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On September 22, 2014, the United States Department of the Treasury and the Internal Revenue Service issued a Notice (Notice 2014-52) that limit "inversion" transactions and their potential tax benefits. In general, an inversion is a transaction in which a U.S. corporation is acquired by a smaller foreign corporation. If the shareholders of the existing U.S. corporation receive at least 80% of the stock of the foreign corporation, the foreign corporation will be treated as a U.S. corporation for U.S. tax purposes. If the foreign corporation is not treated as a U.S. corporation, an inversion potentially offers significant tax benefits. The Notice makes it more difficult to stay under the 80% threshold and realize the tax benefits previously available through inversion transactions.

The Notice generally prevents inverted companies from using the following types of techniques after the inversion to reduce the U.S. tax base:

- **Hopscotch Loans.** The U.S. parent of a foreign subsidiary cannot generally avoid paying tax on the profits of the subsidiary if the subsidiary makes a loan to the U.S. parent. By contrast, prior to the Notice, a foreign subsidiary of the former U.S. parent could make a loan directly to the new foreign parent (skipping over the former U.S. parent) without triggering U.S. tax.
- **De-Control Transactions.** Prior to the Notice, a new foreign parent could buy enough stock to take control of a foreign subsidiary away from the former U.S. parent. This "de-controlling" strategy allowed the new foreign parent to access the deferred earnings of the foreign subsidiary without paying U.S. tax because the foreign subsidiary would no longer be subject to the U.S. anti-deferral tax rules (known as the "controlled foreign corporation" rules).
- **Intercompany Stock Transfers.** Prior to the Notice, a new foreign parent could sell stock in the former U.S. parent to a foreign subsidiary with deferred earnings, effectively moving cash from the foreign subsidiary directly to the new foreign parent without triggering any U.S. tax.

In addition, the Notice makes it more difficult for U.S. entities to invert by strengthening the requirement that the former owners of the U.S. parent own less than 80 percent of the new combined entity.

- **Cash Boxes.** The Notice curtails the ability of a U.S. corporation to invert using a foreign entity (known as a "cash box") that holds substantial liquid assets that are not part of the foreign entity's daily business functions.
- **Skinny-Down Distributions.** The Notice prevents U.S. corporations from reducing their pre-inversion size by making extraordinary dividends prior to an inversion transaction.

Finally, the Notice prevents U.S. corporations from inverting a portion of their operations through "spinversion" transactions, which, in general, are transactions in which assets are transferred to a foreign corporation that is spun off to shareholders.

The Notice generally applies to transactions completed on or after September 22, 2014. Treasury is expected to issue regulations implementing the Notice (and providing additional detail) in the coming months and these regulations will be effective as of September 22, 2014.

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