

transfer, the U.S. transferor and the acquired corporation filed a consolidated return (or, in the case of a section 368(a)(1)(A) and (a)(2)(E) reorganization described in § 1.367(a)-3(d)(1)(ii), the U.S. transferor and the acquiring corporation filed a consolidated return) and the transferred corporation disposes of substantially all of its assets (taking into account § 1.367(a)-3(d)(2)(v)) in a transaction in which all realized gain is recognized currently.

(3) *Distribution by transferee foreign corporation of stock of transferred corporation that qualifies under section 355 or section 337.* If, during the term of the gain recognition agreement, the transferee foreign corporation distributes to the U.S. transferor, in a transaction that qualifies under section 355, or in a liquidating distribution that qualifies under sections 332 and 337, the stock that initially necessitated the filing of the gain recognition agreement (and any additional stock received after the initial transfer), the gain recognition agreement shall terminate and have no further effect, provided that immediately after the section 355 distribution or section 332 liquidation, the U.S. transferor's basis in the transferred stock is less than or equal to the basis that it had in the transferred stock immediately prior to the initial transfer that necessitated the GRA.

(i) *Effective date.* The rules of this section shall apply to transfers that occur on or after July 20, 1998. For matters covered in this section for periods before July 20, 1998, the corresponding rules of § 1.367(a)-3T(g) (see 26 CFR part 1, revised April 1, 1998) and Notice 87-85 ((1987-2 C.B. 395); see § 601.601(d)(2)(ii) of this chapter) apply. In addition, if a U.S. transferor entered into a gain recognition agreement for transfers prior to July 20, 1998, then the rules of § 1.367(a)-3T(g) (see 26 CFR part 1, revised April 1, 1998) shall continue to apply in lieu of this section in the event of any direct or indirect non-recognition transfer of the same property. See, also, § 1.367(a)-3(f).

[T.D. 8770, 63 FR 33562, June 19, 1998]

§ 1.367(b)-0 Table of contents.

This section lists the paragraphs contained in §§ 1.367(b)-1 through 1.367(b)-6 and 1.367(b)-12.

§ 1.367(b)-1 Other transfers.

- (a) Scope.
- (b) General rules.
 - (1) Rules.
 - (2) Example.
- (c) Notice required.
 - (1) In general.
 - (2) Persons subject to section 367(b) notice.
 - (3) Time and manner for filing notice.
 - (i) United States persons described in § 1.367(b)-1(c)(2).
 - (ii) Foreign corporations described in § 1.367(b)-1(c)(2).
 - (4) Information required.
 - (5) Abbreviated notice provision for shareholders that make the election described in § 1.367(b)-3(c)(3).
 - (6) Supplemental published guidance.

§ 1.367(b)-2 Definitions and special rules.

- (a) Controlled foreign corporation.
- (b) Section 1248 shareholder.
- (c) Section 1248 amount.
 - (1) Rule.
 - (2) Examples.
- (d) All earnings and profits amount.
 - (1) General rule.
 - (2) Rules for determining earnings and profits.
 - (i) Domestic rules generally applicable.
 - (ii) Certain adjustments to earnings and profits.
 - (iii) Effect of section 332 liquidating distribution.
 - (3) Amount attributable to a block of stock.
 - (i) Application of section 1248 principles.
 - (A) In general.
 - (f) Rule.
 - (2) Example.
 - (B) Foreign shareholders.
 - (ii) Limitation on amounts attributable to holding periods determined under section 1223.
 - (A) Rule.
 - (B) Example.
 - (iii) Exclusion of lower-tier earnings.
- (e) Treatment of deemed dividends.
 - (1) In general.
 - (2) Consequences of dividend characterization.
 - (3) Ordering rules.
 - (4) Examples.
 - (f) Deemed asset transfer and closing of taxable year in certain section 368(a)(1)(F) reorganizations.
 - (1) Scope.
 - (2) Deemed asset transfer.
 - (3) Other applicable rules.
 - (4) Closing of taxable year.

