

Guidance Related to Section 961 and Certain Inbound Nonrecognition Transactions

Notice 2024-16

SECTION 1. PURPOSE

This notice announces that the Department of the Treasury (the “Treasury Department”) and the Internal Revenue Service (the “IRS”) intend to issue proposed regulations addressing the treatment of basis provided under section 961(c) in certain transactions in which a domestic corporation acquires stock of a controlled foreign corporation (as defined in section 957(a), a “CFC”) in a liquidation described in section 332 or an asset reorganization described in section 368(a)(1).¹ Section 2 of this notice provides background on section 961 and other relevant Code provisions. Section 3 of this notice describes the regulations that the Treasury Department and the IRS intend to issue. Section 4 of this notice permits taxpayers to rely on the rules described in section 3 of this notice. Section 5 of this notice requests comments and provides contact information.

SECTION 2. BACKGROUND

Section 961(a) provides that, under regulations prescribed by the Secretary, the basis that a United States shareholder (as defined in section 951(b)) has in stock of a

¹ Unless otherwise specified, all “section” or “§” references are to sections of the Internal Revenue Code (the “Code”) or the Income Tax Regulations (26 CFR part 1).

CFC, and the basis of property of a United States shareholder by reason of which the shareholder is considered under section 958(a)(2) as owning stock of a CFC, is increased by the amount required to be included in its gross income under section 951(a) with respect to such stock or with respect to such property, as the case may be, but only to the extent to which such amount was included in the gross income of such United States shareholder. Section 951A(f)(1) and §1.951A-5(b)(1) provide that an amount included in a United States shareholder's gross income as a GILTI inclusion amount is treated in the same manner as an amount included under section 951(a) for purposes of applying section 961.

Section 961(b) provides that, under regulations prescribed by the Secretary, the basis of stock or other property with respect to which a United States shareholder or a United States person receives an amount that is excluded from gross income under section 959(a) is reduced by the amount so excluded. Section 961(b)(1). To the extent that an amount excluded from gross income under section 959(a) exceeds the basis of the stock or other property with respect to which it is received, the amount is treated as gain from the sale or exchange of property. Section 961(b)(2).

Section 961(c) provides that, under regulations prescribed by the Secretary, if a United States shareholder is treated under section 958(a)(2) as owning stock in a CFC that is owned by another CFC, then adjustments similar to the adjustments provided by section 961(a) and (b) are made to the basis of such stock, and the basis of stock in any other CFC by reason of which the United States shareholder is considered under

section 958(a)(2) as owning the stock of the first mentioned CFC, but only for the purpose of determining the amount included under section 951 in the gross income of such United States shareholder. Section 961(c) further provides that the adjustments described in section 961(c) do not apply with respect to any stock to which a basis adjustment applies under section 961(a) or (b).

Sections 1.961-1 and 1.961-2 implement sections 961(a) and (b), respectively. Those regulations were issued in 1965, before section 961(c) was enacted in 1997, and have not been modified since their issuance.²

In a transaction in which a domestic corporation (“domestic acquiring corporation”) acquires all of the stock of a CFC (“acquired CFC”) from another CFC (“transferor CFC”) in a liquidation described in section 332 or an asset reorganization described in section 368(a)(1) (“inbound nonrecognition transaction”), the domestic acquiring corporation generally obtains a basis of the stock of the acquired CFC that is determined by reference to the basis of the stock in the hands of the transferor CFC pursuant to section 334(b) or 362(b), as applicable. Before such an inbound nonrecognition transaction, the transferor CFC may have increased the basis of the stock of the acquired CFC under section 961(c) (such basis, “section 961(c) basis”), but the section 961(c) basis in the stock of the acquired CFC would apply only for the purpose of determining an amount included under section 951 in the gross income of a

² See TD 6850, 30 Fed. Reg. 11854 (1965). Section 961(c) was added to the Code by the Taxpayer Relief Act of 1997, Pub. L. No. 150-34 § 1112(b), 111 Stat. 788, 969 (1997).

United States shareholder.

