

Part III - Administrative, Procedural, and Miscellaneous

Application of Sections 897(d) and (e) to Certain Inbound Asset Reorganizations under Section 368(a)(1)(F); Stock Ownership Requirement under Section 368(a)(1)(F)

Notice 2025-45

SECTION 1. PURPOSES

This notice announces that the Department of the Treasury (the “Treasury Department”) and the Internal Revenue Service (the “IRS”) intend to issue proposed regulations under sections 897(d) and (e) that modify the application of the rules described in §§1.897-5T and 1.897-6T, Notice 89-85, 1989-31 I.R.B. 9, and Notice 2006-46, 2006-24 I.R.B. 1044, to certain transactions involving the transfer of United States real property interests (“USRPIs”). The regulations will propose to revise the rules that apply to inbound asset reorganizations under section 368(a)(1)(F) that constitute a “covered inbound F reorganization” as defined in section 3.02 of this notice.

This notice also announces that the Treasury Department and the IRS intend to issue proposed regulations to revise §1.368-2(m) to clarify that qualification of a potential F reorganization (as defined in §1.368-2(m)(1)) as a reorganization under section 368(a)(1)(F) (“F reorganization”) would not be affected by a disposition of stock in either the transferor corporation or the resulting corporation if that disposition is not included in the plan of reorganization.

SECTION 2. BACKGROUND

.01 Overview of Section 897

Under section 897(a), gain or loss from the disposition of a USRPI by a nonresident alien individual or a foreign corporation is taken into account as effectively connected income under section 871(b)(1) or section 882(a)(1), respectively, as if the taxpayer were engaged in a trade or business within the United States during the taxable year and the gain or loss were effectively connected with the trade or business.

Section 897(c)(1) generally defines a USRPI to mean an interest in real property located in the United States or the Virgin Islands and any interest (other than an interest solely as a creditor) in any domestic corporation, unless the taxpayer establishes that such corporation was not a United States real property holding corporation (“USRPHC”) at any time during the shorter of the period the taxpayer held such interest or the 5-year period ending on the date of the disposition of such interest. Under section 897(c)(2), a USRPHC is defined as any corporation if the fair market value of its USRPIs equals or exceeds 50-percent of the sum of the fair market value of (i) its USRPIs, (ii) its real property interests located outside of the United States, and (iii) any of its other assets used or held for use in a trade or business. If any class of stock of a corporation is regularly traded on an established securities market, section 897(c)(3) generally provides that stock of that class is treated as a USRPI only with respect to a person who held more than 5 percent of such class of stock during a defined period (applying certain constructive ownership rules under section 897(c)(6)(C)).

.02 Treatment of Distributions by Foreign Corporations under Section 897(d)

Under section 897(d)(1), except to the extent provided in regulations, gain is recognized by a foreign corporation on the distribution (including a distribution in liquidation or redemption) of a USRPI in a transaction that otherwise qualifies for nonrecognition under chapter 1 of the Code. Section 897(d)(2) provides that gain is not recognized under section 897(d)(1) if (i) at the time of the receipt of the distributed property, the distributee would be subject to taxation on a subsequent disposition of the distributed property, and the basis of the distributed property in the hands of the distributee is no greater than the adjusted basis of such property before the distribution, increased by the amount of gain (if any) recognized by the distributing corporation; or (ii) nonrecognition treatment is provided for in regulations under section 897(e)(2).

Section 1.897-5T(c)(4)(i) provides that a foreign corporation that transfers property to another corporation in an exchange under section 361(a) for stock of a USRPHC immediately after the transfer pursuant to a reorganization under section 368(a)(1)(C), (D), or (F) must generally recognize gain under section 897(d)(1) on the distribution of the stock of the USRPHC to its shareholders under section 361(c). Consistent with section 897(d)(2), §1.897-5T(c)(4)(ii) and (iii) provide, respectively, an exception to and a limitation on this gain recognition.

