



US International Tax Alert

Final regulations terminate section 367(d) application to certain repatriated IP

On October 9, 2024, Treasury and the IRS released [final regulations under section 367\(d\)](#) affecting certain US persons that previously transferred intangible property (“section 367(d) IP”) to a foreign corporation in a transaction subject to section 367(d). The final 367(d) regulations terminate the continued application of section 367(d) following repatriations (“subsequent dispositions”) of section 367(d) IP from a transferee foreign corporation to a “qualified domestic person” (QDP), provided certain requirements are met and subject to a gain recognition rule. Importantly, the regulations provide that if a transferee foreign corporation transfers the section 367(d) IP to a QDP and such section 367(d) IP is not transferred basis property, then the US transferor of the section 367(d) IP (or any person treated as such pursuant to Treas. Reg. § 1.367(d)-1T(e)(1)) recognizes gain equal to the excess, if any, of the fair market value of the section 367(d) IP on the date of the transfer and the US transferor’s former adjusted basis in that property.

The final regulations adopt without substantive change the rules set forth in the proposed regulations that were issued in May 2023 (see [the May 30, 2023 International Tax Alert](#) for a discussion of the proposed regulations). The regulations apply to subsequent dispositions of section 367(d) IP occurring on or after October 10, 2024 (the date final regulations were published in the Federal Register).

As compared to the proposed regulations, the final regulations make minor changes. First, the final regulations provide clarifications to procedures for obtaining relief for such failure to comply with information reporting requirements regarding the subsequent IP transfer (which are described in the section 6038B regulations). As requested in comments, the final regulations are intended to clarify that relief for failure to comply is conditioned on the US transferor timely filing one or more amended returns for the taxable year in which the subsequent transfer occurred and succeeding years, and, if the US transferor is under examination when an amended return is filed, providing a copy of the amended return to the IRS personnel conducting the examination.

In addition, the final regulations are intended to further clarify that if the failure to comply is remedied, the rules of the final regulations are satisfied as of the date of the repatriation.

Second, the final regulations clarify Example 3, which describes a fact pattern in which the transferee foreign corporation transferred IP to a “qualified domestic person” in a partially taxable transaction. As revised the facts

explicitly state that the successor CFC (“TFC”) will reduce its earnings and profits and gross income by the amount of gain recognized by the US transferor as a result of the IP repatriation.

The final regulations adopt the May 2023 proposed regulations with these modifications and generally are effective as of the date of publication within the Federal Register, October 10, 2024. Notably, Treasury and the IRS declined to allow taxpayers to apply this regulation retroactively, and instead the final regulations only apply to transactions occurring on, or subsequent to, the aforementioned date of publication.

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