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Richard W. Graham

# Tax Reform Act of 1976: Controlled Foreign Corporations

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> In my own case the words of such an act as the Income Tax, for example, merely dance before my eyes in a meaningless procession: cross-reference to cross-reference, exception upon exception—couched in abstract terms that offer no handle to seize hold of—leave my mind only a confused sense of some vitally important, but successfully concealed, purport, which it is my duty to extract, but which is within my power, if at all, only after the most inordinate expenditure of time. I know that these monsters are the result of fabulous industry and ingenuity, plugging up this hole and casting out that net, against all possible evasion; yet at times I cannot help recalling a saying of William James about certain passages of Hegel: that they were no doubt written with a passion of rationality; but that one cannot help wondering whether to the reader they have any significance save that the words are strung together with syntactical correctness . . . .[1]

## I. Introduction

The Tax Reform Act of 1976[2] added to the sinuosities of subpart F of the Internal Revenue Code[3] but made no organic changes in its "controlled foreign corporation" concept. The Act made one "reform" (relating to the section 367 ruling procedure), added some minor exemptions, took away others, did some loophole closing, and facilitated the investment of foreign earnings in the United States.

The United States imposes an income tax on the worldwide income of a domestic corporation. However, a foreign corporation, even if owned by U.S. persons, is generally taxed only on its U.S. source income; its foreign earnings are taxed only to its U.S. shareholders and then only if and when distributed to them. This principle—that no U.S. tax is imposed until the income is "repatriated"—is sometimes referred to as "tax deferral." A longstanding but narrow exception to deferral is the

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* Member of the firm, Koster, Kohlmeier & Graham, P.C., San Francisco; A.B., 1952, Stanford University; J.D., 1954, Stanford School of Law; Certified Specialist, Taxation Law, California Board of Legal Specialization.



1. Hand, *Eulogy of Thomas Walter Swan*, 57 Yale L.J. 167, 169 (1947).
2. Pub. L. No. 94-455, 90 Stat. 1520 (1976) [hereinafter cited as the Tax Reform Act].
3. Int. Rev. Code of 1954, §§ 951-64 [hereinafter cited as I.R.C.]

foreign personal holding company provisions,[4] which tax investment income of a foreign "incorporated pocketbook" directly to its U.S. shareholders as if it had been distributed to them as a dividend.

A more sweeping departure from the rule of deferral was created by the Revenue Act of 1962,[5] which added the infinitely more complex[6] subpart F[7] to the Code. Under these subpart F provisions business as well as investment income realized through so-called tax haven devices is taxed directly to U.S. shareholders even though it is earned and held by a foreign corporation. This is done through the concept of a "controlled foreign corporation" (CFC),[8] which is any foreign corporation having more than 50 percent of its voting power held by "U.S. persons,"[9] each of whom holds 10 percent or more of the voting power (herein called "U.S. shareholders").[10] A U.S. shareholder is taxed on his share of the CFC's "subpart F income" and the "increase in its earnings invested in U.S. property."[11] Subpart F income is composed of income derived from insurance of U.S. risks and foreign base company (FBC) income.[12] FBC income is further broken down into a modified form of foreign personal holding company income, FBC sales income, FBC services income, and FBC shipping income.[13] These rules are then qualified by a labyrinth of definitions, exceptions, exclusions, and rules of constructive ownership.

To supplement the denial of deferral under subpart F, the 1962 Act also added section 1248 to the Code. Subject to a similar welter of qualifying rules, its general effect is to treat a U.S. shareholder's disposition of CFC stock as a repatriation of tax-deferred earnings. The treatment consists in taxing a por-

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4. I.R.C. §§ 551-58.

5. Pub. L. No. 87-834, 76 Stat. 960 (1962).

6. Often quoted is the wry observation that "the rules of Subpart F reach and never leave a lofty plateau of complexity that the Internal Revenue Code had previously attained only in occasional subsections . . . ." B. BITTKER & J. EUSTICE, FEDERAL INCOME TAXATION OF CORPORATIONS AND SHAREHOLDERS ¶ 17.31, (3d ed. 1971).

