

Par. 2. Section 1.367(a)-3T is amended by revising paragraphs (a), (c), (d), (e), (f), (g)(1) and (h)(1) to read as follows:

§ 1.367(a)-3T Treatment of transfers of stock or securities to foreign corporations (temporary).

(a) *In general.* This section provides rules concerning the transfer of stock or securities by a U.S. person to a foreign corporation in an exchange described in section 367(a). In general, a transfer of stock or securities by a U.S. person (directly, indirectly or constructively) to a foreign corporation that is described in section 351, 354 (pursuant to a reorganization described in section 368(a)(1)(B)) or section 361(a) or (b) is subject to section 367(a)(1) and, therefore, is treated as a taxable exchange, unless one of the exceptions set forth in paragraph (b), (c) or (d) of this section applies. For additional rules relating to an exchange involving a foreign corporation in connection with which there is a transfer of stock, see section 367(b) and the regulations under that section. For additional rules regarding a transfer of stock or securities in an exchange described in section 361(a) or (b), see section 367(a)(5) and any regulations under that section.

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(c) *Transfers by U.S. persons of stock or securities of domestic corporations to foreign corporations—(1) In general.* Except as provided in section 367(a)(5), a transfer of stock or securities of a domestic corporation by a U.S. person to a foreign corporation that would otherwise be subject to section 367(a)(1) under paragraph (a) of this section shall not be subject to section 367(a)(1) if the domestic corporation the stock or securities of which are transferred (referred to as the U.S. target company) complies with the reporting requirements in paragraph (c)(4) of this section and if each of the following four conditions is met:

(i) Fifty percent or less of both the total voting power and the total value of the stock of the transferee foreign corporation is received in the transaction, in the aggregate, by U.S. transferors (i.e., the amount of stock received does not exceed the 50 percent threshold).

(ii) No more than 50 percent of each of the total voting power and the total value of the stock of the transferee foreign corporation is owned, in the aggregate, immediately after the transfer by U.S. persons who are either officers or directors of the U.S. target company or who are five-percent target shareholders (as defined in paragraph (c)(6)(iii) of this section) (i.e., there is no

control group). For purposes of this paragraph (c)(1)(ii), any stock of the transferee foreign corporation owned by U.S. persons immediately after the transfer will be taken into account, whether or not it was received in the exchange for stock or securities of the U.S. target company.

(iii) In the case of a transfer occurring after January 25, 1996, the transferee foreign corporation or an affiliate of the transferee foreign corporation has been engaged in the active conduct of a trade or business, within the meaning of § 1.367(a)-2T(b)(2) and (3), that is substantial in comparison to the trade or business of the U.S. target company, for the entire 36-month period immediately preceding the date of the transfer.

(iv) Either—

(A) The U.S. person is not a five-percent transferee shareholder (as defined in paragraph (c)(6)(ii) of this section); or

(B) The U.S. person is a five-percent transferee shareholder and enters into an agreement to recognize gain with respect to the U.S. target company stock or securities it exchanged in the form provided in paragraph (g) of this section, as modified by paragraph (c)(3) of this section (setting the duration of the gain recognition agreement).

(2) *Ownership Presumption.* For purposes of paragraph (c)(1) of this section, persons who transfer stock or securities of the U.S. target company or other property in exchange for stock of the transferee foreign corporation are presumed to be U.S. persons. This presumption may be rebutted in accordance with paragraph (c)(4)(ii) of this section.

(3) *Term of the gain recognition agreement.* If, immediately after the transfer described in section 367(a)(1), all U.S. transferors own in the aggregate less than fifty percent of both the total voting power and the total value of the stock of the transferee foreign corporation (counting both stock of the transferee foreign corporation owned as a result of the exchange as well as stock of the transferee foreign corporation owned independently by such U.S. transferors), the agreement to recognize gain shall be in the form specified in paragraph (g)(3) of this section. The term of the agreement shall be ten years, rather than the five years specified in paragraph (g)(3) of this section, the waiver described in paragraph (g)(4) of this section shall extend the period for assessment of tax for an additional five years, and the certification and waiver described in paragraph (g)(5) of this section must be filed for an additional five years if—

(i) The five-percent transferee shareholder cannot determine whether the condition in the preceding sentence is satisfied; or

(ii) Immediately after the transfer, all U.S. transferors own in the aggregate fifty percent or more of either the total voting power or the total value of the stock of the transferee foreign corporation (counting both stock of the transferee foreign corporation owned as a result of the exchange, as well as stock of the transferee foreign corporation owned independently by such U.S. transferors).

(4) *Reporting requirements of U.S. target company.* (i) In order for a U.S. person that transfers stock or securities of a domestic corporation to qualify for the exception to the general rule under section 367(a)(1) provided by this paragraph (c), the U.S. target company must comply with the reporting requirements contained in this paragraph (c)(4). The U.S. target company must attach to its timely filed U.S. income tax return (or a subsequent, timely filed amended return) for the taxable year in which the transfer occurs a statement titled "Section 367(a)—Reporting of Cross-Border Transfer Under Reg. § 1.367(a)-3T(c)(4)," signed under penalties of perjury by an officer of the corporation, disclosing the following information—

(A) A description of the transaction in which a U.S. person or persons transferred stock or securities in the U.S. target company to the transferee foreign corporation in a transfer otherwise subject to section 367(a)(1);

(B) The amount (specified as to the percentage of the total voting power and the total value) of stock of the transferee foreign corporation received in the transaction, in the aggregate, by persons who transferred stock or securities of the U.S. target company or other property. For additional information that may be required to rebut the ownership presumption of paragraph (c)(2) of this section in cases where more than 50 percent of either the total voting power or the total value of the stock of the transferee foreign corporation is received in the transaction, in the aggregate, by persons who transferred stock or securities of the U.S. target company or other property, see paragraph (c)(4)(ii) of this section;

(C) The amount (if any) of transferee foreign corporation stock owned directly or indirectly (applying the attribution rules of sections 267(c)(1) and (5)) immediately after the exchange by the U.S. target company;