

Register supplements and, where inconsistent with, supersedes, the 1991 proposed regulations with respect to transfers of domestic stock or securities occurring after April 17, 1994.

Notice 94-46 announced that the regulations under section 367(a) would be amended to deny nonrecognition treatment to the transfer of stock or securities of a domestic corporation by a U.S. person to a foreign corporation if all U.S. transferors owned in the aggregate 50 percent or more of either the total voting power or the total value of the stock of the transferee foreign corporation immediately after the exchange. (Under the approach taken in Notice 87-85, transfers of domestic stock or securities occurring prior to April 18, 1994 (and after December 16, 1987) were generally denied nonrecognition treatment only in the case of a single U.S. transferor that owned more than 50 percent of the total voting power or the total value of the stock of the transferee foreign corporation immediately after the transfer or of a U.S. transferor that held at least 5 percent (but no more than 50 percent) of the total voting power or the total value of the stock of the transferee foreign corporation immediately after the transfer and that failed to enter into a gain recognition agreement.)

In Notice 94-46, the IRS and the Treasury Department invited comments on possible exceptions to the general rule set forth in the Notice, specifically with respect to cases where (i) a domestic corporation is acquired by a foreign corporation that is engaged in an active trade or business and that, prior to the transaction, is unrelated to the acquired corporation or its shareholders, or (ii) the transferee foreign corporation is a controlled foreign corporation (within the meaning of section 957) after the transfer. After consideration of the comments received, the IRS and the Treasury Department have concluded that no exceptions to the general rule are warranted.

In the Notice, the IRS and the Treasury Department also invited specific comment on whether special rules should be provided to determine the ownership of the transferee foreign corporation in cases where the corporation is publicly traded. As described below, in response to comments received, the "cross-ownership" rules of Notice 94-46 have been modified in a way that will ameliorate the burdens of identifying shareholders of publicly traded (or widely-held) corporations and that should reduce the impact of the general rule on business combinations involving unrelated U.S. and foreign corporations

that are engaged in the active conduct of a trade or business.

#### Need for Temporary Regulations

The rules contained in this Treasury decision provide taxpayers with guidance necessary to comply with Notice 94-46, which was effective with respect to transfers of stock or securities of domestic corporations to foreign corporations occurring after April 17, 1994. The provisions of Notice 94-46 were made immediately effective to forestall certain tax-avoidance transfers by U.S. persons of the stock of U.S.-based multinationals to foreign corporations. Because of the Notice's immediate effective date, there is a need for implementing regulations on which both taxpayers and the Service may rely with respect to current transfers.

Based on these considerations, it is determined that immediate regulatory guidance will ensure the efficient administration of the tax laws and that it would be impracticable and contrary to the public interest to issue this Treasury decision with prior notice under section 553(b) or subject to the effective date limitation of section 553(d) of title 5 of the United States Code.

#### Explanation of Provisions

Section 367(a)(1) generally treats a transfer of property (including stock or securities) by a U.S. person to a foreign corporation in connection with an exchange described in section 332, 351, 354, 356 or 361 as a taxable exchange unless the transfer qualifies for an exception to this general rule. Temporary regulations published on May, 16, 1986 (TD 8087) provided exceptions in the case of certain transfers of stock or securities of domestic and foreign corporations (see § 1.367(a)-3T). Notice 87-85 announced modifications to those exceptions for transfers of domestic or foreign stock or securities occurring after December 16, 1987. Proposed regulations issued on August 26, 1991 largely incorporated the positions set forth in Notice 87-85, and expanded the application of section 367(a) with respect to certain transfers of stock or securities of foreign corporations. Notice 94-46 announced modifications to the exceptions originally announced in Notice 87-85, effective with respect to certain transfers of stock or securities of domestic corporations occurring after April 17, 1994.

Both the temporary regulations herein and the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the Federal Register generally incorporate the

positions taken in Notice 94-46, with modifications as described below. As indicated previously, Notice 94-46 did not modify the positions taken in Notice 87-85 governing the transfer of stock or securities of a foreign corporation. Until the 1991 proposed regulations are finalized, the positions originally announced in Notice 87-85 will continue to govern the availability of section 367(a) exceptions for transfers of stock or securities of foreign corporations.

In addition to implementing the positions announced in Notice 94-46, this Treasury decision removes those portions of § 1.367(a)-3T of the 1986 temporary regulations that Notice 87-85 announced would no longer be applicable with respect to stock transfers occurring after December 16, 1987. This includes removal of the exceptions in paragraphs (c) (1) through (4) (providing exceptions for certain transfers of domestic stock or securities); of paragraph (d) (providing exceptions for certain transfers of foreign stock or securities, including an exception for transfers to a foreign corporation organized in the same foreign country as the corporation the stock of which is being transferred); of paragraph (e) (involving exceptions where stock is an operating asset or where there is a consolidation of an integrated business); and of paragraph (f) (exceptions where U.S. transferors obtain a limited interest in the transferee foreign corporation).

The temporary regulations herein also incorporate (in paragraph (a)) the 1991 proposed regulations' restatement of the general rule applicable to outbound stock transfers (see Prop. Reg. § 1.367(a)-3(a)). This restatement revises the general rule contained in the 1986 temporary regulations to reflect changes to section 367 made by Congress after promulgation of those regulations. For example, the 1986 temporary regulations' statement of the general rule included transfers of stock or securities in section 332 liquidations as one of the transactions covered by section 367(a) (see § 1.367(a)-3T(a)). The restatement of the general rule in the temporary regulations herein removes the reference to section 332 because an outbound transfer of stock or securities pursuant to a section 332 liquidation is now covered by section 367(e)(2) and the regulations under § 1.367(e)-2T. Even though the temporary regulations under § 1.367(e)-2T have sunset (because they were promulgated as temporary regulations on January 12, 1990 (TD 8280) and were not finalized within three years of that date), the Service announced its