7. INT. REV. CODE OF 1954, ch. 1 §§ 951-64, 76 Stat. 1006-27 (1962).

8. I.R.C. § 957(a).

9. I.R.C. §§ 957(d), 7701(a)(30).

10. I.R.C. § 951(b).

11. I.R.C. § 951(a)(1).

12. I.R.C. § 952.

13. I.R.C. § 954.

tion or all of the gain from such a disposition as ordinary income rather than capital gain.

Thus the combined thrust of subpart F and section 1248 is to tax a U.S. shareholder at ordinary rates on certain income of his CFC on a year-to-year basis as earned and on certain of his gain when he disposes of his stock. The 1976 Act changes some of the rules in both areas.

## II. YEAR-TO-YEAR INCOME

### A. *Shipping Income*

The Tax Reduction Act of 1975[14] reversed the treatment of shipping income[15] for CFC purposes. It had previously been excluded from subpart F income;[16] beginning in 1976 it is included as a category of its own ("FBC shipping income") except to the extent that it is reinvested in shipping operations.[17]

The House and Senate versions of the Tax Reform Act of 1976[18] would each have made several different changes in FBC shipping income, but ony one change remained in the Act as passed. This was the exemption of income derived from operating a vessel between two points in the foreign country in which the vessel is documented and the CFC is incorporated.[19] The committee reports state that the change was designed to bring the treatment of shipping income into conformity with that of sales and services income, which in general are treated as FBC income only if earned outside the CFC's country of incorporation.[20] The change is effective concurrently with the FBC shipping income rules themselves—that is, in years after 1975.[21]

The House bill would also have made clear that the exclusion for shipping income reinvested in shipping operations includes payments on unsecured debts that constitute general claims against the CFC's shipping assets.[22] This was dropped

14. Pub. L. No. 94-12, 89 Stat. 26 (1975).

15. "Shipping income" is defined, roughly, as income from the use of an aircraft or vessel (I.R.C. § 954(f)), and the term "vessel" is used herein to include "aircraft."

16. INT. REV. CODE OF 1954, ch. 1, § 954(b)(2), 76 Stat. 1010 (1962).

17. I.R.C. §§ 954(f), 955.

18. H.R. 10612, 94th Cong., 1st Sess. (1975).

19. Tax Reform Act § 1024, *amending* INT. REV. CODE OF 1954, ch. 1, § 954(b), 76 Stat. 1010 (1962).

20. H.R. REP. No. 94-658, 94th Cong., 1st Sess. 220 (1975) [hereinafter H.R. REP.]; S. REP. No. 94-938, 94th Cong., 2d Sess. 231 (1976) [hereinafter S. REP.].

21. Tax Reform Act § 1024(b).

22. H.R. REP. 220-21.

in the conference agreement on the assurance that the Treasury Department would provide the same result in regulations.[23]

Also dropped in the conference agreement were two further exclusions from FBC shipping income that would have been added by the Senate bill, one for income from transporting men and supplies between a point on shore and a nearby offshore point (such as an oil drilling rig), and the other for a CFC that does not own a vessel, lease a vessel on a long term basis to another person, or produce any property shipped on a vessel used or leased by the CFC.[24]

B. *Insurance*

Income from an insurance company's investment of its unearned premiums and reserves was exempted under prior law from the foreign personal holding company constituent of FBC income.[25] The Act creates a further exception for passive income from the investment of an amount of its assets equal to one-third of a company's earned premiums on insurance other than life insurance and annuities.[26] The income must not be received from, and the premiums must not be attributable to the insurance or reinsurance of risks of, related persons as defined in section 954(d)(3). This change is applicable to years after 1975.[27]

