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New US Tax Stock Basis Reporting Requirements

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Agenda

New Stock Basis Reporting Requirements

- Issuer Reporting Requirements
- Broker Reporting Requirements
- Transferor Reporting Requirements

New Stock Basis Reporting Requirements

Issuer Reporting Requirements

Issuer Reporting Requirements – Overview

Section 6045B, which was recently enacted and is effective as of January 1, 2011, provides new reporting rules that require corporations to file information returns with the IRS and holders of “specified securities” when the corporation engages in certain actions that affect the tax basis of the specified securities.

New Stock Basis Reporting Requirements

Issuer Reporting Requirements

Purpose of the Rules

- Under former law, brokers were required to report gross proceeds realized by customers from various sale transactions (Form 1099-B)
- Taxpayers were required to compute their own basis (tax cost) in the sold asset
 - Often, taxpayers possessed insufficient information to allow an accurate computation of basis
 - The new rules are intended to provide taxpayers with enough information to accurately calculate gains and losses on sales.

New Stock Basis Reporting Requirements

Issuer Reporting Requirements

General Considerations

- Who must make this reporting?
- What corporate actions trigger a reporting requirement?
- What information must be reported?
- What is a specified security?
- Who does the information have to be reported to?
- When does this information have to be reported?
- How do the issuer reporting rules interface with the broker reporting rules?

New Stock Basis Reporting Requirements

Issuer Reporting Requirements

Who Must Report?

- Both foreign and domestic issuers of publicly traded and privately held specified securities

There is an exemption from reporting where all of the holders are “exempt recipients”

- Exempt recipients generally include corporations, foreign holders and tax exempt organizations
- Form W-9 generally used to identify holders.

New Stock Basis Reporting Requirements

Issuer Reporting Requirements

What Corporate Actions Trigger a Reporting Requirement?

- Legislative history to section 6045B specifically says stock split or merger or acquisition
- Other actions would seem to obviously fit the definition, e.g., recapitalizations, redemptions and distributions.

New Stock Basis Reporting Requirements

Issuer Reporting Requirements

What Information is Reported?

- A description of the corporate action
- The quantitative effect on the basis of the specified security resulting from the action
 - Description of the calculation
 - Supporting data (e.g., fair market value of stock and valuation dates)
 - Code section upon which tax treatment is based
 - Whether any loss may be recognized
- Other information as the IRS may provide, such as name and identification of the issuer, contact information, etc.

New Stock Basis Reporting Requirements

Issuer Reporting Requirements

What is a Specified Security

- Stock of a corporation, any note, bond, debenture, or other evidence of indebtedness, any commodity, or contract or derivative with respect to a commodity (if the IRS determines that basis reporting is appropriate), and any other financial instrument (if the IRS determines that basis reporting is appropriate)
- In 2011, reporting is only required with respect to stock (other than stock of a regulated investment company (RIC) – mutual fund)
- In 2012, reporting begins for stock of a RIC and in 2013, reporting required for all specified securities.

New Stock Basis Reporting Requirements

Issuer Reporting Requirements

Who is the Information Reported To?

- An information return must be filed with the IRS
- In addition, a written statement must be issued to holders of specified securities
- Issuers may satisfy BOTH of these reporting requirements by posting the required information on their primary public website
 - Posted information must remain accessible for 10 years.

New Stock Basis Reporting Requirements

Issuer Reporting Requirements

When is the Reporting Due?

IRS Reporting:

- On or before the 45th day following the corporate action or, if earlier, by January 15th of the year following the calendar year of the corporate action

Holder Reporting:

- On or before January 15th of the year following the year of the corporate action.

New Stock Basis Reporting Requirements

Issuer Reporting Requirements

What Reporting is Required for 2011?

- The IRS has said it will not impose penalties for missing deadlines for reporting to IRS corporate actions that affect stock basis in 2011 (see Notice 2011-18)
 - But, returns (or making information publicly available) for 2011 actions must be reported to IRS by January 17, 2012
 - Holder reporting requirements also must be completed by January 17, 2012.

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Issuer Reporting Requirements

What are the Penalties for Failure to Comply?

- Penalty for failure to timely file a correct information return is \$100 per return (with calendar year maximum penalty of \$1.5 million)
 - Penalty applies separately to IRS reporting and to holder reporting, so the maximum penalty is actually \$3 million.

New Stock Basis Reporting Requirements

Issuer Reporting Requirements

How Will the IRS Enforce the Reporting Requirements on Canadian Companies?

- If the Canadian company has no US assets or business activities, the IRS may seek assistance from the CRA pursuant to Article XXVI-A (Assistance in Collection) of the US/Canada Income Tax Treaty
 - Specifically includes assistance with the collection of civil penalties.

New Stock Basis Reporting Requirements

Issuer Reporting Requirements

What if Information is Unknown at Time of Filing?

- Consider, for example, a cash distribution by a corporation to its shareholders on March 31
 - Distribution is a taxable dividend to shareholders to extent of the “earnings & profits” balance of the distributing corporation, otherwise it is a reduction of the shareholders basis (return of basis)
 - Determination of earnings and profits must be made based on annual results
 - Not known with certainty until some time after year end
- IRS reporting is required within 45 days of the distribution, shareholder reporting due January 15 of following year
- “Reasonable assumptions” are permitted
 - Distribution assumed to be a dividend absent evidence to the contrary.

New Stock Basis Reporting Requirements

Broker Reporting Requirements

Broker Reporting – What Basis Information are Brokers Required to Report?

- Prior to January 1, 2011, brokers were required to report gross proceeds realized by customers from stock sale transactions
 - Form 1099-B, to be provided to customer by February 15 and to IRS by February 28
- Brokers now face expanded reporting requirements and must report customer's adjusted basis in the stock sold
- Grandfathering rules apply to exempt stock held by brokers prior to effective date of basis reporting rules (i.e., stock acquired before January 1, 2011)
 - Note that the issuer reporting rules have no such grandfathering rule.

New Stock Basis Reporting Requirements

Broker Reporting Requirements

What Brokers are Subject to the Reporting Obligations?

- The same brokers that are subject to reporting under the old rules
- A broker is any person who, in the ordinary course of business, stands ready to effect sales to be made by others
 - Can be a US or foreign person
 - However, for a transaction occurring at an office outside the US, only a US payer or US middleman is a broker
 - Payers or middlemen are generally “US” if they are US persons, US controlled entities, foreign persons that derive the majority of their gross income from US sources, or US branches of foreign banks or insurance companies.

New Stock Basis Reporting Requirements

Transferor Reporting Requirements

Basis Reporting Requirements Also Apply to Transfers Between Brokers

- The basis reporting rules also cover transfers of securities to a broker after 2010
- Transferees that are required to report generally include other brokers, persons who act as custodians of securities as part of their business, issuers of securities, agents of the foregoing, etc.
 - Transferee does not include the beneficial owner of the security
- Transferor statement must include date, identification of transferor and transferee, identification of transferred security, and adjusted basis information
- Statement must be provided within 15 days after date of settlement for the transfer.

Thank you

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