(A) Identification of the applicable presently effective rate schedules, when no additional tariff filings will be required, or

(B) When changes are required in applicant's presently effective tariff, or if applicant has no tariff, pro forma copies of appropriate changes in or additions to the effective tariff or a pro forma copy of the new gas tariff proposed, or

(C) When a new rate is proposed, a statement explaining the basis used in arriving at the proposed rate. Such statement shall clearly show whether such rate results from negotiation, cost-of-service determination, competitive factors or others, and shall give the nature of any studies which have been made in connection therewith.

(ii) When new rates or changes in present rates are proposed or when the proposed facilities will result in a material change in applicant's average cost of service, such statement shall be accompanied by supporting data showing:

(A) System cost of service for the first calendar year of operation after the proposed facilities are placed in service.

(B) An allocation of such costs to each particular service classification, with the basis for each allocation clearly stated.

(C) The proposed rate base and rate of return.

(D) Gas operating expenses, segregated functionally by accounts.

(E) Depletion and depreciation.

(F) Taxes with the basis upon which computed.

* * * * *

[FR Doc. 2016–06288 Filed 3–21–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Part 113

[CBP Dec. 15–15, USCBP–2006–0013]

RIN 1515–AD56 [Formerly 1505–AB54]

Customs and Border Protection's Bond Program; Correction

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule; correction.

SUMMARY: U.S. Customs and Border Protection (CBP) published in the **Federal Register** of November 13, 2015, a final rule amending CBP's bond regulations. In that rule, CBP amended the regulation prescribing bond and rider filing requirements and stated, in the preamble, that the agency's intent was to provide additional time for the filing of these documents prior to their effective date. Due to a drafting error, one of the provisions inadvertently provides for a more restrictive time frame for filing a continuous bond, associated application, or rider prior to their effective date. This document corrects that provision to conform it to CBP's stated intent to liberalize the bond and rider filing process.

DATES: Effective on March 22, 2016.

FOR FURTHER INFORMATION CONTACT: Kara Welty, Revenue Division, Office of Administration, Customs and Border Protection, Tel. (317) 614–4614.

SUPPLEMENTARY INFORMATION: On November 13, 2015, U.S. Customs and Border Protection (CBP) published in the **Federal Register** (80 FR 70154), as CBP Dec. 15–15, a final rule amending title 19 of the Code of Federal Regulations (19 CFR) regarding CBP's bond regulations. In that document, CBP amended 19 CFR 113.26(a), which pertains to when bonds and riders must be filed prior to their effective date, to provide that ''A continuous bond, and any associated application required by § 113.11 or a rider, must be filed at least 60 days prior to the effective date requested for the continuous bond or rider.''

Prior to the amendments effectuated by CBP Dec. 15–15, § 113.26(a) permitted filing of a bond or rider up to 30 days before the bond's effective date. CBP's intent, as stated in the preamble to CBP Dec. 15–15 at pages 70156 and 70160 of the November 13, 2015, **Federal Register** document, was to liberalize § 113.26(a) to allow the filing of bonds and riders up to 60 days prior to the bond's effective date. This document corrects 19 CFR 113.26(a) to clarify that bonds and riders may be filed up to 60 days prior to the effective date requested for the continuous bond or rider.

List of Subjects in 19 CFR Part 113

Bonds, Copyrights, Counterfeit goods, Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Restricted merchandise, Seizures and forfeitures.

Amendment to CBP Regulations

For reasons discussed in the preamble, CBP amends 19 CFR part 113 with the following correcting amendment:

PART 113—CBP BONDS

■ 1. The authority citation for part 113 continues, in part, to read as follows:

Authority: 6 U.S.C. 101, *et seq.*; 19 U.S.C. 66, 1623, 1624.

■ 2. In § 113.26, revise paragraph (a) to read as follows:

§ 113.26 Effective dates of bonds and riders.

(a) *General.* A continuous bond, and any associated application required by § 113.11, or rider, may be filed up to 60 days prior to the effective date requested for the continuous bond or rider.

* * * * *

Alice A. Kipel,

Executive Director, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection.

Approved: March 15, 2016.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2016–06323 Filed 3–21–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9760]

RIN 1545–BJ74

Indirect Stock Transfers and the Coordination Rule Exceptions; Transfers of Stock or Securities in Outbound Asset Reorganizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations under sections 367, 1248, and 6038B of the Internal Revenue Code (Code). These regulations finalize the elimination of one of two exceptions to the coordination rule between asset transfers and indirect stock transfers for certain outbound asset reorganizations. The regulations also finalize modifications to the exception to the coordination rule for section 351 exchanges so that it is consistent with the remaining asset reorganization exception. In addition, the regulations finalize modifications to the procedures for obtaining relief for failures to satisfy certain reporting requirements. Finally, the regulations finalize certain changes with respect to transfers of stock or securities by a domestic corporation to a foreign corporation in a section 361

exchange. These regulations primarily affect domestic corporations that transfer property to foreign corporations in certain outbound nonrecognition exchanges.

DATES: *Effective Date:* These regulations are effective on March 22, 2016.

Applicability Dates: For dates of applicability, see §§ 1.367(a)–3(g)(1)(vii), 1.367(a)–3(g)(1)(ix), 1.367(a)–6(e)(4), 1.1248(f)–3(b)(1), and 1.6038B–1(g)(5).

FOR FURTHER INFORMATION CONTACT: Joshua G. Rabon at (202) 317–6937 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

On August 20, 2008, the Department of the Treasury (Treasury Department) and the IRS published proposed regulations (REG–209006–89) under sections 367, 1248, and 6038B of the Code (2008 proposed regulations) in the **Federal Register** (73 FR 49278) concerning transfers of property by a domestic corporation to a foreign corporation in an exchange described in section 361(a) or (b) and certain nonrecognition distributions of stock of a foreign corporation by a domestic corporation. The 2008 proposed regulations were substantially finalized on March 19, 2013, when the Treasury Department and the IRS published final regulations (TD 9614) in the **Federal Register** (78 FR 17024). However, the Treasury Department and the IRS simultaneously published the temporary regulations (TD 9615) in the **Federal Register** on March 19, 2013 (78 FR 17,053) (2013 temporary regulations) eliminating one of the two exceptions to the coordination rule between asset transfers and indirect stock transfers for certain outbound asset reorganizations, as well as modifying the one exception to the coordination rule for section 351 exchanges so that it is consistent with the remaining outbound asset reorganization exception. The 2013 temporary regulations also addressed the transfer of stock or securities by a domestic corporation to a foreign corporation in a section 361 exchange, as well as modified, in various contexts, procedures for obtaining relief for failures to satisfy certain reporting requirements. A notice of proposed rulemaking (REG–132702–10) cross-referencing the 2013 temporary regulations and incorporating the text of the 2013 temporary regulations was also published in the **Federal Register** on March 19, 2013 (78 FR 17066). A portion of the 2013 temporary regulations modifying the procedures for obtaining relief for failures to satisfy certain reporting requirements was amended and removed by final regulations (TD 9704) that were published in the **Federal Register** on November 19, 2014 (79 FR 68763). No requests for a public hearing were received regarding the 2013 temporary regulations, and accordingly no hearing was held. The text of these regulations is substantially identical to to the 2013 temporary regulations.

The Treasury Department and the IRS received one comment regarding the remaining exceptions to the coordination rule. In general, the coordination rule provides that if, in connection with an indirect stock transfer, a U.S. person (U.S. transferor) transfers assets to a foreign corporation (foreign acquiring corporation) in an exchange described in section 351 or 361, section 367 applies first to the asset transfer and then to the indirect stock transfer. Pursuant to the exceptions to the coordination rule, sections 367(a) and (d) will not apply to the outbound transfer of assets by the U.S. transferor to the foreign acquiring corporation to the extent those assets (re-transferred assets) are transferred by the foreign acquiring corporation to a domestic corporation in certain nonrecognition transactions, provided certain conditions are satisfied. Both of the remaining exceptions require that the transferee domestic corporation's adjusted basis in the re-transferred assets not be greater than the U.S. transferor's adjusted basis in those assets, disregarding any basis increase attributable to gain or income recognized by the U.S. transferor on the outbound asset transfer (basis comparison test).

The commenter first inquired whether the remaining coordination rule exceptions apply on a transaction-by-transaction basis such that the conditions of an exception, including the basis comparison test, must be satisfied with respect to all the re-transferred assets, or, alternatively, whether the exceptions apply on an asset-by-asset basis such that the conditions of an exception may be satisfied with respect to a portion of the re-transferred assets. The Treasury Department and the IRS have determined that the regulations clearly provide that the coordination rule exceptions apply to a transaction in its entirety and not on an asset-by-asset basis. See, for example, paragraph (d)(3) of Example 6C of the 2013 temporary regulations, illustrating the application of the coordination rule and the relevant exception using a transaction-based analysis. Thus, the 2013 temporary regulations are not clarified in response to this comment.

Given this transaction-based treatment, the commenter then requested a modification to the aspect of the basis comparison test that disregards an increase in basis in the re-transferred assets in the hands of the transferee domestic corporation that is attributable to gain or income recognized by the U.S. transferor on the outbound transfer of the re-transferred assets to the foreign acquiring corporation. The comment requested that the rule be extended to disregard a basis increase in the re-transferred assets that is attributable to gain or income recognized by the foreign acquiring corporation on the transfer of the re-transferred assets to the transferee domestic corporation when that gain or income is subject to U.S. tax (such as gain recognized by the foreign acquiring corporation with respect to U.S. real property that is subject to U.S. tax under section 897). These regulations do not provide for such an extension.

The coordination rule exceptions were first introduced in proposed regulations (INTL–54–91) published in the **Federal Register** on August 26, 1991 (56 FR 41993). The basis comparison test was introduced later, in final regulations (TD 8770) published in the **Federal Register** on June 19, 1998 (63 FR 33550). Proposed regulations (REG–125628–01) published in the **Federal Register** on January 5, 2005 (70 FR 746) proposed further revisions to the coordination rule exceptions in response to concerns ''that asset reorganizations subject to this coordination rule may be used to facilitate corporate inversion transactions.'' Those 2005 proposed regulations were finalized on January 26, 2006, when the Treasury Department and the IRS published final regulations (TD 9243) in the **Federal Register** (71 FR 4276). Although the 2008 proposed regulations included a proposal to further refine one of the coordination rule exceptions in response to transactions utilizing that exception to inappropriately repatriate earnings and profits of foreign corporations, the proposed refinement was not included in the final regulations published on March 19, 2013. Instead, the 2013 temporary regulations eliminated this particular exception to the coordination rule and noted that the ''Treasury Department and the IRS have, over time, clarified and modified the coordination rule exceptions to address various transactions that give rise to policy concerns.''

The Treasury Department and the IRS remain concerned that the coordination rule exceptions may be utilized to inappropriately reduce U.S. tax, and therefore decline to liberalize the basis comparison test. The basis comparison test ensures preservation of the gain realized but not recognized by a U.S. transferor in re-transferred assets in the hands of a transferee domestic corporation by ensuring that the assets re-transferred into U.S. corporate solution retain identical tax attributes to the assets transferred to the foreign acquiring corporation. To the extent such assets do not have the same basis in the hands of the transferee domestic corporation and the basis adjustment is not attributable to gain recognized by the U.S. transferor, then the basis adjustment presumably results from transactions occurring in foreign corporate solution (including gain recognized under section 897). The Treasury Department and the IRS believe the coordination rule exceptions should not permit shifting of gain or income to a foreign corporation (even when the gain or income is subject to U.S. tax) as it may permit the U.S. transferor to inappropriately utilize the foreign corporation's favorable tax attributes available to offset the gain or income.