The House Committee explained that the one-third figure represents the surplus that must be held by casualty companies to satisfy solvency requirements imposed by some state regulatory agencies under a guideline set by the National Association of Insurance Commissioners. Since a foreign insurance company is often effectively required to comply with this ratio when participating in a reinsurance pool made up mainly of companies doing business in the United States, the Committee thought the income on this required surplus to be as much a part of the active conduct of a business and as appropriately excludable from subpart F as income on unearned premiums and reserves.[28]

23. H.R. CONF. REP. No. 94-1515, 94th Cong., 2d Sess. 458 (1976).
24. S. REP. 231-32.
25. I.R.C. § 954(c)(3)(B).
26. Tax Reform Act § 1023, *amending* INT. REV. CODE OF 1954, ch. 1, § 954(c)(3), 76 Stat. 1011 (1962).
27. Tax Reform Act § 1023(b).
28. H.R. REP. 219-20.

The House Committee also stated that the risk insured or reinsured by a company participating in a pool was not intended to be treated as a risk of a related person merely because of the existence of the pool or of joint liability on the risk, or because a related insurance company may jointly share in a risk on a policy issued by one member of the pool.[29]

C. *Earnings Invested in U.S. Property*

A U.S. shareholder of a CFC is taxed on his share not only of its subpart F income, but also of its increase in earnings invested in U.S. property.[30] This latter requirement is to catch the "constructive repatriation" of foreign earnings that is thought to be effected whenever the foreign corporation's earnings are put to use in the United States, even though not paid to the U.S. shareholders. The measure of the constructive dividend is the excess of the earnings invested in U.S. property at the end of a year (which is the amount that would have been a dividend if the property were then distributed) over that quantum as of the end of the preceding year.[31] This seems straightforward enough, at least by subpart F standards, but one writer has warned that this is "perhaps the most understated section in the Code . . . . [T]he full impact of the section—its full potential—is simply not apparent in the initial reading . . . [and it] can easily catch the unwary taxpayer in an unfortunate tax web."[32] Without tracing this in detail, it will be noted that the "earnings" can be from *any* source (the section has nothing to do with subpart F income) and can have been earned at any time. It is the interplay between the amount of earnings and the amount of U.S. property that can cause unexpected results.[33]

"U.S. property" includes practically all kinds of tangible and intangible property connected with the United States, but with the inevitable exceptions (for example, U.S. Government debt obligations and bank deposits).[34]

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29. *Id.* at 220.

30. I.R.C. § 951(a)(1)(B).

31. I.R.C. § 956(a).

32. 1 R. RHOADES, INCOME TAXATION OF FOREIGN RELATED TRANSACTIONS 3-101 to -102 (1976).

33. It is possible for a U.S. shareholder to realize income from this source when his CFC's U.S. investments have actually *decreased* during the year; *see* examples, *id.* 3-101 to -109.

34. I.R.C. § 956(b).

The Act adds two more exceptions.[35] One is stock or debt of a U.S. corporation, provided that such corporation is not a U.S. shareholder of the CFC and that the U.S. shareholders do not together own as much as 25 percent of its stock.[36] This latter condition is to be met immediately after the CFC's investment in the U.S. corporation. In determining the 25 percent ownership the constructive ownership rules of subpart F are applied, but without benefit of the exceptions that otherwise prevent attribution of foreign persons' stock to U.S. persons.