A domestic acquiring corporation may recognize gain on a subsequent distribution of previously taxed earnings and profits (“PTEP”) from the acquired CFC under section 961(b)(2) or recognize gain attributable to PTEP on a disposition of stock in the acquired CFC if the domestic acquiring corporation’s adjusted basis³ in the stock of the acquired CFC does not reflect the section 961(c) basis that the transferor CFC had in the stock of the acquired CFC before the inbound nonrecognition transaction. The Treasury Department and the IRS are of the view that, in certain cases, this result may prevent taxpayers from engaging in such transactions and would be inconsistent with one of the purposes of section 961, which is to prevent double taxation of the same CFC earnings.⁴ Accordingly, pursuant to the grant of regulatory authority under section 961, the Treasury Department and the IRS intend to issue regulations described in section 3 of this notice.

SECTION 3. REGULATIONS TO BE ISSUED

.01 Treatment of section 961(c) basis in covered inbound transactions

As announced in Notice 2019-1 (2019-2 I.R.B. 275), the Treasury Department and the IRS expect to issue proposed regulations providing substantially comprehensive rules under sections 959 and 961. This notice announces that the

³ For purposes of this notice, the term “adjusted basis” does not include section 961(c) basis.

⁴ See H.R. Rep. No. 1447 at A106 (1962) (“To prevent doubling up of tax where stock in a controlled foreign corporation is sold at a gain which reflects the retained earnings already taxed to United States persons, the basis of stock would be adjusted.”).

Treasury Department and the IRS expect to issue additional proposed regulations (the “forthcoming regulations”) that will provide that, in the case of a covered inbound transaction, a domestic acquiring corporation’s adjusted basis of the stock of an acquired CFC determined under section 334(b) or 362(b) is determined as if the transferor CFC’s section 961(c) basis were adjusted basis. The transferor CFC’s section 961(c) basis is taken into account for purposes of the preceding sentence, however, only to the extent the section 961(c) basis is with respect to a domestic corporation described in section 3.02(1) or (2) of this notice, as applicable (that is, the section 961(c) basis resulted from inclusions in gross income of the domestic corporation under section 951(a) or section 951A(a), or the section 961(c) basis was inherited by the domestic corporation under section 961(c)’s successor rules in an acquisition by the domestic corporation of stock of the transferor CFC from another person).

.02 General definition of covered inbound transaction

Under the forthcoming regulations, except as provided in section 3.03 or 3.04 of this notice, a covered inbound transaction would be defined, with respect to an acquired CFC, to mean the following transactions in which a domestic acquiring corporation acquires all of the stock of the acquired CFC from a transferor CFC that, immediately before the transaction and any related transactions, owns (directly or indirectly under section 958(a)(2)) all of the stock of the acquired CFC.

(1) Section 332 liquidation or upstream asset reorganization. A liquidation

described in section 332, a reorganization described in section 368(a)(1)(A) (but not section 368(a)(2)(D) or 368(a)(2)(E)) (“nontriangular A reorganization”), or a reorganization described in section 368(a)(1)(C) (determined without regard to the parenthetical) (“nontriangular C reorganization”), in which all of the stock of the transferor CFC is owned directly by the domestic acquiring corporation immediately before the transaction.

(2) Other asset reorganization. A nontriangular A reorganization, a nontriangular C reorganization, a reorganization described in section 368(a)(1)(D) (that satisfies the requirements of section 354(b)(1)(A) and (B)), or a reorganization described in section 368(a)(1)(F), in which all of the stock of the transferor CFC is owned directly by a single domestic corporation (or by members of the same consolidated group) immediately before the transaction, and that same domestic corporation (or members of the same consolidated group) directly owns all of the stock of the domestic acquiring corporation immediately after the transaction and any related transactions.

.03 De minimis rules for stock ownership

A transaction otherwise described in section 3.02(1) or (2) of this notice would not fail to be a covered inbound transaction solely because, immediately before the transaction, one or more persons other than the domestic corporation (or members of a consolidated group, as applicable) described in section 3.02(1) or (2) of this notice own (in the aggregate) one percent or less of the total fair market value of the stock of the transferor CFC. Solely for purposes of determining whether a transaction is a covered

inbound transaction, stock of the acquired CFC owned by one or more persons other than the transferor CFC immediately before the transaction and any related transactions that represents (in the aggregate) one percent or less of the total fair market value of the stock of the acquired CFC is disregarded, provided that any such person must continue to own its stock of the acquired CFC after the transaction and any related transactions if the person is not related (within the meaning of section 267(b) or 707(b)(1)) to a domestic corporation described in section 3.02(1) or (2) of this notice.