§ 1.367(b)-0

26 CFR Ch. I (4-1-04 Edition)

- (g) Stapled stock under section 269B.
- (h) Section 953(d) domestication elections.
 - (1) Effect of election.
 - (2) Post-election exchanges.
- (i) Section 1504(d) elections.
- (j) Sections 985 through 989.
 - (1) Change in functional currency of a qualified business unit.
 - (i) Rule.
 - (ii) Example.
 - (2) Previously taxed earnings and profits.
 - (i) Exchanging shareholder that is a United States person.
 - (ii) Exchanging shareholder that is a foreign corporation.
 - (3) Other rules.
- (k) Partnerships, trusts and estates.

§ 1.367(b)-3 Repatriation of foreign corporate assets in certain nonrecognition transactions.

- (a) Scope.
 - (b) Exchange of stock owned directly by a United States shareholder or by certain foreign corporate shareholders.
 - (1) Scope.
 - (2) United States shareholder.
 - (3) Income inclusion.
 - (i) Inclusion of all earnings and profits amount.
 - (ii) Examples.
 - (iii) Recognition of exchange gain or loss with respect to capital. [Reserved]
 - (4) [Reserved]
 - (c) Exchange of stock owned by a United States person that is not a United States shareholder.
 - (1) Scope.
 - (2) Requirement to recognize gain.
 - (3) Election to include all earnings and profits amount.
 - (4) De minimis exception.
 - (5) Examples.
 - (d) Carryover of certain foreign taxes.
 - (1) Rule.
 - (2) Example.

§ 1.367(b)-4 Acquisition of foreign corporate stock or assets by a foreign corporation in certain nonrecognition transactions.

- (a) Scope.
- (b) Income inclusion.
 - (1) Exchange that results in loss of status as section 1248 shareholder.
 - (i) Rule.
 - (ii) Examples.
 - (2) Receipt by exchanging shareholder of preferred or other stock in certain instances.
 - (i) Rule.
 - (ii) Examples.
 - (3) Certain recapitalizations.
- (c) Exclusion of deemed dividend from foreign personal holding company income.
 - (1) Rule.
 - (2) Example.
 - (d) Rules for subsequent exchanges.
 - (1) In general.

- (2) Subsequent dispositions by a foreign acquiring corporation.
- (3) Examples.

§ 1.367(b)-5 Distributions of stock described in section 355.

- (a) In general.
 - (1) Scope.
 - (2) Treatment of distributees as exchanging shareholders.
 - (b) Distribution by a domestic corporation.
 - (1) General rule.
 - (2) Section 367(e) transactions.
 - (3) Determining whether distributees are individuals.
 - (4) Applicable cross-references.
 - (c) Pro rata distribution by a controlled foreign corporation.
 - (1) Scope.
 - (2) Adjustment to basis in stock and income inclusion.
 - (3) Interaction with § 1.367(b)-2(e)(3)(ii).
 - (4) Basis redistribution.
 - (d) Non-pro rata distribution by a controlled foreign corporation.
 - (1) Scope.
 - (2) Treatment of certain shareholders as distributees.
 - (3) Inclusion of excess section 1248 amount by exchanging shareholder.
 - (4) Interaction with § 1.367(b)-2(e)(3)(ii).
 - (i) Limited application.
 - (ii) Interaction with predistribution amount.
 - (e) Definitions.
 - (1) Predistribution amount.
 - (2) Postdistribution amount.
 - (f) Exclusion of deemed dividend from foreign personal holding company income.
 - (g) Examples.

§ 1.367(b)-6 Effective dates and coordination rules.

- (a) Effective date.
 - (1) In general.
 - (2) Exception.
 - (b) Certain recapitalizations described in § 1.367(b)-4(b)(3).
 - (c) Use of reasonable method to comply with prior published guidance.
 - (1) Prior exchanges.
 - (2) Future exchanges.
 - (d) Effect of removal of attribution rules.

§ 1.367(b)-12 Subsequent treatment of amounts attributed or included in income.

- (a) In general.
- (b) Applicable rules.
- (c) Effective date.

[T.D. 8862, 65 FR 3596, Jan. 24, 2000; 65 FR 66501, Nov. 6, 2000, as amended by T.D. 8937, 66 FR 2257, Jan. 11, 2001]