

§ 1.358-4 Exceptions.

(a) *Plan of reorganization adopted after October 22, 1968.* In the case of a plan of reorganization adopted after October 22, 1968, section 358 does not apply in determining the basis of property acquired by a corporation in connection with such reorganization by the exchange of its stock or securities (or by the exchange of stock or securities of a corporation which is in control of the acquiring corporation) as the consideration in whole or in part for the transfer of the property to it. See section 362 and the regulations pertaining to that section for rules relating to basis to corporations of property acquired in such cases.

(b) *Plan of reorganization adopted before October 23, 1968.* In the case of a plan of reorganization adopted before October 23, 1968, section 358 does not apply in determining the basis of property acquired by a corporation in connection with such reorganization by the issuance of stock or securities of such corporation (or by the issuance of stock or securities of another corporation which is in control of such corporation) as the consideration in whole or in part for the transfer of the property to it. The term *issuance of stock or securities* includes any transfer of stock or securities, including stock or securities which were purchased or were acquired as a contribution to capital. See section 362 and the regulations pertaining to that section for rules relating to basis to corporations of property acquired in such cases.

[T.D. 7422, 41 FR 26569, June 28, 1976]

§ 1.358-5 [Reserved]

§ 1.358-6 Stock basis in certain triangular reorganizations.

(a) *Scope.* This section provides rules for computing the basis of a controlling corporation in the stock of a controlled corporation as the result of certain reorganizations involving the stock of the controlling corporation as described in paragraph (b) of this section. The rules of this section are in addition to rules under other provisions of the Internal Revenue Code and principles of law. See, e.g., section 1001 for the recognition of gain or loss by the controlled corporation on the ex-

change of property for the assets or stock of a target corporation in a reorganization described in section 368.

(b) *Triangular reorganizations—(1) Nomenclature.* For purposes of this section—

(i) *P* is a corporation—

(A) That is a party to a reorganization,

(B) That is in control (within the meaning of section 368(c)) of another party to the reorganization, and

(C) Whose stock is transferred pursuant to the reorganization.

(ii) *S* is a corporation—

(A) That is a party to the reorganization, and

(B) That is controlled by *P*.

(iii) *T* is a corporation that is another party to the reorganization.

(2) *Definitions of triangular reorganizations.* This section applies to the following reorganizations (which are referred to collectively as *triangular reorganizations*):

(i) *Forward triangular merger.* A forward triangular merger is a statutory merger of *T* and *S*, with *S* surviving, that qualifies as a reorganization under section 368(a)(1)(A) or (G) by reason of the application of section 368(a)(2)(D).

(ii) *Triangular C reorganization.* A triangular C reorganization is an acquisition by *S* of substantially all of *T*'s assets in exchange for *P* stock in a transaction that qualifies as a reorganization under section 368(a)(1)(C).

(iii) *Reverse triangular merger.* A reverse triangular merger is a statutory merger of *S* and *T*, with *T* surviving, that qualifies as a reorganization under section 368(a)(1)(A) by reason of the application of section 368(a)(2)(E).

(iv) *Triangular B reorganization.* A triangular B reorganization is an acquisition by *S* of *T* stock in exchange for *P* stock in a transaction that qualifies as a reorganization under section 368(a)(1)(B).

(c) *General rules.* Subject to the special rule provided in paragraph (d) of this section, *P*'s basis in the stock of *S* or *T*, as applicable, as a result of a triangular reorganization, is adjusted under the following rules—

(1) *Forward triangular merger or triangular C reorganization—(i) In general.*

In a forward triangular merger or a triangular C reorganization, *P*'s basis in its *S* stock is adjusted as if—

(A) *P* acquired the *T* assets acquired by *S* in the reorganization (and *P* assumed any liabilities which *S* assumed or to which the *T* assets acquired by *S* were subject) directly from *T* in a transaction in which *P*'s basis in the *T* assets was determined under section 362(b); and

(B) *P* transferred the *T* assets (and liabilities which *S* assumed or to which the *T* assets acquired by *S* were subject) to *S* in a transaction in which *P*'s basis in *S* stock was determined under section 358.

(ii) *Limitation.* If, in applying section 358, the amount of *T* liabilities assumed by *S* or to which the *T* assets acquired by *S* are subject equals or exceeds *T*'s aggregate adjusted basis in its assets, the amount of the adjustment under paragraph (c)(1)(i) of this section is zero. *P* recognizes no gain under section 357(c) as a result of a triangular reorganization.

