

Reminder of Required IRS Cost Basis Reporting for Canadian Companies

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Canadian companies should be aware that if they engage in certain “organizational actions” that affect the tax basis of shares held by U.S. persons (including many types of acquisitions and business combinations where shares are issued to U.S. persons), they are required by the U.S. tax laws to evaluate the effect of the action on the U.S. holder’s tax basis and disclose this information in a completed Form 8937 promptly following the action.

Internal Revenue Code Section 6045B and IRS Form 8937 require corporations to report an “organizational action” that affects the tax basis of its shares held by U.S. individuals and certain other tax entities. Canadian residents who are U.S. citizens or green card holders are treated as U.S. individuals for this purpose. The required reporting may be satisfied by filing Form 8937 with the IRS within 45 days of the organizational action (or if earlier, by January 15th of the following year) and also providing the Form 8937 to the impacted shareholders by January 15th of the following year. In the alternative, a corporation may satisfy the reporting requirements by timely posting the Form 8937 on its public website and maintaining it there for 10 years. Many public companies choose to post the Form 8937 on their public websites because this is administratively easier.

“Organizational actions” include tax-deferred mergers and acquisitions under Code Section 368, contributions of property to controlled corporations under Code Section 351, contributions to capital without the issuance of additional shares, tax-free stock distributions, share consolidations, tax-free spin-offs, distributions that are treated as a return of capital (i.e., a distribution in excess of earnings and profits), taxable liquidations under Code Section 331 which involve more than one distribution in liquidation, recapitalizations and conversions under Code Section 368 and modifications of certain debt instruments. The instructions to Form 8937 specifically provide that reporting with respect to a corporation’s stock is required only if an organizational action impacts the tax basis of all holders of the issuer’s stock or all holders of a class of stock.

A non-U.S. corporation is subject to the same rules as a U.S. domestic corporation,

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provided it has at least one shareholder who is a U.S. individual or partnership. For this purpose, a corporation includes any business entity that is treated as a corporation for U.S. federal income tax purposes. For example, a Canadian unlimited liability company which elects to be treated as a corporation for U.S. federal income tax purposes is treated as a corporation for Form 8937 reporting purposes.

Penalties apply for failure to properly report an organizational action.