Accordingly, the text of the 2013 temporary regulations is adopted without substantive revision. The text is updated where appropriate for ministerial purposes. For example, the appropriate title for the LB&I officer responsible for determining whether a failure to comply with the reporting requirements was due to reasonable cause and not willful neglect is ''Director of Field Operations, Cross Border Activities Practice Area of Large Business & International.'' It is expected that future guidance projects will update titles in other sections of the existing regulations as appropriate. The corresponding 2013 temporary regulations are removed.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. It is hereby certified that the collections of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. These regulations primarily will affect United States persons that are large corporations engaged in corporate transactions among their controlled corporations. Thus, the number of affected small entities—in any of the three categories defined in the Regulatory Flexibility Act (small businesses, small organizations, and small governmental jurisdictions)—will not be substantial. The Treasury Department and the IRS estimate that small organizations and small governmental jurisdictions are likely to be affected only insofar as they transfer the stock of a controlled corporation to a related corporation. While a certain number of small entities may engage in such transactions, the Treasury Department and the IRS do not anticipate the number to be substantial. Pursuant to section 7805(f) of the Code, the NPRM preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Joshua G. Rabon of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.367(a)–3 is also issued under 26 U.S.C. 367(a).

* * * * *

■ Par. 2. Section 1.367(a)–3 is amended by:

■ 1. Revising paragraph (d)(2)(vi)(B).
■ 2. Revising paragraph (d)(3), *Examples 6B, 6C,* and *9.*
■ 3. Revising paragraph (e).
■ 4. Revising paragraph (g)(1)(vii)(A).
■ 5. Adding paragraph (g)(1)(ix).

The revisions and addition read as follows:

§ 1.367(a)–3 Treatment of transfers of stock or securities to foreign corporations.

* * * * *

(d) * * *

(2) * * *

(vi) * * *

(B) *Exceptions*—(*1*) If a transaction is described in paragraph (d)(2)(vi)(A) of this section, section 367(a) and (d) will not apply to the extent a domestic corporation (domestic acquired corporation) transfers assets to a foreign corporation (foreign acquiring corporation) in an asset reorganization, and those assets (re-transferred assets) are transferred to a domestic corporation (domestic controlled corporation) in a controlled asset transfer, provided that each of the following conditions is satisfied:

(*i*) The domestic controlled corporation's adjusted basis in the re-transferred assets is not greater than the domestic acquired corporation's adjusted basis in those assets. For this purpose, any increase in basis in the re-transferred assets that results because the domestic acquired corporation recognized gain or income with respect to the re-transferred assets in the transaction is not taken into account.

(*ii*) The domestic acquired corporation includes a statement described in paragraph (d)(2)(vi)(C) of this section with its timely filed U.S. income tax return for the taxable year of the transfer; and

(*iii*) The requirements of paragraphs (c)(1)(i), (ii), and (iv) and (c)(6) of this section are satisfied with respect to the indirect transfer of stock in the domestic acquired corporation.

(*2*) Sections 367(a) and (d) shall not apply to transfers described in paragraph (d)(1)(vi) of this section if a U.S. person transfers assets to a foreign corporation in a section 351 exchange, to the extent that such assets are transferred by such foreign corporation to a domestic corporation in another section 351 exchange, but only if the domestic transferee's adjusted basis in the assets is not greater than the adjusted basis that the U.S. person had in such assets. Any increase in adjusted basis in the assets that results because the U.S. person recognized gain or income with respect to such assets in the initial section 351 exchange is not taken into account for purposes of determining whether the domestic transferee's adjusted basis in the assets is not greater than the U.S. person's adjusted basis in such assets. This paragraph (d)(2)(vi)(B)(*2*) will not, however, apply to an exchange described in section 351 that is also an exchange described in section 361(a) or (b). An exchange described in section 351 that is also an exchange described in section 361(a) or (b) is only eligible for the exception in paragraph (d)(2)(vi)(B)(*1*) of this section.

* * * * *

(3) * * *

Example 6B. Section 368(a)(1)(C) reorganization followed by a controlled asset *transfer to a domestic controlled corporation*—(i) *Facts.* The facts are the same as in paragraph (d)(3), *Example 6A,* of this section, except that R is a domestic corporation.

(ii) *Result.* As in paragraph (d)(3), *Example 6A,* of this section, the outbound transfer of the Business A assets to F is not affected by the rules of § 1.367–3(d) and is subject to the general rules under section 367. Subject to the conditions and requirements of section 367(a)(5) and § 1.367(a)–7(c), the Business A assets qualify for the section 367(a)(3) active trade or business exception and are not subject to section 367(a)(1). The Business B and C assets are part of an indirect stock transfer under § 1.367–3(d), but must first be tested under section 367(a) and (d). The Business B assets qualify for the active trade or business exception under section 367(a)(3); the Business C assets do not. However, pursuant to paragraph (d)(2)(vi)(B)(*1*) of this section, the Business B and C assets are not subject to section 367(a) or (d), provided that the basis of the Business B and C assets in the hands of R is not greater than the basis of the assets in the hands of Z, the requirements of paragraphs (c)(1)(i), (ii), and (iv) and (c)(6) of this section are satisfied, and Z attaches a statement described in paragraphs (d)(2)(vi)(C) of this section to its U.S. income tax return for the taxable year of the transfer. V also is deemed to make an indirect transfer of Z stock under the rules of paragraph (d) of this section to the extent the assets are transferred to R. To preserve non-recognition treatment, and assuming the other requirements of paragraph (c) of this section are satisfied, V must enter into a gain recognition agreement in the amount of $50, which equals the aggregate gain in the Business B and C assets, because the transfer of those assets by Z was not taxable under section 367(a)(1) and constitute an indirect stock transfer.

Example 6C. Section 368(a)(1)(C) reorganization followed by a controlled asset transfer to a domestic controlled corporation—(i) *Facts.* The facts are the same as in paragraph (d)(3), *Example 6B,* of this section, except that Z is owned by U.S. individuals, none of whom qualify as five-percent target shareholders with respect to Z within the meaning of paragraph (c)(5)(iii) of this section. The following additional facts are present. No U.S. persons that are either officers or directors of Z own any stock of F immediately after the transfer. F is engaged in an active trade or business outside the United States that satisfies the test set forth in paragraph (c)(3) of this section.

(ii) *Result.* The Business A assets transferred to F are not re-transferred to R and therefore Z's transfer of these assets is not subject to the rules of paragraph (d) of this section. However, gain must be recognized on the transfer of those assets under section 367(a)(1) because the section 367(a)(3) active trade or business exception is inapplicable pursuant to section 367(a)(5) and § 1.367(a)–7(b). The Business B and C assets are part of an indirect stock transfer under paragraph (d) of this section, but must first be tested with respect to Z under section 367(a) and (d), as provided in paragraph (d)(2)(vi) of this section. The transfer of the Business B assets (which otherwise would satisfy the section 367(a)(3) active trade or business exception) generally is subject to section 367(a)(1) pursuant to section 367(a)(5) and § 1.367(a)–7(b). The transfer of the Business C assets generally is subject to section 367(a)(1) because these assets do not qualify for the active trade or business exception under section 367(a)(3). However, pursuant to paragraph (d)(2)(vi)(B) of this section, the transfer of the Business B and C assets is not subject to sections 367(a)(1) and (d), provided the basis of the Business B and C assets in the hands of R is no greater than the basis in the hands of Z and certain other requirements are satisfied. Z may avoid immediate gain recognition under section 367(a) and (d) on the transfers of the Business B and Business C assets to F if, pursuant to paragraph (d)(2)(vi)(B) of this section, the indirect transfer of Z stock satisfies the requirements of paragraphs (c)(1)(i), (ii), and (iv) and (c)(6) of this section, and Z attaches a statement described in paragraph (d)(2)(vi)(C) of this section to its U.S. income tax return for the taxable year of the transfer. In general, the statement must contain a certification that, if F disposes of the stock of R (in a recognition or nonrecognition transaction) and a principal purpose of the transfer is the avoidance of U.S. tax that would have been imposed on Z on the disposition of the Business B and C assets transferred to R, then Z (or F on behalf of Z) will file a return (or amended return as the case may be) recognizing gain ($50), as if, immediately prior to the reorganization, Z transferred the Business B and C assets to a domestic corporation in exchange for stock in a transaction treated as a section 351 exchange and immediately sold such stock to an unrelated party for its fair market value. A transaction is deemed to have a principal purpose of U.S. tax avoidance if F disposes of R stock within two years of the transfer, unless Z (or F on behalf of Z) can rebut the presumption to the satisfaction of the Commissioner. See paragraph (d)(2)(vi)(D)(*2*) of this section. With respect to the indirect transfer of Z stock, assume the requirements of paragraphs (c)(1)(i), (ii), and (iv) of this section are satisfied. Thus, assuming Z attaches the statement described in paragraph (d)(2)(vi)(C) of this section to its U.S. income tax return and satisfies the reporting requirements of paragraph (c)(6) of this section, the transfer of Business B and C assets is not subject to immediate gain recognition under section 367(a) or (d).

* * * * *

Example 9. Indirect stock transfer by reason of a controlled asset transfer—(i) *Facts.* The facts are the same as in paragraph (d)(3), *Example 8,* of this section, except that R transfers the Business A assets to M, a wholly owned domestic subsidiary of R, in a controlled asset transfer. In addition, V's basis in its Z stock is $90.

(ii) *Result.* Pursuant to paragraph (d)(2)(vi)(B) of this section, sections 367(a) and (d) do not apply to Z's transfer of the Business A assets to R if M's basis in the Business A assets is not greater than the basis of the assets in the hands of Z, the requirements of paragraphs (c)(1)(i), (ii), and (iv) and (c)(6) of this section are satisfied, and Z includes a statement described in paragraph (d)(2)(vi)(C) of this section with its U.S. income tax return for the taxable year of the transfer. Subject to the conditions and requirements of section 367(a)(5) and § 1.367(a)–7(c), Z's transfer of the Business B assets to R (which are not re-transferred to M) qualifies for the active trade or business exception under section 367(a)(3). Pursuant to paragraphs (d)(1) and (d)(2)(vii)(A)(*1*) of this section, V is generally deemed to transfer the stock of a foreign corporation to F in a section 354 exchange subject to the rules of paragraphs (b) and (d) of this section, including the requirement that V enter into a gain recognition agreement and comply with the requirements of § 1.367(a)–8. However, pursuant to paragraph (d)(2)(vii)(B) of this section, paragraph (d)(2)(vii)(A) of this section does not apply to the extent of the transfer of business A assets by R to M, a domestic corporation. As a result, to the extent of the business A assets transferred by R to M, V is deemed to transfer the stock of Z (a domestic corporation) to F in a section 354 exchange subject to the rules of paragraphs (c) and (d) of this section. Thus, with respect to V's indirect transfer of stock of a domestic corporation to F, such transfer is not subject to gain recognition under section 367(a)(1) if the requirements of paragraph (c) of this section are satisfied, including the requirement that V enter into a gain recognition agreement (separate from the gain recognition agreement described above with respect to the deemed transfer of stock of a foreign corporation to F) and comply with the requirements of § 1.367(a)–8. Under paragraphs (d)(2)(i) and (ii) of this section, the transferee foreign corporation is F and the transferred corporation is R (with respect to the transfer of stock of a foreign corporation) and M (with respect to the transfer of stock of a domestic corporation). Pursuant to paragraph (d)(2)(iv) of this section, a disposition by F of the stock of R would trigger both gain recognition agreements. In addition, a disposition by R of the stock of M would trigger the gain recognition agreement filed with respect to the transfer of the stock of a domestic corporation. To determine whether there is a triggering event under § 1.367(a)–8(j)(2)(i) for the gain recognition agreement filed with respect to the transfer of stock of the domestic corporation, the Business A assets in M must be considered. To determine whether there is such a triggering event for the gain recognition agreement filed with respect to the transfer of stock of the foreign corporation, the Business B assets in R must be considered.

