

## **SUPPORTING STATEMENT**

1545-1271

(Treatment of transfers of stock or securities to foreign corporations)

### **1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

Section 367(a)(1) of the Internal Revenue Code requires the recognition of gain on the transfer of property (including stock) by a U.S. person to a foreign corporation in connection with certain non-recognition transactions. The regulations under § 1.367(a) provide several exceptions to the general rule for transfers of stock provided that the U.S. person enters into a gain recognition agreement ("GRA") with the Service pursuant to which it agrees to recognize the gain realized but not recognized in the original transfer if the transferee foreign corporation disposes of the stock within the term of the GRA.

Section 367(b) of the Internal Revenue Code and regulation §§1-367(b)(0) through (b)(6) provide rules for foreign liquidations and reorganizations that involve one or more foreign corporations. The regulations provide guidance in determining the extent to which gain or income is recognized, the effect of the transaction on earnings and profits, basis of stock or securities and basis of assets. A person that enters into a transaction described in this section must file a notice with the Service providing information necessary to ensure compliance with this section.

The collection of information contained under this approval number is specifically addressed under 26 CFR 1.367(a)-8 and 1.367(b)-1.

1.367(a)-8 provides the terms and conditions for a gain recognition agreement entered into by a United States person pursuant to §1.367(a)-3(b) through (e) in connection with a transfer of stock or securities to a foreign corporation pursuant to an exchange that would otherwise be subject to section 367(a)(1). The regulations promulgated under section 367(b) (the section 367(b) regulations) set forth rules regarding the proper inclusions and adjustments that must be made as a result of an exchange described in section 367(b) (a section 367(b) exchange).

### **2. USE OF DATA**

The information required of U.S. persons that enter into GRAs will be used to determine the proper amount of gain to be recognized on the occurrence of a subsequent disposition of stock. The information required in §1.367(b)-1(c) will be used on audit to verify compliance with that section.

### **3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN**

IRS Publications, Regulations, Notices and Letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998.

### **4. EFFORTS TO IDENTIFY DUPLICATION**

We have attempted to eliminate duplication within the agency wherever possible.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

There are no small entities affected by this collection.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

TD 9760 finalizes the elimination of one of two exceptions to the coordination rule between asset transfers and indirect stock transfers for certain outbound asset reorganizations. TD 8862 contains final regulations addressing the application of non-recognition exchange provisions in Subchapter C of the Internal Revenue Code to transactions that involve one or more foreign corporations. These regulations provide guidance for taxpayers engaging in those transactions in order to determine the extent to which in-come shall be included and appropriate corresponding adjustments shall be made.

Failure to provide guidance in determining the extent to which gain or income is recognized will put taxpayer information in jeopardy.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

There are no special circumstances requiring data collection to be inconsistent with Guidelines in 5 CFR 1320.5(d)(2).

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

The coordination rule exceptions were first introduced in proposed regulations (INTL–54–91) published in the Federal Register on August 26, 1991 (56 FR 41993). The basis comparison test was introduced later, in final regulations (TD 8770) published in the Federal Register on June 19, 1998 (63 FR 33550). Proposed regulations (REG–125628–01) published in the Federal Register on January 5, 2005 (70 FR 746) proposed further revisions to the coordination rule exceptions in response to concerns “that asset reorganizations subject to this coordination rule may be used to facilitate corporate inversion transactions.” Those 2005 proposed regulations were finalized on January 26, 2006, when the Treasury Department and the IRS published final regulations (TD 9243) in the Federal Register (71 FR 4276). Although the 2008 proposed regulations included a proposal to further refine one of the coordination rule exceptions in response to transactions utilizing that exception to inappropriately repatriate earnings and profits of foreign corporations, the proposed refinement was not included in the final regulations published on March 19, 2013. Instead, the 2013 temporary regulations eliminated this particular exception to the coordination rule and noted that the “Treasury Department and the IRS have, over time, clarified and modified the coordination rule exceptions to address various transactions that give rise to policy concerns.”

The Treasury Department and the IRS issued final regulations §§1.367(b)-1 through 1.367(b)-6, dealing with tax consequences of certain foreign-to-foreign and inbound corporate transactions, in June 1998 and January 2000 (the January 2000 final

regulations). The preamble to the January 2000 final regulations referred to proposed regulations that would be issued to address the carryover of certain corporate tax attributes in transactions involving one or more foreign corporations. Those proposed regulations were issued on November 15, 2000, in the Federal Register ((65 FR 69138) (REG-116050-99, 2000-2 C.B. 520)), (the 2000 proposed regulations). The public hearing with respect to the 2000 proposed regulations was cancelled because no request to speak was received. However, the Treasury Department and the IRS received and considered several written comments, which are discussed in this preamble.

We received no comments during the comment period in response to the **Federal Register** notice (81 FR 51964), dated August 5, 2016.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

No payment or gift has been provided to any respondents.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

A privacy impact assessment (PIA) has been conducted for information collected under this request as part of the "Business Master File, BMF" system and a Privacy Act System of Records notice (SORN) has been issued for this system under:

Treas/IRS 24.046 BMF

Treas/IRS 34.047 Audit trail and security records system

The Internal Revenue Service PIA's can be found at <http://www.irs.gov/uac/Privacy-Impact-Assessments-PIA>.

Title 26 USC 6109 requires inclusion of identifying numbers in returns, statements, or other documents for securing proper identification of persons required to make such returns, statements, or documents and is the authority for social security numbers (SSNs) in IRS systems.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Section 1.367(a)-8(b), in conjunction with §1.367(a)-3(b), requires certain U.S. persons that transfer stock or securities to a foreign corporation in an exchange described in section 367(a) to enter into GRAs, the terms of which are set forth in the regulations. We estimate that the preparation of a GRA will take approximately 8 hours and affect approximately 200 respondents annually. The total burden for this requirement is 1600 hours.

Section 1.367(a)-8(c) requires that such persons file annually a statement certifying that no gain has been triggered under the GRA. We estimate that preparation of such a statement will take .5 hours and affect approximately 200 respondents annually. The

total burden for this requirement is 100 hours.

Section 1.367(a)-8(d) provides that no gain is triggered if the transferee foreign corporation disposes of the transferred stock in a non-recognition transfer, provided that the U.S. person enters into a new GRA applicable to the new circumstances. Similarly, if a U.S. person (domestic corporate transferor) goes out of existence, §1.367(a)-8(e) requires the successor in interest to enter into a new GRA. We estimate that the preparation of such a new agreement will take 3 hours and affect 30 respondents annually. The total burden for this requirement is 90 hours.

Section 1.367(b)-1(c) requires that any person that realizes income (whether or not recognized) in any section 367(b) exchange must file with their income tax return for the year a statement containing certain information concerning the exchange. We estimate that the preparation of such a statement will take approximately 4 hours and affect 150 respondents annually. The total burden for this requirement is 600 hours.

<u>Total estimated Responses</u>	<u>Total Estimated Burden</u>
580	2,390

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our **Federal Register** notice dated August 5, 2016, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any response from taxpayers on this subject. IRS has estimated that the respondents' costs is nominal or consistent with the normal costs of doing business.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

After consulting with various functions within the Service, we estimate that the cost of maintaining these regulations is minimal.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the paperwork burden previously approved by OMB.

We are making this submission to renew the OMB approval.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

There are no plans for tabulation, statistical analysis and publication.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulations sunset as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions to the certification statement.

**Note:** The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.