

PLR 201027036 (July 2010) Related Party Acquisition of Relinquished Property from Controlled Foreign Corporation

The relinquished property in this ruling is owned by a controlled foreign corporation (CFC) within the meaning of IRC § 957(a). The ruling holds that Section 1031(f) does not apply if the CFC, using a QI arrangement, sells the relinquished property to related corporations and acquires replacement property from an unrelated party. Further, the ruling holds that the CFC will not have income or earnings and profits from the gain realized but not recognized from the exchange.

This ruling involves a group of corporations conducting a global leasing business of an unspecified product. With respect to the relinquished property in the exchange, the CFC (through in its disregarded entities) will transfer the product, using a QI, to the two related corporations, who will disassemble the product and sell the parts within two years of their acquisition of the product. The replacement property will be acquired from an unrelated manufacturer.

The PLR holds that the related party rules of § 1031(f) do not apply because the related corporations who acquired the relinquished property did not own, prior to the exchange, any property that CFC acquired in the exchange. Thus, the related corporations' disposal of relinquished property within two years of the acquisition would not result in a "cashing out" of an investment or shifting of basis between the CFC or the related corporations. This is similar to the holdings in PLRs 200709036, 200712013, and 200728008.

In addition, because the income of a CFC is generally computed as if the corporation were domestic under IRC § 1.952-2(a) and (b), the PLR holds that the CFC has income only to the extent of gain recognition under § 1031, if any. Further, any gain or loss realized but not recognized by the CFC on the transfer of relinquished property will not generate earnings and profits (or a deficit in earnings and profits) under IRC § 964 for the year in which such gain or loss is realized but not recognized. See IRC § 312(f)(1), Regs. 1.312-7(b)(1), and 1.964-1.