* * * * *

(e) *Transfers of stock or securities by a domestic corporation to a foreign corporation in a section 361 exchange*—(1) *Overview*—(i) *Scope and definitions.* This paragraph (e) applies to a domestic corporation (U.S. transferor) that transfers stock or securities of a domestic or foreign corporation (transferred stock or securities) to a foreign corporation (foreign acquiring corporation) in a section 361 exchange. Except as otherwise provided in this paragraph (e), paragraphs (b) and (c) of this section do not apply to the U.S. transferor's transfer of the transferred stock or securities in the section 361 exchange. For purposes of this paragraph (e), the definitions of control group, control group member, and non-control group member in § 1.367(a)–7(f)(1), ownership interest percentage in § 1.367(a)–7(f)(7), section 361 exchange in § 1.367(a)–7(f)(8), and U.S. transferor shareholder in § 1.367(a)–7(f)(13), apply.

(ii) *Ordering rules.* Except as otherwise provided, this paragraph (e) applies to the transfer of the transferred stock or securities in the section 361 exchange prior to the application of any other provision of section 367 to such transfer. Furthermore, any gain recognized (including gain treated as a deemed dividend pursuant to section 1248(a)) by the U.S. transferor under this paragraph (e) shall be taken into account for purposes of applying any other provision of section 367 (including §§ 1.367(a)–6, 1.367(a)–7, and 1.367(b)–4) to the transfer of the transferred stock or securities.

(2) *General rule.* Except as provided in paragraph (e)(3) of this section, the transfer by the U.S. transferor of the transferred stock or securities to the foreign acquiring corporation in the section 361 exchange shall be subject to section 367(a)(1), and therefore the U.S. transferor shall recognize any gain (but not loss) realized with respect to the transferred stock or securities. Realized gain is recognized pursuant to the prior sentence notwithstanding that the transfer is described in any other nonrecognition provision enumerated in section 367(a)(1) (such as section 351 or 354).

(3) *Exception.* The general rule of paragraph (e)(2) of this section shall not apply if the conditions of paragraphs (e)(3)(i), (ii), and (iii) of this section are satisfied.

(i) The conditions set forth in § 1.367(a)–7(c) are satisfied with respect to the section 361 exchange.

(ii) If the transferred stock or securities are of a domestic corporation, the U.S. target company (as defined in paragraph (c)(1) of this section) complies with the reporting requirements of paragraph (c)(6) of this section, and the conditions of paragraphs (c)(1)(i), (ii), and (iv) of this section are satisfied with respect to the transferred stock or securities.

(iii) If the U.S. transferor owns (applying the attribution rules of section 318, as modified by section 958(b)) five percent or more of the total voting power or the total value of the stock of the transferee foreign corporation immediately after the transfer of the transferred stock or securities in the section 361 exchange, then the conditions set forth in paragraphs (e)(3)(iii)(A), (B), and (C) of this section are satisfied.

(A) Except as otherwise provided in this paragraph (e)(3)(iii)(A), each U.S. transferor shareholder that is a qualified U.S. person (as defined in paragraph (e)(6)(vii) of this section) owning (applying the attribution rules of section 318, as modified by section 958(b)) five percent or more of the total voting power or the total value of the stock of the transferee foreign corporation immediately after the reorganization enters into a gain recognition agreement that satisfies the conditions of paragraph (e)(6) of this section and § 1.367(a)–8. A U.S. transferor shareholder is not required to enter into a gain recognition agreement pursuant to this paragraph if the amount of gain that would be subject to the gain recognition agreement (as determined under paragraph (e)(6)(i) of this section) is zero.

(B) With respect to non-control group members that are not described in paragraph (e)(3)(iii)(A) of this section, the U.S. transferor recognizes gain equal to the product of the aggregate ownership interest percentage of such non-control group members multiplied by the gain realized by the U.S. transferor on the transfer of the transferred stock or securities.

(C) With respect to each control group member that is not described in paragraph (e)(3)(iii)(A) of this section, the U.S. transferor recognizes gain equal to the product of the ownership interest percentage of such control group member multiplied by the gain realized by the U.S. transferor on the transfer of the transferred stock or securities.

(4) *Application of certain rules at U.S. transferor-level.* For purposes of paragraphs (c)(5)(iii) and (e)(3)(ii) and (iii) of this section, ownership of the stock of the transferee foreign corporation is determined by reference to stock owned by the U.S. transferor immediately after the transfer of the transferred stock or securities to the foreign acquiring corporation in the section 361 exchange, but prior to and without taking into account the U.S. transferor's distribution under section 361(c)(1) of the stock received.

(5) *Transferee foreign corporation*—(i) *General rule.* Except as provided in paragraph (e)(5)(ii) of this section, the transferee foreign corporation for purposes of applying paragraph (e) of this section and § 1.367(a)–8 shall be the foreign corporation that issues stock or securities to the U.S. transferor in the section 361 exchange.

(ii) *Special rule for triangular asset reorganizations involving the receipt of stock or securities of a domestic corporation.* In the case of a triangular asset reorganization described in § 1.358–(6)(b)(2)(i), (ii), or (iii) or (b)(2)(v) (triangular asset reorganization) in which the U.S. transferor receives stock or securities of a domestic corporation that is in control (within the meaning of section 368(c)) of the foreign acquiring corporation, the transferee foreign corporation shall be the foreign acquiring corporation.

(6) *Special requirements for gain recognition agreements.* A gain recognition agreement filed by a U.S. transferor shareholder pursuant to paragraph (e)(3)(iii)(A) of this section is, in addition to the terms and conditions of § 1.367(a)–8, subject to the conditions of this paragraph (e)(6).

(i) The amount of gain subject to the gain recognition agreement shall equal the product of the ownership interest percentage of the U.S. transferor shareholder multiplied by the gain realized by the U.S. transferor on the transfer of the transferred stock or securities, reduced (but not below zero) by the sum of the amounts described in paragraphs (e)(6)(i)(A),(B), (C), and (D) of this section.

(A) Gain recognized by the U.S. transferor with respect to the transferred stock or securities under section 367(a)(1) (including any portion treated as a deemed dividend under section 1248(a)) that is attributable to such U.S. transferor shareholder pursuant to § 1.367(a)–7(c)(2) or (e)(5).

(B) A deemed dividend included in the income of the U.S. transferor with respect to the transferred stock under § 1.367(b)–4(b)(1)(i) that is attributable to such U.S. transferor shareholder pursuant to § 1.367(a)–7(e)(4).

(C) If the U.S. transferor shareholder is subject to an election under § 1.1248(f)–2(c)(1), a deemed dividend included in the income of the U.S. transferor pursuant to § 1.1248(f)–2(c)(3) that is attributable to the U.S. transferor shareholder.

(D) If the U.S. transferor shareholder is not subject to an election under § 1.1248(f)–2(c)(1), the hypothetical section 1248 amount (as defined in § 1.1248(f)–1(c)(4)) with respect to the stock of each foreign corporation transferred in the section 361 exchange attributable to the U.S. transferor shareholder.

(ii) The gain recognition agreement shall include the election described in § 1.367(a)–8(c)(2)(vi).

(iii) The gain recognition agreement shall designate the U.S. transferor shareholder as the U.S. transferor for purposes of § 1.367(a)–8.

(iv) If the transfer of the transferred stock or securities in the section 361 exchange is pursuant to a triangular asset reorganization, the gain recognition agreement shall include appropriate provisions that are consistent with the principles of § 1.367(a)–8 for gain recognition agreements involving multiple parties. See § 1.367(a)–8(j)(9).

(v) The gain recognition agreement shall not be eligible for termination upon a taxable disposition pursuant to § 1.367(a)–8(o)(1) unless the value of the stock or securities received by the U.S. transferor shareholder in exchange for the stock or securities of the U.S. transferor under section 354 or 356 is at least equal to the amount of gain subject to the gain recognition agreement filed by such U.S. transferor shareholder.

(vi) Except as otherwise provided in this paragraph (e)(6)(vi), if gain is subsequently recognized by the U.S. transferor shareholder under the terms of the gain recognition agreement pursuant to § 1.367(a)–8(c)(1)(i), the increase in stock basis provided under § 1.367(a)–8(c)(4)(i) with respect to the stock received by the U.S. transferor shareholder shall not exceed the amount of the stock basis adjustment made pursuant to § 1.367(a)–7(c)(3) with respect to the stock received by the U.S. transferor shareholder. This paragraph (e)(6)(vi) shall not apply if the U.S. transferor shareholder and the U.S. transferor are members of the same consolidated group at the time of the reorganization.

(vii) For purposes of this section, a qualified U.S. person means a U.S. person, as defined in § 1.367(a)–1T(d)(1), but for this purpose does not include domestic partnerships, regulated investment companies (as defined in section 851(a)), real estate investment trusts (as defined in section 856(a)), and S corporations (as defined in section 1361(a)).

(7) *Gain subject to section 1248(a).* If the U.S. transferor recognizes gain under paragraphs (e)(3)(iii)(B) or (C) of this section with respect to transferred stock that is stock in a foreign corporation to which section 1248(a) applies, then the portion of such gain treated as a deemed dividend under section 1248(a) is the product of the amount of the gain multiplied by the section 1248(a) ratio. The section 1248(a) ratio is the ratio of the amount that would be treated as a deemed dividend under section 1248(a) if all the gain in the transferred stock were recognized to the amount of gain realized in all the transferred stock.

(8) *Examples.* The following examples illustrate the provisions of paragraph (e) of this section. Except as otherwise indicated: US1, US2, and UST are domestic corporations that are not members of a consolidated group; X is a United States citizen; US1, US2, and X are unrelated parties; CFC1, CFC2, and FA are foreign corporations; each corporation described herein has a single class of stock issued and outstanding and a tax year ending on December 31; the section 1248 amount (within the meaning of § 1.367(b)–2(c)) with respect to the stock of CFC1 and CFC2 is zero; Asset A is section 367(a) property that, but for the application of section 367(a)(5), would qualify for the active foreign trade or business exception under § 1.367(a)–2T; the requirements of § 1.367(a)–7(c)(2) through (5) are satisfied with respect to a section 361 exchange; the provisions of § 1.367(a)–6T (regarding branch loss recapture) are not applicable; and none of the foreign corporations in the examples is a surrogate foreign corporation (within the meaning of section 7874) as a result of the transactions described in the examples because one or more of the conditions of section 7874(a)(2)(B) is not satisfied.

