(b) will make adjustments with respect to P and S that will have the effect of a distribution of property from S to P under section 301(c). The amount of the distribution shall equal the amount of money plus the fair market value of other property transferred from S to P's shareholders in exchange for the P stock used to acquire the stock or assets of T. Therefore, the regulations will require, as appropriate, an inclusion in P's gross income as a dividend, a reduction in P's basis in its S stock (or, as appropriate, T stock), and the recognition of gain by P from the sale or exchange of property.

The adjustments also will provide, as appropriate, that the amount of property deemed distributed to P is considered to be contributed by P to S immediately thereafter and therefore increases P's basis in S. See, e.g., Treas. Reg. §1.367(b)-2(e)(3)(ii).

Finally, the regulations will provide for appropriate corresponding adjustments to be made, such as a reduction of S's earnings and profits as a result of the distribution (consistent with the principles of section 312).

The section 367(b) adjustments described above shall be made prior to the application of other provisions. For example, after giving effect to the 367(b)

adjustments, S's purchase and transfer of P stock will then be taken into account under generally applicable rules, including sections 304, 358, and 368.

The regulations will address similar transactions in which S acquires the P stock used in the reorganization from a related party that purchased the P stock in a related transaction. The regulations also will include a rule that takes into account the earnings and profits of other corporations, as appropriate, if one of the principal purposes of creating, organizing, or funding S is to avoid the adjustments described in this notice or Notice 2006-85. See, e.g., Treas. Reg. §§1.304-4T and 1.956-1T(b)(4).

### SECTION 3. EFFECTIVE DATE

The regulations described in this notice will apply to transactions occurring on or after May 31, 2007. The regulations described in this notice will not, however, apply to a transaction that was completed on or after May 31, 2007, if the reorganization was entered into pursuant to a written agreement that was (subject to customary conditions) binding before May 31, 2007 and all times thereafter, but only to the extent that: (1) S acquired the P stock to be used in the reorganization prior to May 31, 2007, or (2) S had a commitment to acquire the P stock to be used in the reorganization from an unrelated party pursuant to a written agreement that was (subject to customary conditions) binding before May 31, 2007 and at all times thereafter, or pursuant to a tender offer announced prior to May 31, 2007 that is subject to section 14(d) of the Securities and Exchange act of 1934 [15 U.S.C. 78n(d)(1)] and Regulation 14(D) (17 CFR 240.14d-1 through 240.14d-101) or that is subject to comparable foreign laws.

No inference is intended as to the treatment of transactions described herein

under current law.

#### SECTION 4. COMMENTS

The IRS and Treasury request comments on the regulations to be issued under this notice and continue to request comments on those issues discussed in section 7 of Notice 2006-85, including, for example, any issues regarding the source and timing of the adjustments to be made with respect to P and S.

#### SECTION 5. EFFECT ON OTHER DOCUMENTS

Notice 2006-85 is amplified.

#### SECTION 6. DRAFTING INFORMATION

The principal author of this notice is Daniel McCall of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury participated in its development. For further information regarding this notice contact Mr. McCall at (202) 622-3860 (not a toll-free call).