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July 9, 2012

The Honorable Emily S. McMahon
Acting Assistant Secretary (Tax Policy)
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

The Honorable William J. Wilkins
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Internal Revenue Service
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Re: Report on Notice 2012-15: Cross-Border Stock Sales Subject to Section 304 and Section 367

Dear Ms. McMahon, Mr. Shulman, and Mr. Wilkins:

We write to provide comments on Notice 2012-15, which addresses the application of Section 367 to cross-border stock sales to foreign corporations subject to Section 304 of the Code. In the notice, the IRS and Treasury announced that Section 367 will apply in full to such sales without regard to the amount of gain or other income realized by the seller under Section 304. The IRS and Treasury requested comments on future regulations to be issued pursuant to the notice.

By way of background, Section 304 recasts certain taxable sales of stock to a foreign corporation by the controlling shareholder as two separate transactions: a deemed Section 351 exchange of such stock for newly-issued stock of the foreign corporation, followed by a deemed Section 302 redemption of the newly-issued stock by the foreign corporation.

Under future regulations to be issued pursuant to the notice, Section 367 will apply to both the deemed Section 351 exchange and to the deemed

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Section 302 redemption. To mitigate the potential for double taxation of the same gain, the regulations will allow the controlling shareholder to enter into a gain recognition agreement under the Section 367 regulations. The gain recognition agreement would apply to both the deemed Section 351 exchange and the deemed Section 302 redemption.

The attached report comments on several issues raised by the notice, most of which concern how future regulations might address the risk of double taxation created by applying Section 304 and Section 367 to the same transaction. In addition, the report recommends that the IRS and Treasury consider whether the original approach to these transactions under prior regulations should be reinstated, modified to limit basis recovery to the transferor's carryover basis in the redeemed shares. As described more fully in the report, we believe this approach should achieve all of the policy objectives of the notice with far less complexity because it would not rely on the gain recognition regime of Section 367 to prevent double taxation.

We appreciate your consideration of our report and its recommendations.

Respectfully submitted,



Andrew W. Needham  
Chair

Enclosure

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