The House bill would have narrowed the definition of U.S. property more generously. The concept would have been reduced to stock and debt of a U.S. shareholder and tangible property used by a U.S. shareholder.[37] The Senate Committee felt there was a "potential for abuse"[38] in this approach, and the lesser change was adopted by the Conference Committee. Both the House and Senate committees stated that the purpose of the amendment was to minimize any harmful effect of section 956 on the balance of payments, while preserving the taxability of investments that amount to an effective repatriation of CFC earnings.[39]

Both Committees also warned that if the facts indicate that a CFC "facilitated" a loan to a U.S. shareholder, the CFC would be considered to have made the loan. The House Committee gave as examples a CFC making a deposit in a U.S. bank followed or preceded by a bank loan of a similar amount to a U.S. shareholder, and a CFC supplying collateral for, or guaranteeing a loan to, a U.S. shareholder.[40]

The second new exception to U.S. property added by the Act is "movable property (other than a vessel or aircraft) which is used for the purpose of exploring for, developing, removing, or transporting resources from ocean waters or under such waters when used on the Continental Shelf of the United

35. Tax Reform Act § 1021, *amending* INT. REV. CODE OF 1954, ch. 1, §§ 956(b)(2), 958(b), 76 Stat. 1016-17, 1018-19 (1962).

36. I.R.C. § 956(b)(2)(F).

37. H.R. REP. 216-17.

38. S. REP. 227.

39. *Id.* at 226; H.R. REP. 216.

40. H.R. REP. 217 n. 21.

States."[41] This was added by the Senate Committee, which stated that it is aimed at drilling rigs and other oil and gas equipment, including barges, used on the U.S. Continental Shelf (as defined in section 638), in the belief that "inclusion of oil-drilling rigs used on the U.S. continental shelf acts as a disincentive to explore for oil in the United States. Since these rigs are movable, they can as easily be used in a foreign country."[42]

Both these changes in the definition of U.S. property are effective for years after 1975 and in determining the cumulative amounts invested in U.S. property at the close of the last year beginning before 1976.[43]

D. *Export Trade Corporations*

A further exclusion from FBC income is contained in sections 970-72 (which were inexplicably given subpart G as their own) which concern "export trade corporations" (ETCs). The exclusion was repealed prospectively for new corporations in 1971[44] because of an overlap with the DISC provisions but continues generally in effect for any CFC that qualified as an ETC in a year beginning before October 31, 1971.[45]

The Act continued the lingering last rites for subpart G by repealing section 972,[46] which provided for the consolidated treatment of a group of ETCs. The House Committee stated that "this provision has been little used in the past and is not currently being used."[47]

## III. DISPOSITION OF STOCK

The other half of the 1962 Congressional reach to tax foreign earnings is section 1248, which, in certain cases, taxes as a dividend the gain on sales or exchanges of foreign corporation stock. In general, section 1248 applies if at any time during the five years preceding the sale the taxpayer was a U.S. shareholder while the foreign corporation had CFC status. The dividend treatment is limited to the corporaton's earnings attribut-

41. I.R.C. § 956(b)(2)(G).
42. S. REP. 226.
43. Tax Reform Act § 1021(c).
44. Pub. L. No. 92-178, 85 Stat. 497 (1971).
45. I.R.C. § 971(a)(3).
46. Tax Reform Act § 1901 (the "deadwood" section).
47. H.R. REP. 391.

able to the stock sold which were accumulated after 1962 and during the period the stock was held while the corporation was a CFC. Note that: (1) the taxpayer must have been a U.S. shareholder at some point while the corporation was a CFC, but once this requirement is met the taxpayer is taxed for the entire period the stock was held during CFC status even though the taxpayer might not have been a U.S. shareholder all that time; and (2) neither U.S. shareholder nor CFC status need exist at the time of sale. Also, the earnings that are the basis for dividend treatment are not limited to subpart F earnings—they are earnings from any source. In fact, subpart F earnings previously taxed to the selling shareholder (but not his predecessor) are excluded so they will not be taxed twice.[48]

Threading through this general principle is the usual panoply of exceptions and qualifications that one has come to accept as normal.

