

US Outbound Tax Newsalert

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Government finalizes section 1248 regulations

Overview

The regulation finalizes the rule providing that section 301(c)(3) distributions from a foreign corporation are subject to dividend recharacterization under section 1248(a).

Background

On February 10, 2009, the IRS and Treasury issued, as part of Treasury Decision 9444, Treas. Reg. Sec. 1.1248-1T(b). This regulation provided that distributions from a foreign corporation to a section 1248 shareholder treated as gain under section 301(c)(3) are subject to dividend recharacterization under section 1248(a) as a disposition of the stock of the foreign corporation for section 1248 purposes. Under section 1248(c)(2), the earnings and profits of the distributing corporation's foreign subsidiaries are taken into account to support dividend recharacterization upon a distribution from a foreign corporation normally treated as gain under section 301(c)(3).

Treas. Reg. Sec. 1.1248-1T(b) sunset on February 10, 2012. However, on that same day, the government issued Notice 2012-15, announcing, among other things, that the rule of Treas. Reg. § 1.1248-1T(b) would be finalized, effective February 10, 2009, in future regulations to be promulgated by the government.



Final Regulation

On April 23, 2012, the government issued Treasury Decision 9585, which finalizes the rule of Treas. Reg. Sec. 1.1248-1T(b), effective February 10, 2009. New finalized Treas. Reg. Sec. 1.1248-1(b) does not change the substantive rule of the temporary regulations. Distributions from foreign corporations treated as gain under section 301(c)(3) to section 1248 shareholders are subject to dividend recharacterization to the extent of the distributing corporation's subsidiaries' section 1248 earnings and profits.

The final regulations also remove deadwood references in the temporary regulations to paragraphs (1) and (2) of section 331(a).

This regulation package does not finalize the rules regarding section 367 and section 304 transfers issued in Notice 2012-15. For more information about those rules, please see [US Outbound Newsalert: Government reverses course: Issues Notice 2012-15 requiring GRAs for cross-border section 304 transfers.](#)

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