Notice 89-85 announced that the exception and the limitation set forth in §1.897-5T(c)(4)(ii) and (iii) would be replaced by a new exception. This new exception generally provides that gain recognition will not be required on the section 361(c) distribution of the stock of the USRPHC under §1.897-5T(c)(4)(i) if the foreign

corporation pays an amount equal to any taxes that section 897 would have imposed (plus interest) on all persons who had disposed of interests in the transferor foreign corporation (or a corporation from which such assets were acquired in a transaction described in section 381) after June 18, 1980, as if it were a domestic corporation on the date of each such disposition, and if the conditions of §1.897-5T(c)(4)(ii)(A) and (C) are met. The condition under §1.897-5T(c)(4)(ii)(A) is met if, at the time of the distribution, the distributee (that is, the exchanging shareholder in the section 354 exchange) would be subject to U.S. taxation on a subsequent disposition of the stock of the domestic corporation. The condition under §1.897-5T(c)(4)(ii)(C) is met if the distributing corporation complies with the filing requirements prescribed in §1.897-5T(d)(1)(iii), under which a nonresident alien individual or foreign corporation that transfers or distributes a USRPI is required to file an income tax return for the taxable year of the distribution or transfer and attach to the return a document setting forth certain information prescribed in the regulations.¹

Notice 2006-46 announced rules that would further revise the exception to gain recognition under §1.897-5T(c)(4)(i) described in Notice 89-85. Under the notice, the period that a foreign corporation must consider with respect to prior stock dispositions

¹ Notice 89-57, 1989-1 C.B. 698, suspends the return filing requirement in §1.897-5T(d)(1)(iii) if: (i) the transfer or distribution otherwise qualifies in its entirety for nonrecognition under the temporary regulations under section 897(d) and (e), (ii) the transferor or distributor does not have any other income that is effectively connected with a U.S. trade or business during the taxable year that includes the transfer or distribution subject to the temporary regulations under section 897(d) and (e); and (iii) either a withholding certificate is obtained pursuant to §1.1445-3(a) or a notice of nonrecognition is submitted to the IRS pursuant to the provisions of §1.1445-2(d)(2).

would be revised to the earliest of either (i) the period beginning on the date that is 10 years prior to the date on which the acquiring domestic corporation or a related person (within the meaning of section 267(b)) is in control (as determined under section 304(c)) of the foreign corporation and ending on the date of the reorganization; or (ii) the period beginning on the date that is 10 years prior to the date of the reorganization and ending on the date of the reorganization.

.03 Coordination with Nonrecognition Provisions under Section 897(e)

Subject to the rules of section 897(d) and any regulations issued under section 897(e)(2), section 897(e)(1) provides that any nonrecognition provision will apply for purposes of section 897 only in the case of an exchange of a USRPI for an interest the sale of which would be taxable under Chapter 1 of the Code. Section 897(e)(2)(A) directs the Secretary to prescribe regulations (which are necessary or appropriate to prevent the avoidance of Federal income taxes) providing the extent to which nonrecognition provisions apply for purposes of section 897(e).

Section 1.897-6T(a)(1) provides that, except as otherwise provided in §§1.897-5T and -6T, for purposes of section 897(e), any nonrecognition provision applies to a transfer by a foreign person of a USRPI on which gain is realized only to the extent that the transferred USRPI is exchanged for a USRPI which, immediately following the exchange, would be subject to U.S. taxation on its disposition, and the transferor complies with the filing requirements of §1.897-5T(d)(1)(iii) (as modified by Notice 89-57).

.04 Overview of Section 368(a)(1)(F)

Section 368(a)(1)(F) defines an F reorganization as a mere change in identity, form, or place of organization of one corporation, however effected. A mere change can consist of a transaction that involves an actual or deemed transfer of property by a transferor corporation to a resulting corporation (each term as defined in §1.368-2(m)(1)). A transaction in which a foreign corporation redomiciles into the United States, for example, may qualify as an F reorganization.

Section 1.368-2(m) sets forth the scope and requirements for an F reorganization. Among the requirements imposed by that paragraph for a qualifying F reorganization, §1.368-2(m)(1)(ii) provides that a potential F reorganization (as defined in §1.368-2(m)(1)) must meet an “identity of stock ownership” requirement. Specifically, that provision requires that “[t]he same person or persons must own all of the stock of the transferor corporation, determined immediately before the potential F reorganization, and of the resulting corporation, determined immediately after the potential F reorganization, in identical proportions.”