(2) *Reverse triangular merger—(i) In general—(A) Treated as a forward triangular merger.* Except as otherwise provided in this paragraph (c)(2), *P*'s basis in its *T* stock acquired in a reverse triangular merger equals its basis in its *S* stock immediately before the transaction adjusted as if *T* had merged into *S* in a forward triangular merger to which paragraph (c)(1) of this section applies.

(B) *Allocable share.* If *P* acquires less than all of the *T* stock in the transaction, the basis adjustment described in paragraph (c)(2)(i)(A) of this section is reduced in proportion to the percentage of *T* stock not acquired in the transaction. The percentage of *T* stock not acquired in the transaction is determined by taking into account the fair market value of all classes of *T* stock.

(C) *Special rule if P owns T stock before the transaction.* Solely for purposes of paragraphs (c)(2)(i)(A) and (B) of this section, if *P* owns *T* stock before the transaction, *P* may treat that stock as acquired in the transaction or not, without regard to the form of the transaction.

(ii) *Reverse triangular merger that qualifies as a section 351 transfer or sec-*

tion 368(a)(1)(B) reorganization. Notwithstanding paragraph (c)(2)(i) of this section, if a reorganization qualifies as both a reverse triangular merger and as a section 351 transfer or as both a reverse triangular merger and a reorganization under section 368(a)(1)(B), *P* can—

(A) Determine the basis in its *T* stock as if paragraph (c)(2)(i) of this section applies; or

(B) Determine the basis in the *T* stock acquired as if *P* acquired such stock from the former *T* shareholders in a transaction in which *P*'s basis in the *T* stock was determined under section 362(b).

(3) *Triangular B reorganization.* In a triangular B reorganization, *P*'s basis in its *S* stock is adjusted as if—

(i) *P* acquired the *T* stock acquired by *S* in the reorganization directly from the *T* shareholders in a transaction in which *P*'s basis in the *T* stock was determined under section 362(b); and

(ii) *P* transferred the *T* stock to *S* in a transaction in which *P*'s basis in its *S* stock was determined under section 358.

(4) *Examples.* The rules of this paragraph (c) are illustrated by the following examples. For purposes of these examples, *P*, *S*, and *T* are domestic corporations, *P* and *S* do not file consolidated returns, *P* owns all of the only class of *S* stock, the *P* stock exchanged in the transaction satisfies the requirements of the applicable triangular reorganization provisions, and the facts set forth the only corporate activity.

Example 1. Forward triangular merger. (a) Facts. *T* has assets with an aggregate basis of \$60 and fair market value of \$100 and no liabilities. Pursuant to a plan, *P* forms *S* with \$5 cash (which *S* retains), and *T* merges into *S*. In the merger, the *T* shareholders receive *P* stock worth \$100 in exchange for their *T* stock. The transaction is a reorganization to which sections 368(a)(1)(A) and (a)(2)(D) apply.

(b) *Basis adjustment.* Under § 1.358-6(c)(1), *P*'s \$5 basis in its *S* stock is adjusted as if *P* acquired the *T* assets acquired by *S* in the reorganization directly from *T* in a transaction in which *P*'s basis in the *T* assets was determined under section 362(b). Under section 362(b), *P* would have an aggregate basis of \$60 in the *T* assets. *P* is then treated as if it transferred the *T* assets to *S* in a transaction in which *P*'s basis in the *S* stock was determined under section 358. Under section 358,

P's \$5 basis in its *S* stock would be increased by the \$60 basis in the *T* assets deemed transferred. Consequently, *P* has a \$65 basis in its *S* stock as a result of the reorganization.

(c) *Use of pre-existing S.* The facts are the same as paragraph (a) of this *Example 1*, except that *S* is an operating company with substantial assets that has been in existence for several years. *P* has a \$110 basis in the *S* stock. Under § 1.358-6(c)(1), *P*'s \$110 basis in its *S* stock is increased by the \$60 basis in the *T* assets deemed transferred. Consequently, *P* has a \$170 basis in its *S* stock as a result of the reorganization.

(d) *Mixed consideration.* The facts are the same as paragraph (a) of this *Example 1*, except that the *T* shareholders receive *P* stock worth \$80 and \$20 cash from *P*. Under section 358, *P*'s \$5 basis in its *S* stock is increased by the \$60 basis in the *T* assets deemed transferred. Consequently, *P* has a \$65 basis in its *S* stock as a result of the reorganization.