A. *Less Developed Country Corporations*

One such exception was for earnings realized while the corporation was a "less developed country corporation" (LDCC) on condition the taxpayer had held the stock for at least 10 years.[49] The Act eliminated this exception as such, but left in effect an exception for earnings accumulated before 1976 while the CFC was an LDCC (under section 902(d) as in effect before the Tax Reduction Act of 1975).[50] This revised exception, effective for years after 1975,[51] is in one sense broader than before since the 10-year holding period is eliminated.[52]

The House Committee explained that "the extent to which this exception has provided an incentive to invest in less developed countries is questionable . . . your Committee believes that it would be preferable to provide whatever assistance is appropriate to less developed countries in a direct manner where the economic costs can be accurately measured."[53]

48. I.R.C. § 1248(d)(1).

49. INT. REV. CODE OF 1954, ch. 1, § 1248(d)(3), 76 Stat. 1043-44 (1962).

50. Tax Reform Act § 1022.

51. Tax Reform Act § 1022(b).

52. The House Committee stated that the "exclusion applies to pre-1976 earnings regardless of whether the U.S. shareholder owns the stock for ten years as of that date" (referring to January 1, 1976), but the wording of the Tax Reform Act makes irrelevant the holding period even as of the date of sale. H.R. REP. 218.

53. *Id.*

B. *Section 311, 336, and 337 Transactions*

The Act fills another gap in the effort to tax the liquidation of foreign earnings. Formerly, section 1248 imposed dividend treatment on a disposition of stock only if gain in general was recognized. The area of nonrecognized corporate organizations, reorganizations, and liquidations under sections 332, 351, 354, 355, 356, and 361 was covered by section 367, which in effect denied nonrecognition unless an advance ruling of no tax avoidance was obtained. Here the foreign earnings were reached through the I.R.S. practice of exacting a "toll charge" for issuing a favorable ruling.[54] For example, the liquidation of an 80 percent owned foreign corporation into its domestic parent, which absent section 367 would be tax-free under section 332, would be granted a favorable ruling if the parent agreed to include in its income as a dividend its share of the foreign subsidiary's earnings.[55]

This left certain other dispositions of foreign corporation stock that were not covered by section 367 but that were also not recognized and were thus outside section 1248. For example, if a domestic corporation distributed "section 1248 tainted" stock as a dividend, gain would not be recognized (under section 311 if it were a current dividend, under section 336 if it were a liquidating dividend), and the shareholders, if they were individuals, would acquire a stepped-up basis for the stock and would not be treated as holding the stock for the period it was held by the parent corporation. Thus, although the shareholders would be taxed on the dividend out of the domestic corporation's earnings, there would be no corporate tax on the foreign earnings. In addition, a domestic corporation would not be taxed if it sold such stock as part of a complete liquidation plan under section 337; the shareholders would pay a capital gain tax on the liquidation but no ordinary income tax would have been paid on the foreign earnings. The Senate Committee believed "that the availability of non-recognition treatment for distributions or exchanges of stock of controlled foreign corporations in situations not presently covered under section 367 or 1248 detracts substantially from the principle of

54. "Guidelines" for this were set forth in Rev. Proc. 68—23, 1968-1 CUM. BULL. 821.

55. *Id.* § 3.01(1); S. REP. 262.

taxing accumulated earnings and profits of foreign corporations upon repatriation."[56]

Accordingly, the Act[57] amends section 1248 by adding a new subsection (f) dealing with a domestic corporation that holds foreign corporation stock which would be subject to section 1248 if sold by it. If such a corporation transfers the stock in a manner covered by section 311, 336, or 337, it is taxed under section 1248 as if it had sold the stock, but based on the excess of the stock's fair market value over its adjusted basis.[58]

This rule does not apply if the distribution is to a shareholder which is also a domestic corporation, since here the distributee does not get a stepped-up basis for the stock and the "potential for the future application of section 1248 still exists . . . ."[59] To satisfy this rationale and have the exception apply, the distributee domestic corporation must be treated as holding the stock for the period it was held by the distributor and must satisfy the stock ownership requirements of section 1248(a)(2) immediately after the distribution.[60] That is, the distributee domestic corporation must be considered to have owned the requisite 10 percent voting power at a time during the preceding five years when the foreign corporation was a CFC. This latter requirement would presumably make the exception inapplicable and would produce a dividend to the distributor if it had always owned, *e.g.*, exactly 10 percent of the voting power and it distributed less than its entire holding to its domestic corporate shareholder.

