Example 1. Individuals A, B, and C organize a corporation with 101 shares of common stock. A and B each transfers to it $10,000 worth of the only class of stock of corporation X, listed on the New York Stock Exchange, in exchange for 50 shares of stock. C transfers $200 worth of readily marketable securities in corporation Y for one share of stock. In determining whether or not diversification has occurred, C’s participation in the transaction will be disregarded. There is, therefore, no diversification, and gain or loss will not be recognized.

Example 2. A, together with 50 other transferors, organizes a corporation with 100 shares of stock. A transfers $10,000 worth of stock in corporation X, listed on the New York Stock Exchange, in exchange for 50 shares of stock. Each of the other 50 transferors transfers $200 worth of readily marketable securities in corporations other than X in exchange for one share of stock. In determining whether or not diversification has occurred, all transfers will be taken into account. Therefore, diversification is present, and gain or loss will be recognized.

§ 1.351–3 Records to be kept and information to be filed.

(a) Significant transferor. Every significant transferor must include a statement entitled, “STATEMENT PURSUANT TO §1.351–3(a) BY [INSERT NAME AND TAXPAYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A SIGNIFICANT TRANSFEROR,” on or with such transferor’s income tax return for the taxable year of the section 351 exchange. If a significant transferor is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The name and employer identification number (if any) of the transferee corporation;
(2) The date(s) of the transfer(s) of assets;
(3) The aggregate fair market value and basis, determined immediately before the exchange, of the property transferred by such transferor in the exchange; and
(4) The date and control number of any private letter ruling(s) issued by the Internal Revenue Service in connection with the section 351 exchange.
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(b) Transferee corporation. Except as provided in paragraph (c) of this section, every transferee corporation must include a statement entitled, “STATEMENT PURSUANT TO §1.351–3(b) BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A TRANSFEE CORPORATION.” on or with its income tax return for the taxable year of the exchange. If the transferee corporation is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The name and taxpayer identification number (if any) of every significant transferor;
(2) The date(s) of the transfer(s) of assets;
(3) The aggregate fair market value and basis, determined immediately before the exchange, of all of the property received in the exchange; and
(4) The date and control number of any private letter ruling(s) issued by the Internal Revenue Service in connection with the section 351 exchange.

c) Exception for certain transferee corporations. The transferee corporation is not required to file a statement under paragraph (b) of this section if all of the information that would be included in the statement described in paragraph (b) of this section is included in any statement(s) described in paragraph (a) of this section that is attached to the same return for the same section 351 exchange.

d) Definitions. For purposes of this section:

(1) Significant transferor means a person that transferred property to a corporation and received stock of the transferee corporation in an exchange described in section 351 if, immediately after the exchange, such person—

(i) Owned at least five percent (by vote or value) of the total outstanding stock of the transferee corporation if the stock owned by such person is not publicly traded,
(ii) Owned at least one percent (by vote or value) of the total outstanding stock of the transferee corporation if the stock owned by such person is publicly traded,

(2) Publicly traded stock means stock that is listed on—

(i) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

e) Substantiation information. Under §1.6001–1(e), taxpayers are required to retain their permanent records and make such records available to any authorized Internal Revenue Service officers and employees. In connection with the exchange described in this section, these records should specifically include information regarding the amount, basis, and fair market value of all transferred property, and relevant facts regarding any liabilities assumed or extinguished as part of such exchange.

(f) Effective/applicability date. This section applies to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see §1.351–3 as contained in 26 CFR part 1 in effect on April 1, 2006.

[T.D. 9329, 72 FR 32798, June 14, 2007]

EFFECTS ON SHAREHOLDERS AND SECURITY HOLDERS

§ 1.354–1 Exchanges of stock and securities in certain reorganizations.

(a) Section 354 provides that under certain circumstances no gain or loss is recognized to a shareholder who surrenders his stock in exchange for other stock or to a security holder who surrenders his securities in exchange for stock. Section 354 also provides that under certain circumstances a security holder may surrender securities and receive securities in the same principal amount or in a lesser principal amount without the recognition of gain or loss.