(ii) *Result*—(A) FD's distribution is a transaction described in paragraph (d)(1) of this section. Under paragraph (d)(2) of this section, USS1 is considered a distributee of FD stock. Under paragraph (d)(3) of this section, USS1 and USS2 must compare their predistribution amounts with respect to FD and FC stock to their respective postdistribution amounts. Under paragraph (e)(1) of this section, USS1's predistribution amount with respect to FD or FC is USS1's section 1248 amount computed immediately before the distribution, but only to the extent such amount is attributable to FD or FC. USS2's predistribution amount is determined in the same manner. Under §1.367(b)–2(c)(1), USS1 and USS2 each have a section 1248 amount computed immediately before the distribution of $250, all of which is attributable to FC. Thus, USS1 and USS2 each have a predistribution amount with respect to FD of $0, and each have a predistribution amount with respect to FC of $250. These amounts are computed as follows: If either USS1 or USS2 had sold its FD stock immediately before the transaction, it would have recognized $250 of gain ($750 fair market value—$500 basis). All of the gain would have been treated as a dividend under section 1248, and all of the section 1248 amount would have been attributable to FC (based on USS1's and USS2's pro rata shares of FC's earnings and profits (50 percent × $500)).

(B) Under paragraph (d)(3) of this section, a distributee that owns no stock in the distributing or controlled corporation immediately after the distribution has a postdistribution amount with regard to that stock of zero. Accordingly, USS2 has a postdistribution amount of $0 with respect to FD and USS1 has a postdistribution amount of $0 with respect to FC. Under paragraph (e)(2) of this section, USS1's postdistribution amount with respect to FD is its section 1248 amount with respect to such corporation, computed immediately after the distribution (but without regard to paragraph (d) of this section). USS2's postdistribution amount with respect to FC is determined in the same manner. Under §1.367(b)–2(c)(1), USS1's section 1248 amount computed immediately after the distribution with respect to FD is $0 and USS2's section 1248 amount computed immediately after the distribution with respect to FC is $250. These amounts, which are USS1's and USS2's postdistribution amounts, are computed as follows: After the non-pro rata distribution, USS1 owns all the stock of FD and USS2 owns all the stock of FC. If USS1 sold its FD stock immediately after the distribution, none of the resulting $250 gain ($750 fair market value $500 basis) would be treated as a dividend under section 1248. If USS2 sold its FC stock immediately after the distribution, it would have a $250 gain ($750 fair market value—$500 basis), all of which would be treated as a dividend under section 1248.

(C) The income inclusion rule of paragraph (d)(3) of this section applies to the extent of any difference between USS1's and USS2's postdistribution and predistribution amounts. In the case of USS2, there is no difference between the two amounts with respect to either FD or FC and, as a result, no income inclusion is required. In the case of USS1, there is no difference between the two amounts with respect to its FD stock. However, USS1's postdistribution amount with respect to FC is $250 less than its predistribution amount. Accordingly, under paragraph (d)(3) of this section, USS1 is required to include $250 in income as a deemed dividend. Under §1.367(b)–2(e)(2), the $250 deemed dividend is considered as having been paid by FC to FD, and by FD to USS1, immediately prior to the distribution. This deemed dividend increases USS1's basis in FD ($500 + $250 = $750). Under paragraph (f) of this section, the deemed dividend is not included by FD as foreign personal holding company income under section 954(c).

[T.D. 8862, 65 FR 3606, Jan. 24, 2000; 65 FR 66502, Nov. 6, 2000]

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

(a) *Effective date*—(1) *In general.* Sections 1.367(b)–1 through 1.367(b)–5, and this section, apply to section 367(b) exchanges that occur on or after February 23, 2000.

(2) *Exception.* A taxpayer may, however, elect to have §§1.367(b)–1 through 1.367(b)–5, and this section, apply to section 367(b) exchanges that occur (or occurred) before February 23, 2000, if the due date for the taxpayer's timely filed Federal tax return (including extensions) for the taxable year in which the section 367(b) exchange occurs (or occurred) is after February 23, 2000. The election under this paragraph (a)(2) will be valid only if—

(i) The electing taxpayer makes the election on a timely filed section 367(b) notice;

(ii) In the case of an exchanging shareholder that is a foreign corporation, the election is made on the section 367(b) notice that is filed by each of its shareholders listed in §1.367(b)–1(c)(3)(ii); and

(iii) The electing taxpayer provides notice of the election to all corporations (or their successors in interest) whose earnings and profits are affected

by the election on or before the date the section 367(b) notice is filed.