New subsection (f) also contains another exception[61] (this one labelled a "Nonapplication"), not referred to in the committee reports, that is seemingly intended to avoid a duplication of tax in the case of section 337 sale proceeds that are caught under subsection (e) of section 1248 (which treats a domestic corporation as a first-tier foreign corporation when it is "formed or availed of" principally to hold foreign corporation stock).[62]

56. S. REP. 264.
57. Tax Reform Act § 1042(c).
58. I.R.C. § 1248(f).
59. S. REP. 270.
60. I.R.C. § 1248(f)(2).
61. I.R.C. § 1248(f)(3).
62. Seemingly not covered is another, similar duplication of effect of subsections

C. *Collapsible Partnerships*

The Act closed another potential loophole by amending section 751, which deals with the "collapsible partnership" concept, to add gain attributable to section 1248 stock to the definition of "unrealized receivables" under section 751(c).[63] This is intended to be similar to the treatment given sections 1245 and 1250 depreciation recapture under section 751(c).[64]

*D. Section 367 "Other Transfers"*

The Act contains another change which, though not amending subpart F or section 1248 as such, will have a substantial impact on CFCs. Section 1042(a) of the Act completely overhauls section 367, which required the advance ruling for foreign corporations involved in certain normally tax-free transactions. Amended section 367 distinguishes between such transactions that are "outbound" transfers from a U.S. person to a foreign corporation and transfers that are either into the United States or are completely foreign ("other transfers").[65] The former category does not generally involve the CFC concept and will not be discussed except to say that it substitutes a post-transaction clearance procedure for the advance ruling formerly required. Its statutory aim was to "prevent the removal of appreciated assets or inventory from U.S. tax jurisdiction prior to their sale . . . ."[66] For this type of transaction a judgment of the specific facts of each case to determine the amount of tax required to prevent tax avoidance was still thought necessary.[67]

The statutory purpose for the "other transfers" category was "in most cases . . . to preserve the taxation of accumulated profits of controlled foreign corporations."[68] The Senate report stated that taxpayers participating in this kind of transaction "should be able to determine the tax effects . . . from the statute and accompanying regulations rather than being required to apply to the Internal Revenue Service for a determi-

(e) and (f) that could occur when a domestic parent makes a liquidating distribution of foreign corporation stock.

63. Tax Reform Act § 1042(c)(2).

64. S. REP. 271.

65. I.R.C. § 367(a),(b).

66. S. REP. 264.

67. *Id.* at 263.

68. *Id.* at 264.

nation in advance . . . ."[69] Accordingly, under amended section 367 this kind of exchange no longer requires an advance ruling or a post-transaction clearance. Instead, all such transactions will in effect be nonrecognized as otherwise provided, "except to the extent provided in regulations prescribed by the Secretary which are necessary or appropriate to prevent the avoidance of Federal income taxes."[70] The section states that the regulations shall provide as to when gain shall be immediately recognized or taxed as a dividend, or both, or deferred for later taxation, and for adjustments in earnings, basis of stock and securities, and basis of assets.[71]

The regulations are to deal with two kinds of "other transfer." One is transfers into the United States, that is, those constituting a present repatriation of foreign earnings, where the intention is generally to impose an immediate tax. The Senate Committee gave as examples of this group:

> (i) the liquidation of a foreign corporation into a domestic parent; (ii) the acquisition of assets of a foreign corporation by a domestic corporation in a type "C" or "D" reorganization; and (iii) the acquisition of stock in a foreign corporation by a domestic corporation in a type "B" reorganization.[72]