Example 1. U.S. transferor owns less than 5% of stock of transferee foreign corporation—(i) *Facts.* US1, US2, and X own 80%, 5%, and 15%, respectively, of the stock of UST with a fair market value of $160x, $10x, and $30x, respectively. UST has two assets, Asset A and 100% of the stock of CFC1. UST has no liabilities. Asset A has a $150x basis and $100x fair market value (as defined in § 1.367(a)–7(f)(3)), and the CFC1 stock has a $0x basis and $100x fair market value. UST transfers Asset A and the CFC1 stock to FA solely in exchange for $200x of FA voting stock in a reorganization described in section 368(a)(1)(C). UST's transfer of Asset A and the CFC1 stock to FA qualifies as a section 361 exchange. UST distributes the FA stock received in the section 361 exchange to US1, US2, and X pursuant to the plan of reorganization, and liquidates. US1 receives $160x of FA stock, US2 receives $10x of FA stock, and X receives $30x of FA stock in exchange for the UST stock. Immediately after the transfer of Asset A and the CFC1 stock to FA in the section 361 exchange, but prior to and without taking into account UST's distribution of the FA stock pursuant to section 361(c)(1), UST does not own (applying the attribution rules of section 318, as modified by section 958(b)) five percent or more of the total voting power or the total value of the stock of FA.

(ii) *Result*—(A) UST's transfer of the CFC1 stock to FA in the section 361 exchange is subject to the provisions of this paragraph (e), and this paragraph (e) applies to the transfer of the CFC1 stock prior to the application of any other provision of section 367 to such transfer. See paragraphs (e)(1)(i) and (ii) of this section. Pursuant to the general rule of paragraph (e)(2) of this section, UST must recognize the gain realized of $100x on the transfer of the CFC1 stock (computed as the excess of the $100x fair market value over the $0x basis) unless the requirements for the exception provided in paragraph (e)(3) of this section are satisfied. In this case, the requirements of paragraph (e)(3) of this section are satisfied. First, the requirement of paragraph (e)(3)(i) of this section is satisfied because the control requirement of § 1.367(a)–7(c)(1) is satisfied, and a stated assumption is that the requirements of § 1.367(a)–7(c)(2) through (5) will be satisfied. The control requirement is satisfied because US1 and US2, each a control group member, own in the aggregate 85% of the stock of UST immediately before the reorganization. Second, the requirement of paragraph (e)(3)(ii) of this section is not applicable because that paragraph applies to the transfer of stock of a domestic corporation and CFC1 is a foreign corporation. Third, paragraph (e)(3)(iii) of this section is not applicable because immediately after the section 361 exchange, but prior to and without taking into account UST's distribution of the FA stock pursuant to section 361(c)(1), UST does not own (applying the attribution rules of section 318, as modified by section 958(b)) 5% or more of the total voting power or the total value of the stock of FA. See paragraph (e)(4) of this section. Accordingly, UST does not recognize the $100x of gain realized in the CFC1 stock pursuant to this section.

(B) In order to meet the requirements of § 1.367(a)–7(c)(2)(i), UST must recognize gain equal to the portion of the inside gain (as defined in § 1.367(a)–7(f)(5)) attributable to non-control group members (X), or $7.50x. The $7.50x of gain is computed as the product of the inside gain ($50x) multiplied by X's ownership interest percentage in UST (15%). Pursuant to § 1.367(a)–7(f)(5), the $50x of inside gain is the amount by which the aggregate fair market value ($200x) of the section 367(a) property (as defined in § 1.367(a)–7(f)(10), or Asset A and the CFC1 stock) exceeds the sum of the inside basis ($150x) of such property and the product of the section 367(a) percentage (as defined in § 1.367(a)–7(f)(9), or 100%) multiplied by UST's deductible liabilities (as defined in § 1.367(a)–7(f)(2), or $0x). Pursuant to § 1.367(a)–7(f)(4), the inside basis equals the aggregate basis of the section 367(a) property transferred in the section 361 exchange ($150x), increased by any gain or deemed dividends recognized by UST with respect to the section 367(a) property under section 367 ($0x), but not including the $7.50x of gain recognized by UST under § 1.367(a)–7(c)(2)(i). Pursuant to § 1.367(a)–7(e)(1), the $7.50x of gain recognized by UST is treated as recognized with respect to the CFC1 stock and Asset A in proportion to the amount of gain realized in each. However, because there is no gain realized by UST with respect to Asset A, all $7.50x of the gain is allocated to the CFC1 stock. Furthermore, FA's basis in the CFC1 stock, as determined under section 362 is increased by the $7.50x of gain recognized by UST. See § 1.367(a)–1(b)(4)(i)(B).

(C) The requirement to recognize gain under § 1.367(a)–7(c)(2)(ii) is not applicable because the portion of the inside gain attributable to US1 and US2 (control group members) can be preserved in the stock received by each such shareholder. As described in paragraph (ii)(B) of this *Example 1,* the inside gain is $50x. US1's attributable inside gain of $40x (equal to the product of $50x inside gain multiplied by US1's 80% ownership interest percentage, reduced by $0x, the sum of the amounts described in § 1.367(a)–7(c)(2)(ii)(A)(*1*) through (*3*)) does not exceed $160x (equal to the product of the section 367(a) percentage of 100% multiplied by $160x fair market value of FA stock received by US1). Similarly, US2's attributable inside gain of $2.50x (equal to the product of $50x inside gain multiplied by US2's 5% ownership interest percentage, reduced by $0x, the sum of the amounts described in § 1.367(a)–7(c)(2)(ii)(A)(*1*) through (*3*)) does not exceed $10x (equal to the product of the section 367(a) percentage of 100% multiplied by $10x fair market value of FA stock received by US2).

(D) Each control group member (US1 and US2) must separately compute any required adjustment to stock basis under § 1.367(a)–7(c)(3).

Example 2. U.S. transferor owns 5% or more of the stock of the transferee foreign corporation—(i) *Facts.* The facts are the same as in paragraph (e), *Example 1,* of this section except that immediately after the section 361 exchange, but prior to and without taking into account UST's distribution of the FA stock pursuant to section 361(c)(1), UST owns (applying the attribution rules of section 318, as modified by section 958(b)) 5% or more of the total voting power or value of the stock of FA. Furthermore, immediately after the reorganization, US1 and X (but not US2) each own (applying the attribution rules of section 318, as modified by section 958(b)) five percent or more of the total voting power or value of the stock of FA.

(ii) *Result*—(A) As is the case with paragraph (e), *Example 1,* of this section, UST's transfer of the CFC1 stock to FA in the section 361 exchange is subject to the provisions of this paragraph (e), and this paragraph (e) applies to the transfer of the CFC1 stock prior to the application of any other provision of section 367 to such transfer. See paragraphs (e)(1)(i) and (ii) of this section. In addition, UST must recognize the gain realized of $100x on the transfer of the CFC1 stock (computed as the excess of the $100x fair market value over the $0x basis) unless the requirements for the exception provided in paragraph (e)(3) of this section are satisfied. For the same reasons provided in *Example 1,* the requirement in paragraph (e)(3)(i) of this section is satisfied and the requirement of paragraph (e)(3)(ii) of this section is not applicable.

(B) Unlike paragraph (e), *Example 1,* of this section, however, UST owns 5% or more of the voting power or value of the stock of FA immediately after the transfer of the CFC1 stock in the section 361 exchange, but prior to and without taking into account UST's distribution of the FA stock under section 361(c)(1). As a result, paragraph (e)(3)(iii) of this section is applicable to the section 361 exchange of the CFC1 stock. Accordingly, in order to meet the requirements of paragraph (e)(3)(iii)(A) of this section US1 and X must enter into gain recognition agreements that satisfy the requirements of paragraph (e)(6) of this section and § 1.367(a)–8. See paragraph (ii)(G) of this *Example 2* for the computation of the amount of gain subject to each gain recognition agreement.

(C) In order to meet the requirements of paragraph (e)(3)(iii)(C) of this section, UST must recognize $5x of gain attributable to US2 (computed as the product of the $100x of gain realized with respect to the transfer of the CFC1 stock multiplied by the 5% ownership interest percentage of US2). The $5x of gain recognized is not included in the computation of inside basis (see § 1.367(a)–7(f)(4)(i)), but reduces (but not below zero) the amount of gain recognized by UST pursuant to § 1.367(a)–7(c)(2)(ii) that is attributable to US2. Furthermore, FA's basis in the CFC1 stock as determined under section 362 is increased for the $5x of gain recognized. See § 1.367(a)–1(b)(4)(i)(B). Assuming US1 and X enter into the gain recognition agreements described in paragraph (ii)(B) of this *Example 2,* and UST recognizes the $5x of gain described in this example, the requirements of paragraph (e)(3) of this section are satisfied and, accordingly, UST does not recognize the remaining $95x of gain realized in the CFC1 stock pursuant to this section.

(D) As described in paragraph (ii)(B) of *Example 1* of this paragraph (e), UST must recognize $7.50x of gain pursuant to § 1.367(a)–7(c)(2)(i), the amount of the $50x of inside gain attributable to X. Pursuant to § 1.367(a)–7(e)(1), the $7.50x of gain recognized by UST is treated as recognized with respect to the CFC1 stock and Asset A in proportion to the amount of gain realized in each. However, because there is no gain realized by UST with respect to Asset A, all $7.50x of the gain is allocated to the CFC1 stock. Furthermore, FA's basis in the CFC1 stock as determined under section 362 is increased for the $7.50x of gain recognized. See § 1.367(a)–1(b)(4)(i)(B).

(E) As described in paragraph (ii)(C) of *Example 1* of this paragraph (e), the requirement to recognize gain pursuant to § 1.367(a)–7(c)(2)(ii) is not applicable because the attributable inside gain of US1 and US2 can be preserved in the stock received by each shareholder. However, if UST were required to recognize gain pursuant to § 1.367(a)–7(c)(2)(ii) for inside gain attributable to US2 (for example, if US2 received solely cash rather than FA stock in the reorganization), the amount of such gain would be reduced (but not below zero) by the amount of gain recognized by UST pursuant to paragraph (e)(3)(iii)(C) of this section that is attributable to US2 (computed as $5x in paragraph (ii)(C) of this *Example 2*). See § 1.367(a)–7(c)(2)(ii)(A)(*1*).

(F) Each control group member (US1 and US2) must separately compute any required adjustment to stock basis under § 1.367(a)–7(c)(3).

(G) The amount of gain subject to the gain recognition agreement filed by each of US1 and X is determined pursuant to paragraph (e)(6)(i) of this section. With respect to US1, the amount of gain subject to the gain recognition agreement is $80x. The $80x is computed as the product of US1's ownership interest percentage (80%) multiplied by the gain realized by UST in the CFC1 stock as determined prior to taking into account the application of any other provision of section 367 ($100x), reduced by the sum of the amounts described in paragraphs (e)(6)(i)(A) through (D) of this section attributable to US1 ($0x). With respect to X, the amount of gain subject to the gain recognition agreement is $7.50x. The $7.50x is computed as the product of X's ownership interest percentage (15%) multiplied by the gain realized by UST in the CFC1 stock as determined prior to taking into account the application of any other provision of section 367 ($100x), reduced by the sum of the amounts described in paragraphs (e)(6)(i)(A) through (D) of this section attributable to X ($7.50x, as computed in paragraph (ii)(D) of this *Example 2*).

