

**§ 1.367(e)-0**

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

required to be recognized immediately under paragraph (d), (f), or (g)(2) of this section, the fair market value of transferred property shall be the single payment arm's-length price that would be paid for the property by an unrelated purchaser determined in accordance with the principles of section 482 and regulations thereunder. The allocation of a portion of the purchase price to intangible property agreed to by the parties to the transaction shall not necessarily be controlling for this purpose.

(6) *Anti-abuse rule.* If a U.S. person—

(i) Transfers intangible property to a domestic corporation with a principal purpose of avoiding the effect of section 367(d) and the rules of this section; and

(ii) Thereafter transfers the stock of that domestic corporation to a related foreign corporation,

then solely for purposes of section 367(d) that U.S. person shall be treated as having transferred the intangible property directly to the foreign corporation. A U.S. person shall be presumed to have transferred intangible property for a principal purpose of avoiding the effect of section 367(d) if the property is transferred to the domestic corporation less than two years prior to the transfer of the stock of that domestic corporation to a foreign corporation. The presumption created by the previous sentence may be rebutted by clear evidence that the subsequent transfer of the stock of the domestic transferee corporation was not contemplated at the time the intangible property was transferred to that corporation and that avoidance of section 367(d) and the rules of this section was not a principal purpose of the transaction. A transfer may have more than one principal purpose.

(h) *Related person.* For purposes of this section, persons are considered to be related if—

(1) They are partners or partnerships described in section 707(b)(1) of the Code; or

(2) They are related within the meaning of section 267 (b), (c), and (f) of the Code, except that—

(i) "10 percent or more" shall be substituted for "more than 50 percent" each place it appears; and

(ii) Section 1563 shall apply (for purposes of section 267(d)), without regard to section 1563(b)(2).

(i) *Effective date.* Except as specifically provided to the contrary elsewhere in this section, this section applies to transfers occurring after December 31, 1984.

[T.D. 8087, 51 FR 17953, May 16, 1986, as amended by T.D. 8770, 63 FR 33568, June 19, 1998]

**§ 1.367(e)-0 Outline of §§ 1.367(e)-1 and 1.367(e)-2.**

This section lists captioned paragraphs contained in §§ 1.367(e)-1 and 1.367(e)-2 as follows:

*§ 1.367(e)-1 Distributions described in section 367(e)(1).*

- (a) Purpose and scope.
- (b) Gain recognition.
  - (1) General rule.
  - (2) Stock owned through partnerships, disregarded entities, trusts, and estates.
  - (3) Gain computation.
  - (4) Treatment of distributee.
- (c) Nonrecognition of gain.
- (d) Determining whether distributees are qualified U.S. persons.
  - (1) General rule—presumption of foreign status.
  - (2) Non-publicly traded distributing corporations.
  - (3) Publicly traded distributing corporations.
    - (i) Five percent shareholders.
    - (ii) Other distributees.
  - (4) Qualified exchange or other market.
  - (e) Reporting under section 6038B.
  - (f) Effective date.

*§ 1.367(e)-2 Distributions described in section 367(e)(2).*

- (a) Purpose and scope.
  - (1) In general.
  - (2) Nonapplicability of section 367(a).
- (b) Distribution by a domestic corporation.
  - (1) General rule.
  - (i) Recognition of gain and loss.
  - (ii) Operating rules.
    - (A) General rule.
    - (B) Overall loss limitation.
    - (f) Overall loss limitation rule.
    - (2) Example.
  - (C) Special rules for built-in gains and losses attributable to property received in liquidations and reorganizations.
  - (iii) Distribution of partnership interest.
    - (A) General rule.
    - (B) Gain or loss calculation. [Reserved]
    - (C) Basis adjustments.
    - (D) Publicly traded partnerships.
  - (2) Exceptions.

(i) Distribution of property used in a U.S. trade or business.

- (A) Conditions for nonrecognition.
- (B) Qualifying property.
- (C) Required statement.
- (f) Declaration and certification.
- (2) Property description.
- (3) Distributee identification.
- (4) Treaty benefits waiver.
- (5) Statute of limitations extension.
- (D) Failure to file statement.
- (E) Operating rules.

(f) Gain or loss recognition by the foreign distributee corporation.

- (i) Taxable dispositions.
- (ii) Other triggering events.
- (2) Gain recognition by the domestic liquidating corporation.
- (i) General rule.
- (ii) Amended return.
- (iii) Interest.
- (iv) Joint and several liability.
- (3) Schedule for property no longer used in a U.S. trade or business.
- (4) Nontriggering events.

(i) Conversions, certain exchanges, and abandonment.

- (ii) Amendment to Master Property Description
- (5) Nontriggering transfers to qualified transferees.

(ii) Distribution of certain U.S. real property interests.

(iii) Distribution of stock of domestic subsidiary corporations.

- (A) Conditions for nonrecognition.
- (B) Exceptions when the liquidating corporation is a U.S. real property holding corporation.

- (C) Anti-abuse rule.
- (D) Required statement.
- (3) Other consequences.

(i) Distributee basis in property.

- (ii) Reporting under section 6038B.
- (iii) Other rules.

(c) Distribution by a foreign corporation.

- (1) General rule—gain and loss not recognized.
- (2) Exceptions.
- (i) Property used in a U.S. trade or business.

- (A) General rule.
- (B) Ten-year active U.S. business exception.

- (C) Required statement.
- (D) Operating rules.

(ii) Property formerly used in a U.S. trade or business.

- (3) Other consequences.
- (i) Distributee basis in property.
- (ii) Other rules.
- (d) Anti-abuse rule.
- (e) Effective date.

[T.D. 8834, 64 FR 43075, Aug. 9, 1999]

### § 1.367(e)-1 Distributions described in section 367(e)(1).

(a) *Purpose and scope.* This section provides rules for recognition (and nonrecognition) of gain by a domestic corporation (distributing corporation) on a distribution of stock or securities of a corporation (controlled corporation) to foreign persons that is described in section 355. Paragraph (b) of this section contains the general rule that gain is recognized on the distribution to the extent stock or securities of controlled are distributed to foreign persons. Paragraph (c) of this section provides an exception to the gain recognition rule for distributions of stock or securities of a domestic corporation. Paragraph (d) of this section contains rules for determining whether distributees of stock or securities in a section 355 distribution are qualified U.S. persons. Paragraph (e) of this section cross-references section 6038B for certain reporting obligations. Finally, paragraph (f) of this section specifies the effective date of this section.

(b) *Gain recognition—(1) General rule.* If a domestic corporation makes a distribution of stock or securities of a corporation that qualifies for nonrecognition under section 355 to a person who is not a qualified U.S. person, then, except as provided in paragraph (c) of this section, the distributing corporation shall recognize gain (but not loss) on the distribution under section 367(e)(1). A distributing corporation shall not recognize gain under this section with respect to a section 355 distribution to a qualified U.S. person. For purposes of this section, a qualified U.S. person is—

(A) A citizen or resident of the United States; or

(B) A domestic corporation.

(2) *Stock owned through partnerships, disregarded entities, trusts, and estates.* For purposes of this section, distributing corporation stock or securities owned by or for a partnership (whether foreign or domestic) are owned proportionately by its partners. A partner's proportionate share of the stock or securities of the distributing corporation shall be equal to the partner's distributive share of the gain that would have been recognized had the partnership