SECTION 3. REGULATIONS TO BE ISSUED UNDER SECTION 897

.01 Overview

The Treasury Department and the IRS understand that the current rules described in §§1.897-5T(c)(4) and 1.897-6T(a), as modified by Notice 89-85 and Notice 2006-46, may serve as an impediment to publicly traded foreign corporations redomiciling into the United States. For example, a publicly traded foreign corporation

that holds USRPIs may, for valid non-tax business reasons, desire to become a publicly traded domestic corporation in a transaction that would otherwise qualify for nonrecognition treatment but that would result in the imposition of tax under section 897(d) or (e). Taxpayers may also face significant compliance burdens in seeking to comply with the application of section 897(d) to these transactions under the current rules because the transactions involve a publicly traded corporation (for example, the filing requirements in §1.897-5T(d)(1)(iii) may require any distributee of stock of a USRPHC to provide a signed declaration that the distributee will treat any subsequent sale, exchange, or other disposition of the USRPHC stock as a disposition that is subject to U.S. taxation).

The Treasury Department and the IRS are of the view that the redomiciliation transactions described in section 3.02 of this notice do not give rise to policy concerns under section 897 because they do not create a risk of inappropriate avoidance of section 897. Accordingly, the Treasury Department and the IRS have determined that exceptions to the gain recognition rules described in §§1.897-5T(c)(4) and 1.897-6T(a), Notice 89-85, and Notice 2006-46, as set forth in sections 3.03 and 3.04 of this notice, are appropriate in certain limited circumstances.

.02 Scope

(1) Application to covered inbound F reorganizations. Subject to the exception described in section 3.02(3) of this notice, the rules described in sections 3.03 and 3.04 of this notice will apply with respect to transfers or distributions that occur in an F

reorganization in which the transferor corporation is a publicly traded foreign corporation and the resulting corporation is a publicly traded domestic corporation² (a “covered inbound F reorganization”).

(2) Publicly traded requirement. A foreign transferor corporation will be considered a publicly traded foreign corporation only if the principal class of stock of the foreign transferor corporation was regularly traded on an established securities market at all times during the three-year period immediately preceding the completion of the F reorganization. The domestic resulting corporation will be considered a publicly traded domestic corporation only if, at all times during the one-year period immediately following the completion of the F reorganization, the principal class of stock of the domestic resulting corporation is regularly traded on an established securities market.

The term “principal class of stock” will mean the common stock of the foreign transferor corporation or the domestic resulting corporation, as applicable, provided that the class of stock represents the majority of the aggregate vote and value of the corporation. If no single class of common stock represents the majority of the aggregate vote and value of the corporation, the principal class of stock will mean those classes of stock that in the aggregate represent a majority of the aggregate vote and value of the corporation. In addition, the term “regularly traded” will have the same meaning provided in §1.897-9T(d)(1) (but without regard to the reporting requirement

² For this purpose, a domestic corporation does not include a regulated investment company as defined in section 851 or a real estate investment trust as defined in section 856.

under §1.897-9T(d)(3)), and the term “established securities market” will have the same meaning provided in §1.897-1(m) (but excluding any over-the-counter market described in §1.897-1(m)(3)).

(3) Exception for subsequent transfers. A transaction that would otherwise qualify as a covered inbound F reorganization will not be a covered inbound F reorganization if, pursuant to a plan (or series of related transactions), the resulting domestic corporation transfers any property³ (other than money) to any of its shareholders with respect to the shareholder’s stock in the resulting domestic corporation in connection with the F reorganization. For this purpose, a plan is deemed to exist if the resulting domestic corporation transfers any property (other than money) to any of its shareholders with respect to the shareholder’s stock in the resulting domestic corporation within the one-year period beginning on the date that the F reorganization is completed. However, a transaction would not fail to be a covered inbound F reorganization if the fair market value of the aggregate amount of property (other than money) transferred by the resulting domestic corporation to its shareholders (described in the preceding two sentences) is less than one percent of the total fair market value of the assets of the foreign transferor corporation, as determined at the time of the completion of the F reorganization.

.03 Rules under §1.897-5T(c)(4)

³ For this purpose, property has the meaning provided in section 317(a). The exception described in this section 3.02(3) will apply without regard to the rule in §1.368-2(m)(3)(iii) that distributions from a resulting corporation are treated as unrelated, separate transactions from an F reorganization even if they are connected in a formal sense.

(1) Exception in Notice 89-85 and Notice 2006-46. The proposed regulations will clarify that, in a covered inbound F reorganization, the exception described in Notice 89-85 and Notice 2006-46 to gain recognition under §1.897-5T(c)(4)(i) takes into account section 897(c)(3) (including constructive ownership as provided in section 897(c)(6)(C)).

