



BDO Seidman, LLP
Accountants and Consultants

October 2005

Subject:

IRS Provides Guidance on Retroactive Section 367(a) Gain Recognition Agreement

International Tax Alert

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Issue:

On September 28 the IRS issued Notice 2005-74 dealing with Gain Recognition Agreements (GRAs) under Section 367(a).

Details:

Under a GRA a U.S. transferor agrees, among other things, to include the gain realized but not recognized on the initial transfer of stock or securities upon certain events that occur prior to the close of the fifth full taxable year following the year of transfer and pay the resulting tax on the gain plus interest.

Notice 2005-74 deals with certain issues connected with non-recognition transactions involving entities subject to a GRA. It provides some disclosure requirements upon certain events in order to maintain the GRA and avoid taxation on the later non-recognition transfer.

Taxpayers can apply Notice 2005-74 to GRAs entered into for outbound transfers of stock or securities occurring in any open tax year on or after July 20, 1988 and before September 28, 2005. Amended GRAs must be filed with a taxpayer's federal income tax year that includes September 28, 2005. Taxpayers applying Notice 2005-74 on a retroactive basis must consistently apply it for all transactions within its scope for any open tax years.

The Notice does not cover asset transfers and certain upstream and downstream reorganizations and divisive reorganizations involving a U.S. transferor corporation, foreign transferee corporation and a transferred corporation.

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Details:...(continued)

IRS has invited comments as to the most appropriate treatment of the transactions noted above that were not included in the Notice.

Taxpayers should review GRAs filed after July 20, 1998 for application of the provisions of the Notice in order to include any amended GRAs with their tax return that includes September 28, 2005.

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