

Client Alert.

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New IRS Information Reporting Obligations for Corporate Actions Affecting Tax Basis Become Effective

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The new year brings with it new tax reporting obligations with respect to certain corporate actions affecting tax basis. Although the new reporting obligations were enacted as part of the Energy Improvement and Extension Act of 2008, they became effective as of January 1, 2011, and the Internal Revenue Service (“IRS”) only recently issued final regulations.

The tax reporting rules provide that any domestic or foreign corporation (or entity treated as a corporation for federal income tax purposes) must file an information return with the IRS or publish on its website certain information if an organizational action (such as a stock split, a merger or an acquisition) affects the tax basis of any “specified security.”¹ A “specified security” generally includes any share of stock (including any American Depositary Receipt).² The required information includes, among other things, the type or nature of the organizational action and the quantitative effect of the organizational action on the basis of the security in the hands of a U.S. taxpayer as an adjustment per share or as a percentage of the old tax basis (including a description of the calculation, the applicable Internal Revenue Code provision upon which the tax treatment is based, the data supporting the calculation such as the market values of securities and valuation dates, any other information necessary to implement the adjustment including the reportable taxable year, and whether any resulting loss may be recognized).³

The information return must be filed by the corporation, or the information must be published on its website, on or before the 45th day following the organizational action or, if earlier, January 15 of the year following the calendar year of the organization action. If the information is made available on its website, the corporation must keep the information accessible to the public for 10 years. No reporting is required if all holders of the securities affected are exempt recipients which generally includes, but is not limited to, corporations (or entities treated as corporations for federal income tax purposes), foreign holders, and tax-exempt organizations. These reporting rules are effective with respect to organizational actions occurring on or after January 1, 2011 or, in the case of regulated investment companies, on or after January 1, 2012. The IRS has not yet made a form available in connection with this return requirement.

Our clients should note that the reporting obligations apply to public and privately held domestic and foreign corporations. For example, a foreign corporation not engaged in a U.S. trade or business but that has U.S. shareholders would be required to file a return. The penalties for failure to comply are (i) \$50 for each information return (with a calendar year

¹ Section 6045B of the Internal Revenue Code.

² The definition of “specified security” also includes, for example, any note, bond, debenture, or other evidence of indebtedness. Reporting with respect to securities other than stock, however, is not required with respect to organizational actions occurring before January 1, 2013 (or such later date as determined in Treasury regulations).

³ In addition, the corporation must, on or before January 15 of the year following the calendar year of the organizational action, furnish a written statement with the same information to each holder of record of the security or to the holder’s nominee. In this respect, a corporation is deemed to furnish such a holder or nominee statement if it satisfies the above-described public reporting requirement.

Client Alert.

maximum penalty amount of \$250,000) or \$100 if the failure to file is a result of intentional disregard of the filing requirement without a maximum penalty amount, and (ii) \$50 for each holder or nominee return (with a calendar year maximum penalty amount of \$100,000) or \$100 if the failure to file is a result of intentional disregard of the filing requirement without a maximum penalty amount.

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