(e) *Liabilities.* The facts are the same as paragraph (a) of this *Example 1*, except that *T*'s assets are subject to \$50 of liabilities, and the *T* shareholders receive \$50 of *P* stock in exchange for their *T* stock. Under section 358, *P*'s basis in its *S* stock is increased by the \$60 basis in the *T* assets deemed transferred and decreased by the \$50 of liabilities to which the *T* assets acquired by *S* are subject. Consequently, *P* has a net basis adjustment of \$10, and a \$15 basis in its *S* stock as a result of the reorganization.

(f) *Liabilities in excess of basis.* The facts are the same as in paragraph (a) of this *Example 1*, except that *T*'s assets are subject to liabilities of \$90, and the *T* shareholders receive \$10 of *P* stock in exchange for their *T* stock in the reorganization. Under § 1.358-6(c)(1)(ii), the adjustment under § 1.358-6(c) is zero if the amount of the liabilities which *S* assumed or to which the *T* assets acquired by *S* are subject exceeds the aggregate adjusted basis in *T*'s assets. Consequently, *P* has no adjustment in its *S* stock, and *P* has a \$5 basis in its *S* stock as a result of the reorganization.

Example 2. Reverse triangular merger. (a) *Facts.* *T* has assets with an aggregate basis of \$60 and a fair market value of \$100 and no liabilities. *P* has a \$110 basis in its *S* stock. Pursuant to a plan, *S* merges into *T* with *T* surviving. In the merger, the *T* shareholders receive \$10 cash from *P* and *P* stock worth \$90 in exchange for their *T* stock. The transaction is a reorganization to which sections 368(a)(1)(A) and (a)(2)(E) apply.

(b) *Basis adjustment.* Under § 1.358-6(c)(2)(i)(A), *P*'s basis in the *T* stock acquired is *P*'s \$110 basis in its *S* stock before the transaction, adjusted as if *T* had merged into *S* in a forward triangular merger to which § 1.358-6(c)(1) applies. In such a case, *P*'s \$110 basis in its *S* stock before the transaction would have been increased by the \$60 basis of the *T* assets deemed transferred. Con-

sequently, *P* has a \$170 basis in its *T* stock immediately after the transaction.

(c) *Reverse triangular merger that also qualifies under section 368(a)(1)(B).* The facts relating to *T* are the same as in paragraph (a) of this *Example 2*. *P*, however, forms *S* pursuant to the plan of reorganization. The *T* shareholders receive \$100 worth of *P* stock (and no cash) in exchange for their *T* stock. The *T* shareholders have an aggregate basis in their *T* stock of \$85 immediately before the reorganization. The reorganization qualifies as both a reverse triangular merger and a reorganization under section 368(a)(1)(B). Under § 1.358-6(c)(2)(ii), *P* may determine its basis in its *T* stock either as if § 1.358-6(c)(2)(i) applied to the *T* stock acquired, or as if *P* acquired the *T* stock from the former *T* shareholders in a transaction in which *P*'s basis in the *T* stock was determined under section 362(b). Accordingly, *P* may determine a basis in its *T* stock of \$60 (*T*'s net asset basis) or \$85 (the *T* shareholders' aggregate basis in the *T* stock immediately before the reorganization).

(d) *Allocable share in a reverse triangular merger.* The facts are the same as in paragraph (a) of this *Example 2*, except that *X*, a 10% shareholder of *T*, does not participate in the transaction. The remaining *T* shareholders receive \$10 cash from *P* and *P* stock worth \$80 for their *T* stock. *P* owns 90% of the *T* stock after the transaction. Under § 1.358-6(c)(2)(i)(A), *P*'s basis in its *T* stock is *P*'s \$110 basis in its *S* stock before the reorganization, adjusted as if *T* had merged into *S* in a forward triangular merger. In such a case, *P*'s basis would have been adjusted by the \$60 basis in the *T* assets deemed transferred. Under § 1.358-6(c)(2)(i)(B), however, the basis adjustment determined under § 1.358-6(c)(2)(i)(A) is reduced in proportion to the percentage of *T* stock not acquired by *P* in the transaction. The percentage of *T* stock not acquired in the transaction is 10%. Therefore, *P* reduces its \$60 basis adjustment by 10%, resulting in a net basis adjustment of \$54. Consequently, *P* has a \$164 basis in its *T* stock as a result of the transaction.

