

§ 1.338-0 Outline of topics.

This section lists the captions contained in the regulations under section 338 as follows:

§ 1.338-1 General principles; status of old target and new target.

- (a) In general.
- (1) Deemed transaction.
- (2) Application of other rules of law.
- (3) Overview.
- (b) Treatment of target under other provisions of the Internal Revenue Code.

§ 1.338-1 General rule for other provisions of the Internal Revenue Code.

- (c) Anti-abuse rule.
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- (6) Deemed asset sale.
- (7) Deemed sale tax consequences.
- (8) Deemed sale return.
- (9) Domestic corporation.
- (10) Old target's final return.
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- (12) Qualified stock purchase.
- (13) Related persons.
- (14) Section 338 election.
- (15) Section 338(h)(10) election.
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- (18) Target affiliate.
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§ 1.338-2 Special rules for foreign corporations or DISCs.**§ 1.338-2** Elections by certain foreign purchasing corporations.

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 - (i) [Reserved]
 - (j) Anti-avoidance rules.
 - (1) Extension of consistency period.
 - (2) Qualified stock purchase and 12-month acquisition period.
 - (3) Acquisitions by conduits.
 - (i) Asset ownership.
 - (A) General rule.
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 - (A) Purchase by conduit.
 - (B) Purchase of conduit by corporation.
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§ 1.338(i)-1 Effective dates.

[T.D. 8940, 66 FR 9929, Feb. 13, 2001]

§ 1.338-1 General principles; status of old target and new target.

(a) *In general*—(1) *Deemed transaction*. Elections are available under section 338 when a purchasing corporation acquires the stock of another corporation (the target) in a qualified stock purchase. One type of election, under section 338(g), is available to the purchasing corporation. Another type of election, under section 338(h)(10), is, in more limited circumstances, available jointly to the purchasing corporation and the sellers of the stock. (Rules concerning eligibility for these elections are contained in §§ 1.338-2, 1.338-3, and 1.338(h)(10)-1.) Although target is a single corporation under corporate law, if a section 338 election is made, then two

separate corporations, old target and new target, generally are considered to exist for purposes of subtitle A of the Internal Revenue Code. Old target is treated as transferring all of its assets to an unrelated person in exchange for consideration that includes the discharge of its liabilities (see § 1.1001-2(a)), and new target is treated as acquiring all of its assets from an unrelated person in exchange for consideration that includes the assumption of those liabilities. (Such transaction is, without regard to its characterization for Federal income tax purposes, referred to as the deemed asset sale and the income tax consequences thereof as the deemed sale tax consequences.) If a section 338(h)(10) election is made, old target is deemed to liquidate following the deemed asset sale.

(2) *Application of other rules of law*. Other rules of law apply to determine the tax consequences to the parties as if they had actually engaged in the transactions deemed to occur under section 338 and the regulations thereunder except to the extent otherwise provided in those regulations. See also § 1.338-6(c)(2). Other rules of law may characterize the transaction as something other than or in addition to a sale and purchase of assets; however, the transaction between old and new target must be a taxable transaction. For example, if target is an insurance company for which a section 338 election is made, the deemed asset sale would be characterized and taxed as an assumption-reinsurance transaction under applicable Federal income tax law. See § 1.817-4(d).

(3) *Overview*. Definitions and special nomenclature and rules for making the section 338 election are provided in § 1.338-2. Qualification for the section 338 election is addressed in § 1.338-3. The amount for which old target is treated as selling all of its assets (the aggregate deemed sale price, or ADSP) is addressed in § 1.338-4. The amount for which new target is deemed to have purchased all its assets (the adjusted grossed-up basis, or AGUB) is addressed in § 1.338-5. Section 1.338-6 addresses allocation both of ADSP among the assets old target is deemed to have sold