



# TaxNewsFlash

## United States

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### **Notice 2016-73: Future regulations to modify certain triangular reorganizations involving foreign corporations**

The IRS today released an advance version of Notice 2016-73 that announces that the IRS and Treasury Department intend to issue regulations under section 367 to modify the rules relating to the treatment of property used to acquire parent stock or securities in certain triangular reorganizations involving one or more foreign corporations, and the consequences to persons that receive parent stock or securities pursuant to such triangular reorganizations.

[Notice 2016-73](#) [PDF 56 KB] further announces that the IRS and Treasury also intend to issue regulations under section 367 to modify the amount of an income inclusion required in certain inbound nonrecognition transactions.

#### **Future regulations**

In today's notice, the IRS and Treasury said that they are aware that certain taxpayers are engaging in transactions that are designed to repatriate earnings and basis of foreign corporations without incurring U.S. tax by exploiting the section 367(a) priority rule. The notice provides detailed descriptions of the transactions at issue.

Because the IRS and Treasury believe that these transactions "raise significant policy concerns," they announced that they intend to revise the regulations under section 367. Notice 2016-73 explains that the future regulations will modify the section 367(a) priority rule, to apply only when the acquired entity is a domestic corporation. Thus, when the acquired entity is a foreign corporation, the future final regulations generally will treat as a distribution, any property provided by the acquiror to its domestic parent in exchange for stock used in the acquisition—regardless of the amount of gain that might otherwise be recognized in the triangular reorganization by reason of Reg. section 1.367(b)-10(a)(1).

## Effective date

The regulations described in Notice 2016-73 apply to transactions completed on or after December 2, 2016, and to any inbound transaction treated as completed before December 2, 2016, as a result of an entity classification election that is filed on or after December 2, 2016.

For more information, contact a tax professional with KPMG's Washington National Tax:

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