(b) *Certain recapitalizations described in §1.367(b)–4(b)(3).* In the case of a recapitalization described in §1.367(b)–4(b)(3) that occurred prior to July 20, 1998, the exchanging shareholder shall include the section 1248 amount on its tax return for the taxable year that includes the exchange described in §1.367(b)–4(b)(3)(i) (and not in the taxable year of the recapitalization), except that no inclusion is required if both the recapitalization and the exchange described in §1.367(b)–4(b)(3)(i) occurred prior to July 20, 1998.

(c) *Use of reasonable method to comply with prior published guidance*—(1) *Prior exchanges.* The taxpayer may use a reasonable method to comply with the following prior published guidance to the extent such guidance relates to section 367(b): Notice 88–71 (1988–2 C.B. 374); Notice 89–30 (1989–1 C.B. 670); and Notice 89–79 (1989–2 C.B. 392) (see §601.601(d)(2) of this chapter). This rule applies to section 367(b) exchanges that occur (or occurred) before February 23, 2000, or, if a taxpayer makes the election described in paragraph (a)(2) of this section, for section 367(b) exchanges that occur (or occurred) before the date described in paragraph (a)(2) of this section. This rule also applies to section 367(b) exchanges and distributions described in paragraph (d) of this section.

(2) *Future exchanges.* Section 367(b) exchanges that occur on or after February 23, 2000, (or, if a taxpayer makes the election described in paragraph (a)(2) of this section, for section 367(b) exchanges that occur on or after the date described in paragraph (a)(2) of this section) are governed by the section 367(b) regulations and, as a result, paragraph (c)(1) of this section shall not apply.

(d) *Effect of removal of attribution rules.* To the extent that the rules under §§7.367(b)–9 and 7.367(b)–10(h) of this chapter, as in effect prior to February 23, 2000 (see 26 CFR part 1, revised as of April 1, 1999), attributed earnings and profits to the stock of a foreign corporation in connection with an exchange described in section 351, 354, 355, or 356 before February 23, 2000, the foreign corporation shall continue to be subject to the rules of §7.367(b)–12 of this chapter in the event of any subsequent exchanges and distributions with respect to such stock, notwithstanding the fact that such subsequent exchange or distribution occurs on or after the effective date described in paragraph (a) of this section.

[T.D. 8862, 65 FR 3608, Jan. 24, 2000]

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

(a) *In general.* This section applies to distributions with respect to, or a disposition of, stock—

(1) To which, in connection with an exchange occurring before February 23, 2000, an amount has been attributed pursuant to §7.367(b)–9 or 7.367(b)–10 of this chapter (as in effect prior to February 23, 2000, see 26 CFR part 1 revised as of April 1, 1999); or

(2) In respect of which, before February 23, 2000, an amount has been included in income or added to earnings and profits pursuant to §7.367(b)–7 or §7.367(b)–10 of this chapter (as in effect prior to February 23, 2000, see 26 CFR part 1 revised as of April 1, 1999).

(b) *Applicable rules.* See §7.367(b)–12(b) through (e) of this chapter (as in effect prior to January 11, 2001, see 26 CFR part 1 revised as of April 1, 2000) for purposes of applying paragraph (a) of this section.

(c) *Effective date.* This section applies to distributions or dispositions that occur on or after January 11, 2001.

[T.D. 8937, 66 FR 2257, Jan. 11, 2001]

§1.367(d)–1T Transfers of intangible property to foreign corporations (temporary).

(a) *Purpose and scope.* This section provides rules under section 367(d) concerning transfers of intangible property by U.S. persons to foreign corporations pursuant to section 351 or 361. Paragraph (b) of this section specifies the transfers that are subject to section 367(d) and the rules of this section, while paragraph (c) provides rules concerning the consequences of such a transfer. In general, the U.S. transferor will be treated as receiving annual payments contingent on productivity or use of the transferred property, over the useful life of the property (regardless of whether such payments are in