(H) In order the meet the requirements of paragraph (e)(6)(ii) of this section, each gain recognition agreement must include the election described in § 1.367(a)–8(c)(2)(vi). Furthermore, pursuant to paragraph (e)(6)(iii) of this section, US1 and X must be designated as the U.S. transferor on their respective gain recognition agreements for purposes of § 1.367(a)–8.

Example 3. U.S. transferor owns 5% or more of the stock of the transferee foreign corporation; interaction with section 1248(f)—(i) *Facts.* US1, US2, and X own 50%, 30%, and 20%, respectively, of the stock of UST. The UST stock owned by US1 has a $180x basis and $200x fair market value; the UST stock owned by US2 has a $100x basis and $120x fair market value; and the UST stock owned by X has a $80x fair market value. UST owns Asset A, and all the stock of CFC1 and CFC2. UST has no liabilities. Asset A has a $10x basis and $200x fair market value. The CFC1 stock is a single block of stock (as defined in § 1.1248(f)–1(c)(2)) with a $20x basis, $40x fair market value, and $30x of earnings and profits attributable to it for purposes of section 1248 (with the result that the section 1248 amount (as defined in § 1.1248(f)–1(c)(9)) is $20x). The CFC2 stock is also a single block of stock with a $30x basis, $160x fair market value, and $150x of earnings and profits attributable to it for purposes of section 1248 (with the result that the section 1248 amount is $130x). On December 31, Year 3, in a reorganization described in section 368(a)(1)(D), UST transfers the CFC1 stock, CFC2 stock, and Asset A to FA in exchange for 60 shares of FA stock with a $400x fair market value. UST's transfer of the CFC1 stock, CFC2 stock, and Asset A to FA in exchange for the 60 shares of FA stock qualifies as a section 361 exchange. UST distributes the FA stock received in the section 361 exchange to US1, US2, and X pursuant to section 361(c)(1). US1, US2, and X exchange their UST stock for 30, 18, and 12 shares, respectively, of FA stock pursuant to section 354. Immediately after the reorganization, FA has 100 shares of stock outstanding, and US1 and US2 are each a section 1248 shareholder with respect to FA.

(ii) *Result*—(A) UST's transfer of the CFC1 stock and CFC2 stock to FA in the section 361 exchange is subject to the provisions of this paragraph (e), and this paragraph (e) applies to the transfer of the CFC1 stock and CFC2 stock prior to the application of any other provision of section 367 to such transfer. See paragraphs (e)(1)(i) and (ii) of this section. Pursuant to the general rule of paragraph (e)(2) of this section, UST must recognize the gain realized of $20x on the transfer of the CFC1 stock (the excess of $40x fair market value over $20x basis) and the gain realized of $130x on the transfer of the CFC2 stock (the excess of $160x fair market value over $30x basis), subject to the application of section 1248(a), unless the requirements for the exception provided in paragraph (e)(3) of this section are satisfied. In this case, the requirement of paragraph (e)(3)(i) of this section is satisfied because the control requirement of § 1.367(a)–7(c)(1) is satisfied, and a stated assumption is that the requirements of § 1.367(a)–7(c)(2) through (5) will be satisfied. The control requirement is satisfied because US1 and US2, each a control group member, own in the aggregate 80% of the UST stock immediately before the reorganization. The requirement of paragraph (e)(3)(ii) of this section is not applicable because paragraph (e)(3)(ii) applies to the transfer of stock of a domestic corporation, and CFC1 and CFC2 are foreign corporations. UST owns 5% or more of the total voting power or value of the stock of FA (60%, or 60 of the 100 shares of FA stock outstanding) immediately after the transfer of the CFC1 stock and CFC2 stock in the section 361 exchange, but prior to and without taking into account UST's distribution of the FA stock under section 361(c)(1). As a result, paragraph (e)(3)(iii) of this section is applicable to the section 361 exchange of the CFC1 stock and CFC2 stock. US1, US2, and X each own (applying the attribution rules of section 318, as modified by section 958(b)) 5% or more of the total voting power or value of the FA stock immediately after the reorganization, or 30%, 18%, and 12%, respectively. Accordingly, in order to meet the requirements of paragraph (e)(3)(iii)(A) of this section, US1 and US2 must enter into gain recognition agreements with respect to the CFC1 stock and CFC2 stock that satisfy the requirements of paragraph (e)(6) of this section and § 1.367(a)–8. X is not required to enter into a gain recognition agreement because the amount of gain that would be subject to the gain recognition agreement is zero. See paragraph (ii)(J) of this *Example 3* for the computation of the amount of gain subject to each gain recognition agreement. Assuming US1 and US2 enter into the gain recognitions agreements described above, the requirements of paragraph (e)(3) of this section are satisfied and accordingly, UST does not recognize the gain realized of $20x in the stock of CFC1 or the gain realized of $130x in the stock of CFC2 pursuant to this section.

(B) UST's transfer of the CFC1 stock and CFC2 stock to FA pursuant to the section 361 exchange is subject to § 1.367(b)–4(b)(1)(i), which applies prior to the application of § 1.367(a)–7(c). See paragraph (e)(1) of this section. UST (the exchanging shareholder) is a U.S. person and a section 1248 shareholder with respect to CFC1 and CFC2 (each a foreign acquired corporation). However, UST is not required to include in income as a deemed dividend the section 1248 amount with respect to the CFC1 stock ($20x) or CFC2 stock ($130x) under § 1.367(b)–4(b)(1)(i) because, immediately after UST's section 361 exchange of the CFC1 stock and CFC2 stock for FA stock (and before the distribution of the FA stock to US1, US2, and X under section 361(c)(1), FA, CFC1, and CFC2 are controlled foreign corporations as to which UST is a section 1248 shareholder. See § 1.367(b)–4(b)(1)(ii)(A). However, if UST were required to include in income as a deemed dividend the section 1248 amount with respect to the CFC1 stock or CFC2 stock (for example, if FA were not a controlled foreign corporation), such deemed dividend would be taken into account prior to the application of § 1.367(a)–7(c). Furthermore, because US1, US2, and X are all persons described in paragraph (e)(3)(iii)(A) of this section, any such deemed dividend would increase inside basis. See § 1.367(a)–7(f)(4).

(C) In order to meet the requirements of § 1.367(a)–7(c)(2)(i), UST must recognize gain equal to the portion of the inside gain attributable to non-control group members (X), or $68x. The $68x of gain is computed as the product of the inside gain ($340x) multiplied by X's ownership interest percentage in UST (20%), reduced (but not below zero) by $0x, the sum of the amounts described in § 1.367(a)–7(c)(2)(i)(A) through (C). Pursuant to § 1.367(a)–7(f)(5), the $340x of inside gain is the amount by which the aggregate fair market value ($400x) of the section 367(a) property (Asset A, CFC1 stock, and CFC2 stock) exceeds the sum of the inside basis ($60x) and $0x (the product of the section 367(a) percentage (100%) multiplied by UST's deductible liabilities ($0x)). Pursuant to § 1.367(a)–7(f)(4), the inside basis equals the aggregate basis of the section 367(a) property transferred in the section 361 exchange ($60x), increased by any gain or deemed dividends recognized by UST with respect to the section 367(a) property under section 367 ($0x), but not including the $68x of gain recognized by UST under § 1.367(a)–7(c)(2)(i). Under § 1.367(a)–7(e)(1), the $68x gain recognized is treated as being with respect to the CFC1 stock, CFC2 stock, and Asset A in proportion to the amount of gain realized by UST on the transfer of the property. The amount treated as recognized with respect to the CFC1 stock is $4x ($68x gain multiplied by $20x/$340x). The amount treated as recognized with respect to the CFC2 stock is $26x ($68x gain multiplied by $130x/$340x). The amount treated as recognized with respect to Asset A is $38x ($68x gain multiplied by $190x/$340x). Under section 1248(a), UST must include in gross income as a dividend the $4x gain recognized with respect to the CFC1 stock and the $26x gain recognized with respect to CFC2 stock. Furthermore, FA's basis in the CFC1 stock, CFC2 stock, and Asset A, as determined under section 362, is increased by the amount of gain recognized by UST with respect to such property. See § 1.367(a)–1(b)(4)(i)(B). Thus, FA's basis in the CFC1 stock is $24x ($20x increased by $4x of gain), the CFC2 stock is $56x ($30x increased by $26x of gain), and Asset A is $48x ($10x increased by $38x of gain).

(D) The requirement to recognize gain under § 1.367(a)–7(c)(2)(ii) is not applicable because the portion of the inside gain attributable to US1 and US2 (control group members) can be preserved in the stock received by each such shareholder. As described in paragraph (ii)(C) of this Example 3, the inside gain is $340x. US1's attributable inside gain of $170x (equal to the product of $340x inside gain multiplied by US1's 50% ownership interest percentage, reduced by $0x, the sum of the amounts described in § 1.367(a)–7(c)(2)(ii)(A)(*1*) through (*3*)) does not exceed $200x (equal to the product of the section 367(a) percentage of 100% multiplied by $200x fair market value of FA stock received by US1). Similarly, US2's attributable inside gain of $102x (equal to the product of $340x inside gain multiplied by US2's 30% ownership interest percentage, reduced by $0x, the sum of the amounts described in § 1.367(a)–7(c)(2)(ii)(A)(*1*) through (*3*)) does not exceed $120x (equal to the product of the section 367(a) percentage of 100% multiplied by $120x fair market value of FA stock received by US2).

(E) Each control group member (US1 and US2) separately computes any required adjustment to stock basis under § 1.367(a)–7(c)(3). US1's section 358 basis in the FA stock received of $180x (equal to US1's basis in the UST stock exchanged) is reduced to preserve the attributable inside gain with respect to US1, less any gain recognized with respect to US1 under § 1.367(a)–7(c)(2)(ii). Because UST does not recognize gain on the section 361 exchange with respect to US1 under § 1.367(a)–7(c)(2)(ii) (as determined in paragraph (ii)(D) of this *Example 3*), the attributable inside gain of $170x with respect to US1 is not reduced under § 1.367(a)–7(c)(3)(i)(A). US1's outside gain (as defined in § 1.367(a)–7(f)(6)) in the FA stock is $20x, the product of the section 367(a) percentage (100%) multiplied by the $20x gain (equal to the difference between $200x fair market value and $180x section 358 basis in the FA stock). Thus, US1's $180x section 358 basis in the FA stock must be reduced by $150x (the excess of $170x attributable inside gain, reduced by $0x, over $20x outside gain) to $30x. Similarly, US2's section 358 basis in the FA stock received of $100x (equal to US2's basis in the UST stock exchanged) is reduced to preserve the attributable inside gain with respect to US2, less any gain recognized with respect to US2 under § 1.367(a)–7(c)(2)(ii). Because UST does not recognize gain on the section 361 exchange with respect to US2 under § 1.367(a)–7(c)(2)(ii) (as determined in paragraph (ii)(D) of this *Example 3*), the attributable inside gain of $102x with respect to US2 is not reduced under § 1.367(a)–7(c)(3)(i)(A). US2's outside gain in the FA stock is $20x, the product of the section 367(a) percentage (100%) multiplied by the $20x gain (equal to the difference between $120x fair market value and $100x section 358 basis in FA stock). Thus, US2's $100x section 358 basis in the FA stock must be reduced by $82x (the excess of $102x attributable inside gain, reduced by $0x, over $20x outside gain) to $18x.

