PLR 202551006

Outbound 351 Exchange For Built-In Loss Property

Taxpayer owned 100% of Member, and Member owned 100% of ForeignCorp. In a Code §351 exchange, Member transferred certain property (the “Property”) to ForeignCorp. At the time of the transfer, Member’s basis in the Property exceeded its fair market value (built-in loss property). Just as an example, let’s say that the basis of the Property was $100 and the fair market value of the Property was $60.

Typically, under Code §362(a), ForeignCorp would take a basis in the Property equal to Member’s basis in the Property ($100), and, under Code §358(a)(1), Member would take a basis of $100 in the ForeignCorp shares . An exception to this general rule applies where there is a built-in loss in the property. Code §362(e)(2)(A). Under this exception, ForeignCorp would take a basis of $60 in the Property, but Member would still get a basis of $100 in the shares of ForeignCorp.

Under Code §362(e)(2)(C), an election can be made to reduce the basis in the ForeignCorp shares issued, rather than ForeignCorp reducing the basis in the property it received. That is, Member would take a basis of $60 in the ForeignCorp shares issued, and ForeignCorp would get a basis of $100 in the Property.

To make the Code §362(e)(2)(C) election, Member and ForeignCorp must enter into a binding agreement to apply Code §362(e)(2)(C) and a statement must be attached to a timely filed original tax return. In this PLR, the IRS granted relief under Treas. Reg. §1.9100-1, -3 to provide an extension of time for the binding agreement to be entered into and to attach the required statement.