The other group is transfers between foreign parties only (which "involve a U.S. tax liability of U.S. shareholders only to the extent of determining the amount of any deemed distribution under the subpart F rules").[73] The Senate Committee gave as examples of these:

> (i) the acquisition of stock of a controlled foreign corporation by another foreign corporation; (ii) the acquisition of stock of a controlled foreign corporation by another foreign corporation which is controlled by the same U.S. shareholders as the acquired corporation; (iii) the acquisition of the assets of a controlled foreign corporation by another foreign corporation; (iv) the mere recapitalization of a foreign corporation (type "E" reorganization); and (v) a transfer of property by one controlled foreign corporation to its foreign subsidiary.[74]

The Committee "anticipated" that for "these exclusively for-

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69. *Id.* at 263.
70. I.R.C. § 367(b)(1).
71. I.R.C. § 367(b)(2).
72. S. REP. 268.
73. *Id.*
74. *Id.* at 268, 269.

eign transactions . . . regulations will provide for no immediate U.S. tax liability."[75] The Committee added that the regulations may

> establish rules pursuant to which an exchange of stock in a second tier foreign corporation for other stock in a similar foreign corporation will result in a deferral of the toll charge which otherwise would be imposed based on accumulated earnings and profits. This deferral could be accomplished by designating the stock received as stock with a deferred tax potential in a manner similar to section 1248 without reference to the December 31, 1962, date; the amount includable as foreign source dividend income upon the subsequent disposition of the stock in question results in dividend income only to the extent of the gain realized on the subsequent sale or exchange. In addition, if a second tier foreign subsidiary is liquidated into a first tier foreign subsidiary, the regulations may provide that the tax which would otherwise be due in the absence of a ruling [citing Rev. Rul. 64-157, 1964-1 C.B. 139] is deferred until the disposition of the stock in the first tier foreign subsidiary.[76]

The Committee had earlier given as one reason for the amendments:

> The third area of difficulty in the present administration of section 367 concerns situations where the IRS requires a U.S. shareholder to include certain amounts in income as a toll charge even though there is no present tax avoidance purpose but, rather, only the existence of a potential for future tax avoidance. This occurs under the section 367 guidelines because of limitations in the carryover of attribution rules (sec. 381). The Internal Revenue Service in some cases only has the option either of collecting an immediate tax or of collecting no tax at all since the IRS has in those cases no authority to defer payment of the tax until the time that the avoidance actually arises, except by entering into closing agreement with the taxpayer.[77]

Thus, we can expect regulations that will be far more comprehensive (and correspondingly more intricate) than the guidelines of Revenue Procedure 68-23[78] and that will provide for deferral of tax in some instances where an immediate tax has formerly been exacted. No doubt some of the techniques of deferral that have been used in section 367 closing agree-

75. *Id.* at 269.

76. *Id.*

77. *Id.* at 263; for an example of such closing agreements, *see* Rev. Proc. 75-29, 1975-1 CUM. BULL. 754.

78. 1968-1 CUM. BULL. 821.

ments (*e.g.*, the "triggering events" in Revenue Procedure 75-29[79]) will be continued in the regulations.

The amendments made by section 1042 of the Act are generally applicable to transactions after October 9, 1975.[80] However, to give the I.R.S. time to publish regulations for the "other transfers" category, amended section 367(d) provides that any exchange, *i.e.*, whether "outbound" or "other," before January 1, 1978, shall be governed by the post-transaction clearance procedure that is thereafter applicable only to "outbound" transfers. Also, for any exchange described in section 367 as in effect December 31, 1974, that took place after 1962 and before October 4, 1976, which is not a transfer of property to or from a U.S. person, a taxpayer will have until April 5, 1977, to request a nontax avoidance clearance.[81]

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79. 1975-1 CUM. BULL. 754.
80. Tax Reform Act § 1042(e)(1).
81. Tax Reform Act § 1042(e)(2).