(e) *P's ownership of T stock.* The facts are the same as in paragraph (a) of this *Example 2*, except that *P* owns 10% of the *T* stock before the transaction. *P*'s basis in that *T* stock is \$8. All the *T* shareholders other than *P* surrender their *T* stock for \$10 cash from *P* and *P* stock worth \$80. *P* does not surrender the stock in the transaction. Under § 1.358-6(c)(2)(i)(C), *P* may treat its *T* stock owned before the transaction as acquired in the transaction or not. If *P* treats that *T* stock as acquired in the transaction, *P*'s basis in that *T* stock and the *T* stock actually acquired in the transaction equals *P*'s \$110 basis in its *S* stock before the transaction, adjusted by the \$60 basis of the *T* assets deemed transferred, for a total basis of \$170.

If *P* treats its *T* stock as not acquired, *P* retains its \$8 pre-transaction basis in that stock. *P*'s basis in its other *T* shares equals *P*'s \$110 basis in its *S* stock before the transaction, adjusted by \$54 (the \$60 basis in the *T* assets deemed transferred, reduced by 10%), for a total basis of \$164 in those shares. See § 1.358-6(c)(2)(i)(A) and (B). Consequently, if *P* treats its *T* shares as not acquired, *P*'s total basis in all of its *T* shares is \$172.

Example 3. Triangular B reorganization. (a) *Facts.* *T* has assets with a fair market value of \$100 and no liabilities. The *T* shareholders have an aggregate basis in their *T* stock of \$85 immediately before the reorganization. Pursuant to a plan, *P* forms *S* with \$5 cash and *S* acquires all of the *T* stock in exchange for \$100 of *P* stock. The transaction is a reorganization to which section 368(a)(1)(B) applies.

(b) *Basis adjustment.* Under § 1.358-6(c)(3), *P* adjusts its \$5 basis in its *S* stock by treating *P* as if it acquired the *T* stock acquired by *S* in the reorganization directly from the *T* shareholders in exchange for the *P* stock in a transaction in which *P*'s basis in the *T* stock was determined under section 362(b). Under section 362(b), *P* would have an aggregate basis of \$85 in the *T* stock received by *S* in the reorganization. *P* is then treated as if it transferred the *T* stock to *S* in a transaction in which *P*'s basis in the *S* stock was determined under section 358. Under section 358, *P*'s basis in its *S* stock would be increased by the \$85 basis in the *T* stock deemed transferred. Consequently, *P* has a \$90 basis in its *S* stock as a result of the reorganization.

(d) *Special rule for consideration not provided by P—(1) In general.* The amount of *P*'s adjustment to basis in its *S* or *T* stock, as applicable, described in paragraph (c) of this section is decreased by the fair market value of any consideration (including *P* stock in which gain or loss is recognized, see § 1.1032-2(c)) that is exchanged in the reorganization and that is not provided by *P* pursuant to the plan of reorganization. This paragraph (d) does not apply to the amount of *T* liabilities assumed by *S* or to which the *T* assets acquired by *S* are subject under paragraph (c)(1) of this section (or deemed assumed or taken subject to by *S* under paragraph (c)(2)(i) of this section).

(2) *Limitation.* *P* makes no adjustment to basis under this section if the decrease required under paragraph (d)(1) of this section equals or exceeds the amount of the adjustment described in paragraph (c) of this section.

(3) *Example.* The rules of this paragraph (d) are illustrated by the following example. For purposes of this example, *P*, *S*, and *T* are domestic corporations, *P* and *S* do not file consolidated returns, *P* owns all of the only class of *S* stock, the *P* stock exchanged in the transaction satisfies the requirements of the applicable triangular reorganization provisions, and the facts set forth the only corporate activity.

Example. (a) *Facts.* *T* has assets with an aggregate basis of \$60 and fair market value of \$100 and no liabilities. *S* is an operating company with substantial assets that has been in existence for several years. *P* has a \$100 basis in its *S* stock. Pursuant to a plan, *T* merges into *S* and the *T* shareholders receive \$70 of *P* stock provided by *P* pursuant to the plan and \$30 of cash provided by *S* in exchange for their *T* stock. The transaction is a reorganization to which sections 368(a)(1)(A) and (a)(2)(D) apply.

(b) *Basis adjustment.* Under § 1.358-6(c)(1), *P*'s \$100 basis in its *S* stock is increased by the \$60 basis in the *T* assets deemed transferred. Under § 1.358-6(d)(1), the \$60 adjustment is decreased by the \$30 of cash provided by *S* in the reorganization. Consequently, *P* has a net adjustment of \$30 in its *S* stock, and *P* has a \$130 basis in its *S* stock as a result of the reorganization.