Thus, for example, assume a nonresident alien individual disposed of stock of the foreign transferor corporation engaging in a covered inbound F reorganization during the applicable period set forth in Notice 2006-46, but section 897(c)(3), if applied, would have treated the stock of the foreign transferor corporation as not a USRPI (if the foreign corporation were a domestic corporation on the date of the disposition). In this case, the disposition would not give rise to any amount owed by the transferor foreign corporation (assuming the conditions of §1.897-5T(c)(4)(ii)(A) and (C) are met).

The proposed regulations will also provide that, solely for purposes of covered inbound F reorganizations, section 897(c)(3) applies based on whether the foreign transferor corporation knows or has reason to know that a person at some time during the shorter of the periods described in section 897(c)(1)(A)(ii) held more than 5 percent of the class of stock. For purposes of the rule set forth in the preceding sentence, the foreign transferor corporation must make reasonable efforts to know, including researching publicly available information.

(2) Subject to U.S. taxation requirement. The proposed regulations will provide that in a covered inbound F reorganization, a distributee of the resulting domestic corporation stock that qualifies for the exception in section 897(c)(3) at the time of the

distribution is treated as meeting the requirement described in §1.897-5T(c)(4)(ii)(A) of being subject to U.S. taxation. Thus, for example, the subject to U.S. taxation requirement of §1.897-5T(c)(4)(ii)(A) would be met if the foreign transferor corporation in a covered inbound F reorganization distributes stock of the resulting domestic corporation to a distributee shareholder that, at the time of the distribution, is a nonresident alien individual who owned 5 percent or less of the stock of the resulting domestic corporation and, thus, the resulting domestic corporation stock would not constitute a USRPI under section 897(c)(3).

(3) Filing requirements. The proposed regulations will provide that for purposes of satisfying the filing requirements described in §1.897-5T(c)(4)(ii)(C) for a covered inbound F reorganization, the declaration described in §1.897-5T(d)(1)(iii)(H) is required to be provided only with respect to distributees of resulting domestic corporation stock that the foreign transferor corporation knows or has reason to know (after making reasonable efforts to determine, including researching publicly available information) do not qualify for the exception under section 897(c)(3) at the time of the distribution.

.04 Rules under §1.897-6T(a)

The proposed regulations will revise the rules described in §1.897-6T(a) to provide that, for purposes of section 897(e)(1), nonrecognition treatment under section 361(a) will apply in a covered inbound F reorganization to a foreign transferor corporation's transfer of a USRPI to a resulting domestic corporation in exchange for stock of the resulting domestic corporation that is not a USRPI. This exception will

apply without regard to whether the foreign transferor corporation would be subject to U.S. taxation on its disposition of the stock of the resulting domestic corporation received in the exchange. However, the foreign transferor corporation remains subject to the condition set forth in §1.897-6T(a)(1) that it satisfy the filing requirements described in §1.897-5T(d)(1)(iii) (but it is not required to provide the information described in §1.897-5T(d)(1)(iii)(C) and (H)) and, as part of those requirements, must include a statement that any USRPI transferred is pursuant to a covered inbound F reorganization as defined in section 3.02 of this notice and to which the rules in this section 3.04 apply. The foreign transferor corporation may avoid the filing requirements described in §1.897-5T(d)(1)(iii) if it satisfies the conditions described in Notice 89-57.

SECTION 4. REGULATIONS TO BE ISSUED UNDER SECTION 368(a)(1)(F)

.01 Overview

The Treasury Department and the IRS have received stakeholder requests to clarify the application of the “identity of stock ownership” requirement for potential F reorganizations in which sales or exchanges (or other dispositions) of transferor or resulting corporation stock occur in close temporal proximity to transactions properly included in the plan of reorganization. For example, stakeholders have requested that the Treasury Department and the IRS provide guidance to clarify the potential effect on F reorganization qualification of sales or exchanges of resulting corporation stock that occur among transaction steps including (i) the formation of the resulting corporation, (ii) a transaction that involves an actual or deemed transfer of property from the transferor

corporation to the resulting corporation, and (iii) the liquidation (or deemed liquidation) of the transferor corporation. The Treasury Department and the IRS are of the view that §1.368-2(m) and the most relevant examples set forth in §1.368-2(m)(4)(vi) and (vii) (Examples 6 and 7, respectively) fail to address these issues with sufficient certainty for taxpayers.