.04 Limitations on the scope of covered inbound transactions

(1) De minimis boot. In general, a reorganization would not be a covered inbound transaction if money or other property is received as described under section 356(a). However, a reorganization would not fail to be a covered inbound transaction if the amount of money or other property received as described under section 356(a) represents no more than one percent of the total fair market value of the stock of the transferor CFC.

(2) Loss in stock of acquired CFC. A transaction would not be a covered inbound transaction if, immediately before the covered inbound transaction, the total amount of the transferor CFC's basis in the stock of the acquired CFC (that is, the aggregate amount of adjusted basis and section 961(c) basis) exceeds the total fair market value of such stock of the acquired CFC.

(3) Transfers described in section 368(a)(2)(C) or §1.368-2(k)(1). A transaction would not be a covered inbound transaction if stock of the acquired CFC is transferred

pursuant to section 368(a)(2)(C) or §1.368-2(k)(1), unless the transferee is (i) a member of the same consolidated group that includes the domestic acquiring corporation and wholly owned by one or more members of that same consolidated group, or (ii) the common parent of that consolidated group.

(4) Other subsequent transfers. A transaction would not be a covered inbound transaction if, pursuant to a plan (or series of related transactions), stock of the acquired CFC is transferred to a partnership or foreign corporation in connection with a covered inbound transaction. A plan to transfer the stock of the acquired CFC would be deemed to exist if stock of the acquired CFC is subsequently transferred to a partnership or a foreign corporation within the two-year period beginning at the time the covered inbound transaction is completed.

(5) Certain types of domestic acquiring corporations. A transaction would not be a covered inbound transaction if the domestic acquiring corporation is a regulated investment company as defined in section 851, a real estate investment trust as defined in section 856, or an S corporation as defined in section 1361.

If the stock of multiple acquired CFCs is transferred by a single transferor CFC in a transaction described in section 3.02 of this notice, the limitations in sections 3.04(2), 3.04(3), and 3.04(4) of this notice apply separately with respect to each acquired CFC.

SECTION 4. RELIANCE ON RULES DESCRIBED IN THIS NOTICE

A taxpayer may rely on the rules described in section 3 of this notice for transactions completed on or before the date proposed regulations governing the basis

consequences of covered inbound transactions are published in the Federal Register, provided the taxpayer and its related parties (within the meaning of sections 267(b) and 707(b)(1)) follow the rules in their entirety and in a consistent manner.

No inference is intended with regard to the treatment of section 961(c) basis as a result of transactions other than covered inbound transactions. The Treasury Department and the IRS will consider in future guidance the extent to which basis provided under section 961(c) in stock of a CFC may be taken into account as adjusted basis by a domestic corporation that acquires stock of the CFC in a transaction other than a covered inbound transaction.

A taxpayer relying on this notice that has maintained section 961(c) basis in a currency that is not the U.S. dollar must, before applying the rules described in section 3 of this notice, translate section 961(c) basis into U.S. dollars, under a reasonable method consistently applied to all acquired CFCs in any covered inbound transaction undertaken by one or more domestic acquiring corporations. For this purpose, a reasonable method must use an exchange rate that reflects the original U.S. dollar inclusion amounts of the United States shareholder that gave rise to the section 961(c) basis, reduced as appropriate, including to take into account distributions of PTEP on such stock. Moreover, distributions of PTEP are treated as reducing the section 961(c) basis as so translated by the U.S. dollar basis of the PTEP.

SECTION 5. REQUEST FOR COMMENTS AND CONTACT INFORMATION

The Treasury Department and the IRS request comments on all aspects of this

notice, including whether the rules described in section 3 of this notice should apply to transactions other than covered inbound transactions and whether additional limitations should apply in those cases.

Comments should be submitted by February 26, 2024. Comments may be submitted electronically via the Federal eRulemaking Portal at www.regulations.gov (type IRS-2024-16 in the search field on the regulations.gov homepage to find this notice and submit comments). Alternatively, comments may be submitted by mail to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2024-16), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. The Treasury Department and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket.

The principal authors of this notice are Karen Li and Brady Plastaras of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Ms. Li or Mr. Plastaras at (202) 317-6937 (not a toll-free number).