



Federal Tax ADVISORY ■

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Foreign Books and Records

It can come as a surprise to taxpayers that foreign persons that have no contact with the U.S. tax system nevertheless have tax items and attributes that may become relevant to a U.S. taxpayer. If so, the foreign person's books and records will have to be employed to construct the numbers needed for the U.S. reporting. That can often be challenging.

A simple example is contributing property to a new U.S. subsidiary in a Section 351 exchange. The subsidiary will take a carryover basis in the property and will need to know the shareholder's adjusted tax basis in the property. If that basis exceeds value, the basis must be written down to value under Section 362(e) unless the parties elect to reduce the foreign person's basis in the U.S. corporation's stock.

You might think that election would be made in all relevant cases because the foreign person's basis in the U.S. stock is usually irrelevant ... until it isn't. What if the foreign person later wants to contribute that U.S. corporation to another U.S. corporation it owns? That scenario frequently occurs because foreign parent corporations often find it useful to keep their U.S. subsidiaries separated for management reasons, but later want to combine them.

And the foreign person might not have kept up with its basis in property anyway, or at least not under U.S. tax principles. For example, it may have had a foreign subsidiary that engaged in what we would call a spinoff, but the foreign parent did not apportion the basis of the stock of the distributing corporation between it and the spinco.

That is just one of many examples of how foreign basis, earnings and profits, and other tax attributes can become relevant for U.S. tax purposes. There is no good way to prepare for the day when relevance occurs other than keeping good financial accounting records until that day arrives.

For more information, please contact [Jack Cummings](#) at 919.862.2302.

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