(F) UST's distribution of the FA stock to US1, US2, and X under section 361(c)(1) (new stock distribution) is subject to § 1.1248(f)–1(b)(3). Except as provided in § 1.1248(f)–2(c), under § 1.1248(f)–1(b)(3) UST must include in gross income as a dividend the total section 1248(f) amount (as defined in § 1.1248(f)–1(c)(14)). The total section 1248(f) amount is $120x, the sum of the section 1248(f) amount (as defined in § 1.1248(f)–1(c)(10)) with respect to the CFC1 stock ($16x) and CFC2 stock ($104x). The $16x section 1248(f) amount with respect to the CFC1 stock is the amount that UST would have included in income as a dividend under § 1.367(b)–4(b)(1)(i) with respect to the CFC1 stock if the requirements of § 1.367(b)–4(b)(1)(ii)(A) had not been satisfied ($20x), reduced by the amount of gain recognized by UST under § 1.367(a)–7(c)(2) allocable to the CFC1 stock and treated as a dividend under section 1248(a) ($4x, as described in paragraph (ii)(C) of this *Example 3*). Similarly, the section 1248(f) amount with respect to the CFC2 stock is $104x ($130x reduced by $26x).

(G) If, however, UST along with US1 and US2 (each a section 1248 shareholder of FA immediately after the distribution) elect to apply the provisions of § 1.1248(f)–2(c) (as provided in § 1.1248(f)–2(c)(1)), the amount that UST is required to include in income as a dividend under § 1.1248(f)–1(b)(3) ($120x total section 1248(f) amount as computed in paragraph (ii)(F) of this *Example 3*) is reduced by the sum of the portions of the section 1248(f) amount with respect to the CFC1 stock and CFC2 stock that is attributable (under the rules of § 1.1248(f)–2(d)) to the FA stock distributed to US1 and US2. Assume that the election is made to apply § 1.1248(f)–2(c).

(*1*) Under § 1.1248(f)–2(d)(1), the portion of the section 1248(f) amount with respect to the CFC1 stock that is attributed to the 30 shares of FA stock distributed to US1 is equal to the hypothetical section 1248 amount (as defined in § 1.1248(f)–1(c)(4)) with respect to the CFC1 stock that is attributable to US1's ownership interest percentage in UST. US1's hypothetical section 1248 amount with respect to the CFC1 stock is the amount that UST would have included in income as a deemed dividend under § 1.367(b)–4(b)(1)(i) with respect to the CFC1 stock if the requirements of § 1.367(b)–4(b)(1)(ii)(A) had not been satisfied ($20x) and that would be attributable to US1's ownership interest percentage in UST (50%), reduced by the amount of gain recognized by UST under § 1.367(a)–7(c)(2) attributable to US1 and allocable to the CFC1 stock, but only to the extent such gain is treated as a dividend under section 1248(a) ($0x, as described in paragraphs (ii)(C) and (D) of this *Example 3*). Thus, US1's hypothetical section 1248 amount with respect to the CFC1 stock is $10x ($20x multiplied by 50%, reduced by $0x). The $10x hypothetical section 1248 amount is attributed pro rata (based on relative values) among the 30 shares of FA stock distributed to US1, and the attributable share amount (as defined in § 1.1248(f)–2(d)(1)) is $.33x ($10x/30 shares). Similarly, US1's hypothetical section 1248 amount with respect to the CFC2 stock is $65x ($130x multiplied by 50%, reduced by $0x), and the attributable share amount is $2.17x ($65x/30 shares). Similarly, US2's hypothetical section 1248 amount with respect to the CFC1 stock is $6x ($20x multiplied by 30%, reduced by $0x), and the attributable share amount is also $.33x ($6x/18 shares). Finally, US2's hypothetical section 1248 amount with respect to the CFC2 stock is $39x ($130x multiplied by 30%, reduced by $0x), and the attributable share amount is also $2.17x ($39x/18 shares). Thus, the sum of the portion of the section 1248(f) amount with respect to the CFC1 stock and CFC2 stock attributable to shares of stock of FA distributed to US1 and US2 is $120x ($10x plus $65x plus $6x plus $39x).

(*2*) If the shares of FA stock are divided into portions, § 1.1248(f)–2(d)(2) applies to attribute the attributable share amount to portions of shares of FA stock distributed to US1 and US2. Under § 1.1248(f)–2(c)(2) each share of FA stock received by US1 (30 shares) and US2 (18 shares) is divided into three portions, one attributable to the single block of stock of CFC1, one attributable to the single block of stock of CFC2, and one attributable to Asset A. Thus, the attributable share amount of $.33x with respect to the CFC1 stock is attributed to the portion of each of the 30 shares and 18 shares of FA stock received by US1 and US2, respectively, that relates to the CFC1 stock. Similarly, the attributable share amount of $2.17x with respect to the CFC2 stock is attributed to the portion of each of the 30 shares and 18 shares of FA stock received by US1 and US2, respectively, that relates to the CFC2 stock.

(*3*) The total section 1248(f) amount ($120x) that UST is otherwise required to include in gross income as a dividend under § 1.1248(f)–1(b)(3) is reduced by $120x, the sum of the portions of the section 1248(f) amount with respect to the CFC1 stock and CFC2 stock that are attributable to the shares of FA stock distributed to US1 and US2. Thus, the amount DC is required to include in gross income as a dividend under § 1.1248(f)–1(b)(3) is $0x ($120x reduced by $120x).

(H) As stated in paragraph (ii)(G)(*2*) of this *Example 3,* under § 1.1248(f)–2(c)(2) each share of FA stock received by US1 (30 shares) and US2 (18 shares) is divided into three portions, one attributable to the CFC1 stock, one attributable to the CFC2 stock, and one attributable to Asset A. Under § 1.1248(f)–2(c)(4)(i), the basis of each portion is the product of US1's and US2's section 358 basis in the share of FA stock multiplied by the ratio of the section 362 basis of the property (CFC1 stock, CFC2 stock, or Asset A, as applicable) received by FA in the section 361 exchange to which the portion relates, to the aggregate section 362 basis of all property received by FA in the section 361 exchange. Under § 1.1248(f)–2(c)(4)(ii), the fair market value of each portion is the product of the fair market value of the share of FA stock multiplied by the ratio of the fair market value of the property (CFC1 stock, CFC2 stock, or Asset A, as applicable) to which the portion relates, to the aggregate fair market value of all property received by FA in the section 361 exchange. The section 362 basis of the CFC1 stock, CFC2 stock, and Asset A is $24x, $56x, and $48x, respectively, for an aggregate section 362 basis of $128x. See paragraph (ii)(C) of this *Example 3.* The fair market value of the CFC1 stock, CFC2 stock, and Asset A is $40x, $160x, and $200x, for an aggregate fair market value of $400x. Furthermore, US1's 30 shares of FA stock have an aggregate fair market value of $200x and section 358 basis of $30x (resulting in aggregate gain of $170x), and US2's 18 shares of FA stock have an aggregate fair market value of $120x and section 358 basis of $18x (resulting in aggregate gain of $102x). See paragraph (ii)(E) of this *Example 3.*

(*1*) With respect to US1's 30 shares of FA stock, the portions attributable to the CFC1 stock have an aggregate basis of $5.63x ($30x multiplied by $24x/$128x) and fair market value of $20x ($200x multiplied by $40x/$400x), resulting in aggregate gain in such portions of $14.38x (or $.48x gain in each such portion of the 30 shares). The portions attributable to the CFC2 stock have an aggregate basis of $13.13x ($30x multiplied by $56x/$128x) and fair market value of $80x ($200x multiplied by $160x/$400x), resulting in aggregate gain in such portions of $66.88x (or $2.23x in each such portion of the 30 shares). The portions attributable to Asset A have an aggregate basis of $11.25x ($30x multiplied by $48x/$128x) and fair market value of $100x ($200x multiplied by $200x/$400x), resulting in aggregate gain in such portions of $88.75x (or $2.96x in each such portion of the 30 shares). Thus, the aggregate gain in all the portions of the 30 shares is $170x ($14.38x plus $66.88x plus $88.75x).

(*2*) With respect to US2's 18 shares of FA stock, the portions attributable to the CFC1 stock have an aggregate basis of $3.38x ($18x multiplied by $24x/$128x) and fair market value of $12x ($120x multiplied by $40x/$400x), resulting in aggregate gain in such portions of $8.63x (or $.48x in each such portion of the 18 shares). The portions attributable to the CFC2 stock have an aggregate basis of $7.88x ($18x multiplied by $56x/$128x) and fair market value of $48x ($120x multiplied by $160x/$400x), resulting in aggregate gain of $40.13x (or $2.23x in each such portion of the 18 shares). The portions attributable to Asset A have an aggregate basis of $6.75x ($18x multiplied by $48x/$128x) and fair market value of $60x ($120x multiplied by $200x/$400x), resulting in aggregate gain of $53.25x (or $2.96x in each such portion of the 18 shares). Thus, the aggregate gain in all the portions of the 18 shares is $102x ($8.63x plus $40.13x plus $53.25x).

(*3*) Under § 1.1248–8(b)(2)(iv), the earnings and profits of CFC1 attributable to the portions of US1's 30 shares of FA stock that relate to the CFC1 stock is $15x (the product of US1's 50% ownership interest percentage in UST multiplied by $30x of earnings and profits attributable to the CFC1 stock before the section 361 exchange, reduced by $0x of dividend included in UST's income with respect to the CFC1 stock under section 1248(a) attributable to US1). The earnings and profits of CFC2 attributable to the portions of US1's 30 shares of FA stock that relate to the CFC2 stock is $75x (the product of US1's 50% ownership interest percentage in UST multiplied by $150x of earnings and profits attributable to the CFC2 stock before the section 361 exchange, reduced by $0x of dividend included in UST's income with respect to the CFC2 stock under section 1248(a) attributable to US1). Similarly, the earnings and profits of CFC1 attributable to the portions of US2's 18 shares of FA stock that relate to the CFC1 stock is $9x (the product of US2's 30% ownership interest percentage in UST multiplied by $30x of earnings and profits attributable to the CFC1 stock before the section 361 exchange, reduced by $0x of dividend included in UST's income with respect to the CFC1 stock under section 1248(a) attributable to US2). Finally, the earnings and profits of CFC2 attributable to the portions of US2's 18 shares of FA stock that relate to the CFC2 stock is $45x (the product of US2's 30% ownership interest percentage in UST multiplied by $150x of earnings and profits attributable to the CFC2 stock before the section 361 exchange, reduced by $0x of dividend included in UST's income with respect to the CFC2 stock under section 1248(a) attributable to US2).

(I) Under § 1.1248(f)–2(c)(3), neither US1 nor US2 is required to reduce the aggregate section 358 basis in the portions of their respective shares of FA stock, and UST is not required to include in gross income any additional deemed dividend.