(c) *Appreciated asset.* The facts are the same as in paragraph (a) of this *Example*, except that in the reorganization *S* provides an asset with a \$20 adjusted basis and \$30 fair market value instead of \$30 of cash. The basis results are the same as in paragraph (b) of this *Example*. In addition, *S* recognizes \$10 of gain under section 1001 on its disposition of the asset in the reorganization.

(d) *Depreciated asset.* The facts are the same as in paragraph (c) of this *Example*, except that *S* has a \$60 adjusted basis in the asset. The basis results are the same as in paragraph (b) of this *Example*. In addition, *S* recognizes \$30 of loss under section 1001 on its disposition of the asset in the reorganization.

(e) *P stock.* The facts are the same as in paragraph (a) of this *Example*, except that in the reorganization *S* provides *P* stock with a fair market value of \$30 instead of \$30 of cash. *S* acquired the *P* stock in an unrelated transaction several years before the reorganization. *S* has a \$20 adjusted basis in the *P* stock. The basis results are the same as in paragraph (b) of this *Example*. In addition, *S* recognizes \$10 of gain on its disposition of the *P* stock in the reorganization. See § 1.1032-2(c).

(e) *Cross-reference.* For rules relating to stock basis adjustments made as a result of a triangular reorganization in

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which *P* and *S*, or *P* and *T*, as applicable, are, or become, members of a consolidated group, see § 1.1502-30. For rules relating to stock basis adjustments after a group structure change, see § 1.1502-31.

(f) *Effective dates*—(1) *General rule*. Except as otherwise provided in this paragraph (f), this section applies to triangular reorganizations occurring on or after December 23, 1994.

(2) *Special rule for reverse triangular mergers*. For a reverse triangular merger occurring before December 23, 1994, *P* may—

(i) Determine the basis in its *T* stock as if paragraph (c)(2)(i) of this section applied; or

(ii) Determine the basis in its *T* stock acquired as if *P* acquired such stock from the former *T* shareholders in a transaction in which *P*'s basis in the *T* stock was determined under section 362(b).

[T.D. 8648, 60 FR 66079, Dec. 21, 1995; 61 FR 11547, Mar. 21, 1996]

EFFECTS ON CORPORATION

§ 1.361-1 Nonrecognition of gain or loss to corporations.

Section 361 provides the general rule that no gain or loss shall be recognized if a corporation, a party to a reorganization, exchanges property in pursuance of the plan of reorganization solely for stock or securities in another corporation, a party to the reorganization. This provision includes only stock and securities received in connection with a reorganization defined in section 368(a). It also includes non-voting stock and securities in a corporation, a party to a reorganization, received in a transaction to which section 368(a)(1)(C) is applicable only by reason of section 368(a)(2)(B).

§ 1.362-1 Basis to corporations.

(a) *In general*. Section 362 provides, as a general rule, that if property was acquired on or after June 22, 1954, by a corporation (1) in connection with a transaction to which section 351 (relating to transfer of property to corporation controlled by transferor) applies, (2) as paid-in surplus or as a contribution to capital, or (3) in connection with a reorganization to which part III,

subchapter C, chapter 1 of the Code applies, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain recognized to the transferor on such transfer. (See also § 1.362-2.) See § 1.460-4(k)(3)(iv)(B)(2) for rules relating to adjustments to the basis of certain contracts accounted for using a long-term contract method of accounting that are acquired in certain transfers described in section 351 and certain reorganizations described in section 368(a).

(b) *Exceptions*. (1) In the case of a plan of reorganization adopted after October 22, 1968, section 362 does not apply if the property acquired in connection with such reorganization consists of stock or securities in a corporation a party to the reorganization, unless acquired by the exchange of stock or securities of the transferee (or of a corporation which is in control of the transferee) as the consideration in whole or in part for the transfer.

(2) In the case of a plan of reorganization adopted before October 23, 1968, section 362 does not apply if the property acquired in connection with such reorganization consists of stock or securities in a corporation a party to the reorganization, unless acquired by the issuance of stock or securities of the transferee (or, in the case of transactions occurring after December 31, 1963, of a corporation which is in control of the transferee) as the consideration in whole or in part for the transfer. The term *issuance of stock or securities* includes any transfer of stock or securities, including stock or securities which were purchased or were acquired as a contribution to capital.

[T.D. 7422, 41 FR 26569, June 28, 1976, as amended by T.D. 8995, 67 FR 34605, May 15, 2002]

§ 1.362-2 Certain contributions to capital.

The following regulations shall be used in the application of section 362(c):

(a) Property deemed to be acquired with contributed money shall be that property, if any, the acquisition of which was the purpose motivating the contribution;