

US Outbound Tax Newsalert

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*PwC submits comments on Temp.
Reg § 1.367(a)-9T(b) which address
certain cross-border stock
transactions*

PwC has submitted a comment letter on Temp. Reg. § 1.367(a)-9T(b), which applies when a U.S. person transfers the stock of a domestic or foreign corporation (the “issuing corporation”) to a foreign corporation (the “acquiring corporation”) in certain section 304(a)(1) transactions.

Temp. Reg. § 1.367(a)-9T(a) provides the general rule that calls off section 367(a) to the deemed outbound section 351 exchange. As a result, gain is not recognized under section 367(a), and a gain recognition agreement (“GRA”) is not required when Temp. Reg. § 1.367(a)-9T(a) applies. In contrast, Temp. Reg. § 1.367(a)-9T(b), the focus of PwC’s comment letter, triggers gain under section 367(a) when basis in the “historic” stock of a foreign acquiring corporation (*i.e.*, stock that was issued and outstanding before the section 304(a)(1) transaction) is recovered tax-free (as a return of basis) in a section 304(a)(1) transaction.

PwC’s comment letter requests that Temp. Reg. § 1.367(a)-9T(b) be withdrawn and section 367(a) be made inapplicable on cross-border section 304 transactions, regardless of the manner in which the basis in the stock of the acquiring corporation is recovered. If, however, Temp. Reg. § 1.367(a)-9T(b) is retained, then PwC’s



comment letter requests that taxpayers be permitted to enter into GRAs in lieu of currently recognizing gain.

[Click here to view the letter.](#)

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