(*1*) US1 is not required to reduce the aggregate section 358 basis of the portions of its 30 shares of FA stock that relate to the CFC1 stock because the $10x section 1248(f) amount with respect to the CFC1 stock attributable to the portions of the shares of FA stock received by US1 (as computed in paragraph (ii)(G) of this *Example 3*) does not exceed US1's postdistribution amount (as defined in § 1.1248(f)–1(c)(6), or $14.38x) in those portions. The $14.38x postdistribution amount equals the amount that US1 would be required to include in income as a dividend under section 1248(a) with respect to such portion if it sold the 30 shares of FA stock immediately after the distribution in a transaction in which all realized gain is recognized, without taking into account basis adjustments or income inclusions under § 1.1248(f)–2(c)(3) ($20x fair market value, $5.63x basis, and $15x earnings and profits attributable to the portions for purposes of section 1248). Similarly, US1 is not required to reduce the aggregate section 358 basis of the portions of its 30 shares of FA stock that relate to the CFC2 stock because the $65x section 1248(f) amount with respect to the CFC2 stock attributable to the portions of the shares of FA stock received by US1 (as computed in paragraph (ii)(G) of this *Example 3*) does not exceed US1's postdistribution amount ($66.88x) in those portions. The $66.88x postdistribution amount equals the amount that US1 would be required to include in income as a dividend under section 1248(a) with respect to such portion if it sold the 30 shares of FA stock immediately after the distribution in a transaction in which all realized gain is recognized, without taking into account basis adjustments or income inclusions under § 1.1248(f)–2(c)(3) ($80x fair market value, $13.13x basis, and $75x earnings and profits attributable to the portions for purposes of section 1248).

(*2*) US2 is not required to reduce the aggregate section 358 basis of the portions of its 18 shares of FA stock that relate to the CFC1 stock because the $6x section 1248(f) amount with respect to the CFC1 stock attributable to the portions of the shares of FA stock received by US2 (as computed in paragraph (ii)(G) of this *Example 3*) does not exceed US2's postdistribution amount ($8.63x) in those portions. The $8.63x postdistribution amount equals the amount that US2 would be required to include in income as a dividend under section 1248(a) with respect to such portion if it sold the 18 shares of FA stock immediately after the distribution in a transaction in which all realized gain is recognized, without taking into account basis adjustments or income inclusions under § 1.1248(f)–2(c)(3) ($12x fair market value, $3.38x basis, and $9x earnings and profits attributable to the portions for purposes of section 1248). Similarly, US2 is not required to reduce the aggregate section 358 basis of the portions of its 18 shares of FA stock that relate to the CFC2 stock because the $39x section 1248(f) amount with respect to the CFC2 stock attributable to the portions of the shares of FA stock received by US2 (as computed in paragraph (ii)(G of this *Example 3*) does not exceed US1's postdistribution amount ($40.13x) in those portions. The $40.13x postdistribution amount equals the amount that US2 would be required to include in income as a dividend under section 1248(a) with respect to such portion if it sold the 18 shares of FA stock immediately after the distribution in a transaction in which all realized gain is recognized, without taking into account basis adjustments or income inclusions under § 1.1248(f)–2(c)(3) ($48x fair market value, $7.88x basis, and $45x earnings and profits attributable to the portions for purposes of section 1248).

(J) The amount of gain subject to the gain recognition agreement filed by each of US1 and US2 is determined pursuant to paragraph (e)(6)(i) of this section. The amount of gain subject to the gain recognition agreement filed by US1 with respect to the stock of CFC1 and CFC2 is $10x and $65x, respectively. The $10x and $65x are computed as the product of US1's ownership interest percentage (50%) multiplied by the gain realized by UST in the CFC1 stock ($20x) and CFC2 stock ($130x), respectively, as determined prior to taking into account the application of any other provision of section 367, reduced by the sum of the amounts described in paragraphs (e)(6)(i)(A) through (D) of this section with respect to the CFC1 stock and CFC2 stock attributable to US1 ($0x with respect to the CFC1 stock, and $0x with respect to the CFC2 stock). The amount of gain subject to the gain recognition agreement filed by US2 with respect to the stock of CFC1 and CFC2 is $6x and $39x, respectively. The $6x and $39x are computed as the product of US2's ownership interest percentage (30%) multiplied by the gain realized by UST in the CFC1 stock ($20x) and CFC2 stock ($130x), respectively, as determined prior to taking into account the application of any other provision of section 367, reduced by the sum of the amounts described in paragraphs (e)(6)(i)(A) through (D) of this section with respect to the CFC1 stock and CFC2 stock attributable to US2 ($0x with respect to the CFC1 stock, and $0x with respect to the CFC2 stock). X is not required to enter into a gain recognition agreement because the amount of gain that would be subject to the gain recognition agreement is $0x with respect to the CFC1 stock, and $0x with respect to the CFC2 stock, computed as X's ownership percentage (20%) multiplied by the gain realized in the stock of CFC1 ($20x multiplied by 20%, or $4x) and CFC2 ($130x multiplied by 20%, or $26x), reduced by the amount of gain recognized by UST with respect to the stock of CFC1 and CFC2 that is attributable to X pursuant to § 1.367(a)–7(c)(2) ($4x and $26x, respectively, as determined in paragraph (ii)(C) of this *Example 3*). Pursuant to paragraph (e)(6)(ii) of this section, each gain recognition agreement must include the election described in § 1.367(a)–8(c)(2)(vi). Furthermore, pursuant to paragraph (e)(6)(iii) of this section, US1 and US2 must be designated as the U.S. transferor on their respective gain recognition agreements for purposes of § 1.367(a)–8.

(9) *Illustration of rules.* For rules relating to certain distributions of stock of a foreign corporation by a domestic corporation, see section 1248(f) and §§ 1.1248(f)–1 through 1.1248(f)–3.

* * * * *

(g) * * *

(1) * * *

(vii) * * *

(A) Except as provided in this paragraph (g)(1)(vii), the rules of paragraph (e) of this section apply to transfers of stock or securities occurring on or after April 17, 2013. For matters covered in this section for periods before April 17, 2013, but on or after March 13, 2009, see § 1.367(a)–3(e) as contained in 26 CFR part 1 revised as of April 1, 2012. For matters covered in this section for periods before March 13, 2009, but on or after March 7, 2007, see § 1.367(a)–3T(e) as contained in 26 CFR part 1 revised as of April 1, 2007. For matters covered in this section for periods before March 7, 2007, but on or after July 20, 1998, see § 1.367(a)–8(f)(2)(i) as contained in 26 CFR part 1 revised as of April 1, 2006.

* * * * *

(ix) Paragraphs (d)(2)(vi)(B)(*1*)(*i*) and (*iii*), (d)(2)(vi)(B)(*2*), and (d)(3), *Examples 6B, 6C,* and *9* of this section apply to transfers that occur on or after March 18, 2013. See paragraphs (d)(2)(vi)(B)(*1*)(*i*) and (*iii*), (d)(2)(vi)(B)(*2*), and (d)(3), *Examples 6B, 6C,* and *9* of this section, as contained in 26 CFR part 1 revised as of April 1, 2012, for transfers that occur on or after January 23, 2006, and before March 18, 2013. Paragraph (d)(2)(vi)(B)(*1*)(*ii*) of this section applies to statements that are required to be filed on or after November 19, 2014. See paragraph (d)(2)(vi)(B)(*1*)(*ii*) of this section, as contained in 26 CFR part 1 revised as of April 1, 2014, for statements required to be filed on or after March 18, 2013, and before November 19, 2014.

* * * * *

§ 1.367(a)–3T [Removed]

■ Par. 3. Section 1.367(a)–3T is removed.

■ Par. 4. Section 1.367(a)–6 is added to read as follows:

§ 1.367(a)–6 Transfer of foreign branch with previously deducted losses.

(a) through (e)(3) [Reserved]. For further guidance, see § 1.367(a)–6T(a) through (e)(3).

(4) *Gain recognized under section 367(a).* The previously deducted branch losses shall be reduced by any gain recognized pursuant to section 367(a)(1) (other than by reason of the provisions of this section) upon the transfer of the assets of the foreign branch to the foreign corporation. For transactions occurring on or after April 17, 2013, notwithstanding the prior sentence, this paragraph (e)(4) shall apply before the rules of § 1.367(a)–7(c).

(e)(5) through (i) [Reserved]. For further guidance, see § 1.367(a)–6T(e)(5) through (i).

§ 1.367(a)–6T [Amended]

■ Par. 5. Section 1.367(a)–6T is amended by removing and reserving paragraph (e)(4) and removing paragraph (j).

■ Par. 6. Section 1.1248(f)–3 is revised by adding paragraph (a) and adding a sentence at the end of paragraph (b)(1) to read as follows:

§ 1.1248(f)–3 Reasonable cause and effective/applicability dates.

(a) *Reasonable cause for failure to comply*—(1) *Request for relief.* If an 80-percent distributee, a distributee that is a section 1248 shareholder, or the domestic distributing corporation (reporting person) fails to timely comply with any requirement under § 1.1248(f)–2, the failure shall be deemed not to have occurred if the reporting person is able to demonstrate that the failure was due to reasonable cause and not willful neglect using the procedure set forth in paragraph (a)(2) of this section. Whether the failure to timely comply was due to reasonable cause and not willful neglect will be determined by the Director of Field Operations, Cross Border Activities Practice Area of Large Business & International (Director) based on all the facts and circumstances.

(2) *Procedures for establishing that a failure to timely comply was due to reasonable cause and not willful neglect*—(i) *Time of submission.* A reporting person's statement that the failure to timely comply was due to reasonable cause and not willful neglect will be considered only if, promptly after the reporting person becomes aware of the failure, an amended return is filed for the taxable year to which the failure relates that includes the information that should have been included with the original return for such taxable year or that otherwise complies with the rules of this section, and that includes a written statement explaining the reasons for the failure to timely comply.

(ii) *Notice requirement.* In addition to the requirements of paragraph (a)(2)(i) of this section, the reporting person must comply with the notice requirements of this paragraph (a)(2)(ii). If any taxable year of the reporting person is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Internal Revenue Service personnel conducting the examination. If no taxable year of the reporting person is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Director.

(b) * * *

(1) * * * The provisions of § 1.1248(f)–3(a) apply to distributions occurring on or after April 17, 2013.

* * * * *

§ 1.1248(f)–3T [Removed]

■ Par. 7. Section 1.1248(f)–3T is removed.

■ Par. 8. Section 1.6038B–1 is amended by:

■ 1. Removing ''or § 1.367(a)–3T'' from paragraph (c)(4)(ii).

■ 2. Revising paragraph (f)(3).

The revision reads as follows:

§ 1.6038B–1 Reporting of certain transfers to foreign corporations.

* * * * *

(f) * * *

(3) *Reasonable cause for failure to comply*—(i) *Request for relief.* If the U.S. transferor fails to comply with any requirement of section 6038B and this section, the failure shall be deemed not to have occurred if the U.S. transferor is able to demonstrate that the failure was due to reasonable cause and not willful neglect using the procedure set forth in paragraph (f)(3)(ii) of this section. Whether the failure to timely comply was due to reasonable cause and not willful neglect will be determined by the Director of Field Operations, Cross Border Activities Practice Area of Large Business & International (Director) based on all the facts and circumstances.

