



TaxNewsFlash

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Final regulations: Single-entity treatment of consolidated groups for purposes of section 951(a)(2)(B) in context of section 959(b) distributions

The U.S. Treasury Department and IRS today released for publication in the Federal Register final regulations (T.D. 9973) treating members of a consolidated group as a single U.S. shareholder for purposes of applying section 951(a)(2)(B) with respect to CFC-to-CFC distributions of previously taxed earnings and profits (PTEP) under section 959(b) (section 959(b) distributions).

The [final regulations](#) [PDF 239 KB] adopt regulations that were proposed on December 14, 2022, without modification. Read [TaxNewsFlash](#)

The final regulations provide that the purpose of the rule is “to facilitate the clear reflection of income of a consolidated group by ensuring that the location of ownership of stock of a foreign corporation within the group does not affect the amount of the group’s income by reason of sections 951(a)(1)(A) and 951A(a).” Two examples are included illustrating application of the rule.

The preamble to the final regulations provides no description of the provisions, indicating simply that no comments were received on the proposed regulations and no public hearing was requested or held. However, the preamble to the proposed regulations explained that by treating members of a consolidated group as a single U.S. shareholder, a section 959(b) distribution from a controlled foreign corporation (CFC) preceding a transfer of such CFC by one member of the consolidated group to another member would not give rise to a reduction to the second member’s pro rata share of the CFC’s subpart F income or tested income under section 951(a)(2)(B), because the numerator of the section 951(a)(2)(B) fraction reflects the period that both members owned stock of the CFC. As a result, the group’s aggregate inclusions under sections 951(a)(1)(A) and 951A(a) with respect to a CFC would not be reduced under section 951(a)(2)(B) by reason of a section 959(b) distribution made by the CFC preceding a change in the location of ownership of stock of the CFC within the group. Treasury and the

IRS determined that this outcome facilitates the clear reflection of the U.S. tax liability of a consolidated group.

The final regulations apply to tax years for which the original consolidated return is due (without extensions) after February 23, 2023. Thus, the final regulations will apply to 2022 for calendar year taxpayers. However, the preamble to the proposed regulations stated that no inference is intended with regard to the treatment of transactions involving a consolidated group before this applicability date, including under Treas. Reg. §1.1502-13.

The final regulations do not apply with respect to dividends out of non-PTEP or to section 959(b) distributions not involving members of the same consolidated group. However, the preamble to the proposed regulations noted that other rules (such as the “extraordinary reduction” rules of Reg. §1.245A-5) may result in a dividend out of non-PTEP being (directly or indirectly) included in the gross income of a U.S. shareholder. Additionally, the preamble indicated that no inference is intended with regard to the treatment of similar transactions not involving a consolidated group, or with regard to whether section 959(b) distributions are taken into account generally under section 951(a)(2)(B). The preamble indicated that Treasury and the IRS are further considering the interaction of sections 951(a)(2)(B) and 959(b), and any additional guidance issued relating to those sections, including guidance to prevent abuse, may be retroactive. Thus, while the final regulations only apply to transactions involving CFCs whose direct or indirect ownership is transferred between members of a consolidated group, the preamble to the proposed regulations explicitly raised the possibility that Treasury and the IRS could issue future guidance, with retroactive effect, applicable to the effect of section 959(b) distributions on section 951(a)(2)(B) outside of section 1502.

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