.02 Proposed Regulations revising §1.368-2(m)(1)(ii)

(1) *Proposed operative rule.* The forthcoming proposed regulations would revise §1.368-2(m)(1)(ii) to add at the end the following sentence: “Satisfaction of the identity of stock ownership requirement under this paragraph (m)(1)(ii) would not be affected by a disposition of stock in either the transferor corporation or the resulting corporation if that disposition is not included in the plan of reorganization.”

(2) *Proposed example 15 under §1.368-2(m)(4).* The forthcoming proposed regulations would revise §1.368-2(m)(4) to add at the end the following new paragraph (m)(4)(xv) (Example 15).

“(xv) *Example 15. Sales of stock among transaction steps included in the plan of reorganization—mere change.* P is a publicly traded Country A foreign corporation that has a single class of common stock outstanding. P also is a holding company that owns all the stock of domestic corporation (S). P organizes a domestic corporation (US Corp.), subscribing for stock of US Corp. with nominal consideration. P’s purpose for its organization of US Corp. is to have it serve as a resulting corporation for a potential F reorganization. To effectuate the potential F reorganization, US Corp. creates a merger

subsidiary, which merges into P with P surviving as a wholly owned subsidiary of US Corp. (merger). Next, P elects to change its classification for Federal income tax purposes to be classified as a disregarded entity three days after the merger (liquidation). Between the dates of the merger and the liquidation, however, some of the US Corp. shareholders sell their US Corp. shares to persons that are not shareholders of US Corp. prior to sale. The sale of the US Corp. stock is not included in the plan of reorganization for the potential F reorganization. Therefore, the satisfaction of the identity of stock ownership requirement under this paragraph (m)(1)(ii) of this section is not affected by the disposition of stock in US Corp.”

SECTION 5. APPLICABILITY DATES AND RELIANCE

The forthcoming proposed regulations incorporating the guidance described in sections 3 and 4 of this notice will apply to distributions, transfers, or exchanges occurring on or after August 19, 2025. Taxpayers may rely on the rules described in section 3 of this notice for covered inbound F reorganizations occurring before the forthcoming proposed regulations are published in the Federal Register, provided taxpayers follow those rules in their entirety and in a consistent manner. Taxpayers also may rely on the rules described in section 4 of this notice for potential F reorganizations before the forthcoming proposed regulations are published in the Federal Register.

SECTION 6. PAPERWORK REDUCTION ACT

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) generally requires

that a Federal agency obtain the approval of the Office of Management and Budget (“OMB”) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The rules described in section 3.03 and 3.04 of this notice will apply to a foreign transferor corporation in a covered inbound F reorganization and will require the foreign corporation to satisfy the filing requirements described in §1.897-5T(d)(1)(iii), as modified by Notice 89-57, 1989-1 C.B. 698. The specific collections of information relate to the rules described in §§1.897-5T(c)(4)(ii)(C) and 1.897-6T(a), as modified by this notice. The collections of information mentioned in this notice are already approved by the OMB under OMB number 1545-0123.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Notice 89-85, 1989-31 I.R.B. 9, and Notice 2006-46, 2006-24 I.R.B. 1044, are modified and clarified.

SECTION 8. REQUEST FOR COMMENTS AND DRAFTING INFORMATION

The Treasury Department and the IRS request comments on the rules described in this notice. Comments should be submitted by October 20, 2025. Comments may be submitted electronically via the Federal eRulemaking Portal at www.regulations.gov (type IRS-2025-0170 in the search field on the regulations.gov homepage to find this

notice and submit comments). Written comments may be submitted to the Office of Associate Chief Counsel (International), Attention: Daren Gottlieb, Internal Revenue Service, IR-4561, 1111 Constitution Avenue, NW, Washington, DC 20224. Comments will be available for public inspection and copying.

The principal authors of this notice are Daren Gottlieb and Elena Madaj of the Office of Associate Chief Counsel (International), and Douglas C. Bates of the Office of Associate Chief Counsel (Corporate). For further information regarding section 3 of this notice, contact Mr. Gottlieb at (202) 317-4943 (not a toll-free call). For further information regarding section 4 of this notice, contact Mr. Bates at (202) 317-6847 (not a toll-free call).