(ii) *Procedures for establishing that a failure to timely comply was due to reasonable cause and not willful neglect*—(A) *Time of submission.* A U.S. transferor's statement that the failure to timely comply was due to reasonable cause and not willful neglect will be considered only if, promptly after the U.S. transferor becomes aware of the failure, an amended return is filed for the taxable year to which the failure relates that includes the information that should have been included with the original return for such taxable year or that otherwise complies with the rules of this section, and that includes a written statement explaining the reasons for the failure to timely comply.

(B) *Notice requirement.* In addition to the requirements of paragraph (f)(3)(ii)(A) of this section, the U.S. transferor must comply with the notice requirements of this paragraph (f)(3)(ii)(B). If any taxable year of the U.S. transferor is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Internal Revenue Service personnel conducting the examination. If no taxable year of the U.S. transferor is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Director.

* * * * *

§ 1.6038B–1T [Amended]

■ Par. 9. Section 1.6038B–1T is amended by removing and reserving paragraphs (c)(4)(ii)(B) and (f)(3).

§§ 1.367(a)–2T, 1.367(a)–3, 1.367(a)–4T, 1.367(a)–7, 1.367(a)-8, 1.367(b)–4, 1.367(e)–1, 1.1248(f)–1, 1.1248(f)–2, 1.6038B–1, 1.6038B–1T [Amended]

■ Par. 10. For each section listed in the table, remove the language in the ''Remove'' column and add in its place the language in the ''Add'' column as set forth below:

Section	Remove	Add
§ 1.367(a)–2T(a)(2), fourth sentence	§ 1.367(a)–3T	§ 1.367(a)–3.
§ 1.367(a)–3(d)(3), *Example 12*(ii), third sentence	§ 1.367(a)–3T(e)(3)	§ 1.367(a)–3(e)(3).
§ 1.367(a)–4T(d), first sentence	§ 1.367(a)–3T	§ 1.367(a)–3.
§ 1.367(a)–7(c) introductory text, second sentence	§ 1.367(a)–3T	§ 1.367(a)–3.
§ 1.367(a)–7(c)(2)(i)(A), first sentence	§ 1.367(a)–3T(e)(3)(iii)(B)	§ 1.367(a)–3(e)(3)(iii)(B).
§ 1.367(a)–7(c)(2)(ii)(A)(*1*), first sentence	§ 1.367(a)–3T(e)(3)(iii)(C)	§ 1.367(a)–3(e)(3)(iii)(C).
§ 1.367(a)–7(c)(3)(v), first sentence	§ 1.367(a)–3T(e)(8)	§ 1.367(a)–3(e)(8).
§ 1.367(a)–7(c)(4)(ii), first sentence	§ 1.367(a)–3T(e)	§ 1.367(a)–3(e).
§ 1.367(a)–7(e)(1), third sentence	§ 1.367(a)–3T(e)	§ 1.367(a)–3(e).
§ 1.367(a)–7(e)(1), fourth sentence	§ 1.367(a)–3T(e)(3)(iii)(B)	§ 1.367(a)–3(e)(3)(iii)(B).
§ 1.367(a)–7(e)(4)(i), paragraph heading	§ 1.367(a)–3T(e)(3)(iii)(A)	§ 1.367(a)–3(e)(3)(iii)(A).
§ 1.367(a)–7(e)(4)(i), first sentence	§ 1.367(a)–3T(e)(3)(iii)(B)	§ 1.367(a)–3(e)(3)(iii)(B).
§ 1.367(a)–7(e)(4)(i), first sentence	§ 1.367(a)–3T(e)(3)(iii)(A)	§ 1.367(a)–3(e)(3)(iii)(A).
§ 1.367(a)–7(e)(4)(i), last sentence	§ 1.367(a)–3T(e)(3)(iii)(A)	§ 1.367(a)–3(e)(3)(iii)(A).
§ 1.367(a)–7(e)(4)(ii), first sentence	§ 1.367(a)–3T(e)(3)(iii)(B)	§ 1.367(a)–3(e)(3)(iii)(B).
§ 1.367(a)–7(e)(4)(ii), last sentence	§ 1.367(a)–3T(e)(7)	§ 1.367(a)–3(e)(7).
§ 1.367(a)–7(e)(4)(ii), last sentence	§ 1.367(a)–3T(e)(3)(iii)(B)	§ 1.367(a)–3(e)(3)(iii)(B).
§ 1.367(a)–7(e)(5)(i), paragraph heading	§ 1.367(a)–3T(e)(3)(iii)(A)	§ 1.367(a)–3(e)(3)(iii)(A).
§ 1.367(a)–7(e)(5)(i), first sentence	§ 1.367(a)–3T(e)(3)(iii)(B)	§ 1.367(a)–3(e)(3)(iii)(B).
§ 1.367(a)–7(e)(5)(i), first sentence	§ 1.367(a)–3T(e)(3)(iii)(A)	§ 1.367(a)–3(e)(3)(iii)(A).
§ 1.367(a)–7(e)(5)(i), last sentence	§ 1.367(a)–3T(e)(3)(iii)(A)	§ 1.367(a)–3(e)(3)(iii)(A).
§ 1.367(a)–7(e)(5)(ii), first sentence	§ 1.367(a)–3T(e)(3)(iii)(B)	§ 1.367(a)–3(e)(3)(iii)(B).
§ 1.367(a)–7(e)(5)(ii), first sentence	§ 1.367(a)–3T(e)(7)	§ 1.367(a)–3(e)(7).
§ 1.367(a)–7(f)(4), last sentence	§ 1.367(a)–3T(e)(3)(iii)(B)	§ 1.367(a)–3(e)(3)(iii)(B).
§ 1.367(a)–7(f)(4)(i), first sentence	§ 1.367(a)–3T(e)(3)(iii)(B)	§ 1.367(a)–3(e)(3)(iii)(B).
§ 1.367(a)–7(f)(4)(ii), first sentence	§ 1.367(a)–3T(e)(3)(iii)(A)	§ 1.367(a)–3(e)(3)(iii)(A).
§ 1.367(a)–7(f)(4)(iii), first sentence	§ 1.367(a)–3T(e)(3)(iii)(A)	§ 1.367(a)–3(e)(3)(iii)(A).
§ 1.367(a)–7(g) introductory text, second sentence	§ 1.367(a)–3T(e)(8)	§ 1.367(a)–3(e)(8).
§ 1.367(a)–7(h), second sentence	§ 1.367(a)–3T(e)	§ 1.367(a)–3(e).
§ 1.367(a)–8(c)(6), first sentence	§ 1.367(a)–3T(e)(6)	§ 1.367(a)–3(e)(6).
§ 1.367(a)–8(j)(9), first sentence	§ 1.367(a)–3T(e)(6)(iv)	§ 1.367(a)–3(e)(6)(iv).
§ 1.367(b)–4(b)(1)(iii) *Example 4*(i), ninth sentence	§ 1.367(a)–3T(e)(6)	§ 1.367(a)–3(e)(6).
§ 1.367(b)–4(b)(1)(iii), *Example 4*(i), tenth sentence	§ 1.367(a)–3T(e)	§ 1.367(a)–3(e).
§ 1.367(b)–4(b)(1)(iii), *Example 5*(i), penultimate sentence.	§ 1.367(a)–3T(e)(6)	§ 1.367(a)–3(e)(6).
§ 1.367(b)–4(b)(1)(iii) *Example 5*(i), last sentence	§ 1.367(a)–3T(e)	§ 1.367(a)–3(e).
§ 1.367(e)–1(e), first sentence	§ 1.367(a)–3T(e)	§ 1.367(a)–3(e).
§ 1.1248(f)–1(c)(4)(i), first sentence	§ 1.367(a)–3T(e)(3)(iii)(A)	§ 1.367(a)–3(e)(3)(iii)(A).
§ 1.1248(f)–2(e) introductory text, second sentence	§ 1.367(a)–3T(e)(8), *Example 3*	§ 1.367(a)–3(e)(8), *Example 3*.
§ 1.1248(f)–2(e), *Example 2*(i), last sentence	§ 1.367(a)–3T(e)(3)(iii)(A)	§ 1.367(a)–3(e)(3)(iii)(A).
§ 1.1248(f)–2(e), *Example 2*(i), last sentence	§ 1.367(a)–3T(e)(6)	§ 1.367(a)–3(e)(6).
§ 1.1248(f)–2(e), *Example 2*(ii)(A), first sentence	§ 1.367(a)–3T(e)(2)	§ 1.367(a)–3(e)(2).
§ 1.1248(f)–2(e), *Example 2*(ii)(A), first sentence	§ 1.367(a)–3T(e)(3)(i)	§ 1.367(a)–3(e)(3)(i).
§ 1.1248(f)–2(e), *Example 2*(ii)(A), second sentence	§ 1.367(a)–3T(e)(3)(i)	§ 1.367(a)–3(e)(3)(i).
§ 1.1248(f)–2(e), *Example 2*(ii)(A), third sentence	§ 1.367(a)–3T(e)(3)(ii)	§ 1.367(a)–3(e)(3)(ii).
§ 1.1248(f)–2(e), *Example 2*(ii)(A), fourth sentence	§ 1.367(a)–3T(e)(3)(iii)	§ 1.367(a)–3(e)(3)(iii).
§ 1.1248(f)–2(e), *Example 2*(ii)(A), fourth sentence	§ 1.367(a)–3T(e)(6)	§ 1.367(a)–3(e)(6).
§ 1.1248(f)–2(e), *Example 3*(i), penultimate sentence	§ 1.367(a)–3T(e)(6)	§ 1.367(a)–3(e)(6).
§ 1.1248(f)–2(e), *Example 3*(ii)(A), first sentence	§ 1.367(a)–3T(e)(2)	§ 1.367(a)–3(e)(2).
§ 1.1248(f)–2(e), *Example 3*(ii)(A), first sentence	§ 1.367(a)–3T(e)(3)(i)	§ 1.367(a)–3(e)(3)(i).
§ 1.1248(f)–2(e), *Example 3*(ii)(A), second sentence	§ 1.367(a)–3T(e)(3)(i)	§ 1.367(a)–3(e)(3)(i).
§ 1.1248(f)–2(e), *Example 3*(ii)(A), third sentence	§ 1.367(a)–3T(e)(3)(ii)	§ 1.367(a)–3(e)(3)(ii).
§ 1.1248(f)–2(e), *Example 3*(ii)(A), fourth sentence	§ 1.367(a)–3T(e)(3)(iii)	§ 1.367(a)–3(e)(3)(iii).
§ 1.1248(f)–2(e), *Example 3*(ii)(A), fourth sentence	§ 1.367(a)–3T(e)(6)	§ 1.367(a)–3(e)(6).
§ 1.1248(f)–2(e), *Example 3*(ii)(G), first sentence	§ 1.367(a)–3T(e)(6)	§ 1.367(a)–3(e)(6).
§ 1.1248(f)–2(e), *Example 3*(ii)(G), first sentence	§ 1.367(a)–3T(e)(6)(i)(A)	§ 1.367(a)–3(e)(6)(i)(A).
§ 1.1248(f)–2(f), third sentence	§ 1.367(a)–3T(e)	§ 1.367(a)–3(e).
§ 1.6038B–1T(c)(4)(ii)(A), second sentence	§ 1.367(a)–3T(d)(2)	§ 1.367(a)–3(d)(2).
§ 1.6038B–1T(c)(4)(ii)(A), second sentence	§ 1.367(a)–3T(d)(2)	§ 1.367(a)–3(d)(2).

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