

Update on New Reporting Rules for Stock Splits, Recapitalizations, Mergers and Acquisitions

January 9, 2012

As previously reported in the [March 15 blog article](#), Section 6045B of the Internal Revenue Code imposes new reporting requirements on issuers of "specified securities" engaging in organizational actions after December 31, 2010 that affect the tax basis of their specified securities. Generally, a "specified security" includes shares of stock and interests treated as stock (such as an American Depository Receipt).

Under Section 6045B, the issuer will have to file an information return with the IRS, and provide an information statement to the holders of record of the securities, setting forth:

- (1) a description of the organizational action that affects the basis of the securities;
 - (2) the quantitative effect on the security's basis resulting from the organizational action;
- and
- (3) any other information IRS may prescribe.

Stock splits, redemptions, recapitalizations, non-dividend distributions, mergers and acquisitions (but not initial public offerings) are examples of organizational actions that could affect basis.

The reporting requirement applies to all issuers organized as, or treated for tax purposes as, a corporation (both domestic and foreign), if US taxpayers hold specified securities. The new rules do not apply to limited liability companies that are taxed as a partnership.

The IRS recently finalized the information return to be used. The new form is **Form 8937**. The form requires the following information: (i) the name and taxpayer identification number of the reporting issuer, (ii) the identifiers of each security involved, (iii) the contact information of the issuer, (iv) information about the organizational action taken, and (v) the quantitative effect of the organizational action on the basis of the securities. The quantitative effect may be disclosed as an adjustment per share or as a percentage of the old basis, including a description of the calculation, the applicable Internal Revenue Code provision upon which the tax treatment is based, the data supporting the calculation (including the market value of securities and valuation dates) and any other information necessary to implement the adjustment.

The issuer can satisfy its reporting requirements in one of two ways:

1. It may file **Form 8937** with the IRS and mail a copy of such return to each security holder; or
2. It may post a completed **Form 8937** in a readily accessible format on its website and keep it accessible for ten years.

If the issuer selects the first option, the information return submitted to the IRS is due within the earlier of (i) 45 days after the organizational action and (ii) January 15 of the calendar year following the organizational action. However, for corporate actions occurring in 2011 the deadline for filing with the IRS has been extended to January 17, 2012.

The issuer is also required to furnish the return to each security holder of record (including nominees) by January 15 of the year following the action (and it is not entirely clear if this deadline for 2011 actions has also been extended to January 17, 2012). Note that information must be provided not only to the holders of record as of the date of the corporate action, but also to all subsequent holders of record up to the date the return is provided to security holders.

If the issuer selects the second option, and chooses to post **Form 8937** on its website, the information must be made available by the same due date for reporting the action to the IRS.

The issuer may choose not to use the IRS form, but any statement it furnishes to the IRS and the security holders (and nominees) of record, or posts on its website, must include the same information as included on [Form 8937](#). In addition, any such statement furnished to security holders must include a statement that the information is being reported to the IRS.

Special rules apply to RICs, REITs, S corporations, and other special entities and situations. (S corporations can satisfy the reporting requirement by reporting the effect of the corporate action on a timely filed Schedule K-1 (Form 1120S) for each shareholder and timely gives a copy to all proper parties.) Further, there is an exemption from the reporting requirements where all of the holders of the securities are “exempt recipients,” such as corporations, foreign holders and nonprofit organizations.

[Click here for Form 8937](#)

[Click here for Instructions to Form 8937](#)