foreign corporation. S–2 is also a foreign subsidiary of P, and this would be so even if P owned none of the voting stock of S–2. S–2 owns 51 percent, S–1 owns 39 percent, and P owns 10 percent of the voting stock of S–3, a foreign corporation. Since P owns less than 20 percent of the voting stock of S–2 and less than 20 percent of the voting stock of S–3, and since S–1 owns not more than 50 percent of the voting stock of S–3, S–3 is not a foreign subsidiary of P within the meaning of the regulations in this part.

*Example 2.* Assume the same facts as those stated in example *1* except that 4 percent of the voting stock of S–2 is transferred by S–1 to P. After, as well as before, the transfer of 66 percent of the voting stock of S–2 is owned by P and S–1 together. After the transfer, however, P owns less than 20 percent and S–1 owns not more than 50 percent of the voting stock of S–2. When such transfer is effected S–2 ceases to be a foreign subsidiary of P for purposes of the regulations in this part.

(c) *Transfer of stock ownership.* The transfer of the voting stock of a foreign corporation which is a foreign subsidiary of a domestic corporation within the meaning of section 3121(l)(8) will not affect the status of the foreign corporation as such a foreign subsidiary if at all times either of the percentage tests stated in section 3121(l)(8), relating to ownership of the voting stock of such foreign corporation, is met.

(d) *Meaning of ''stock''.* The term ''stock'', as used in the regulations in this part, has the meaning assigned by paragraph (7) of section 7701(a). Section 7701(a)(7) provides as follows:

SEC. 7701. *Definitions.* (a) When used in this title [Internal Revenue Code of 1954], where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

* * * * *

(7) *Stock.* The term ''stock'' includes shares in an association, joint-stock company, or insurance company.

[T.D. 6390, 24 FR 4831, June 13, 1959]

### § 36.3121(l)(9)–1 Domestic corporation as separate entity.

A domestic corporation which enters into an agreement as provided in § 36.3121(l)(1)–1 shall, for purposes of the regulations in this part and for purposes of section 6413(c)(2)(C), relating to special credits or refunds, be considered an employer in its capacity as a party to such agreement separate and apart from its identity as an employer incurring liability for the employee tax and employer tax on the wages of its own employees. Thus, if a citizen of the United States performs services in employment for the domestic corporation and at any time within the same calendar year performs services covered by the agreement as an employee of one or more foreign subsidiaries named therein, the limitation on wages provided in section 3121(a) (1) has application separately as to the wages for employment performed in the employ of the domestic corporation and as to the remuneration for services covered by the agreement performed in the employ of such foreign subsidiary or subsidiaries. All services covered by the agreement whether performed in the employ of one or more than one such foreign subsidiary are regarded for purposes of the wage limitation as having been performed in the employ of the domestic corporation in its separate capacity as a party to the agreement. Similarly, any remuneration for such services which, if the services were performed in the United States, would be excluded from wages unless a certain amount of such remuneration is paid by a single employer within a specified period (for example, remuneration for agricultural labor) is regarded, for purposes of determining whether the domestic corporation incurs liability under its agreement with respect to such remuneration, as having been paid by the domestic corporation in its separate capacity as a party to the agreement. All remuneration received by an employee for services covered by the agreement is deemed, for purposes of the special credit or refund provisions contained in section 6413(c), to have been received from the domestic corporation as an employer in its separate capacity as a party to the agreement.

### § 36.3121(l)(10)–1 Requirements in respect of liability under agreement.

To the extent not inconsistent with, or otherwise provided in, the regulations in this part, the requirements and duties (relating to identification number, account numbers, wage information statements to employees, record keeping, etc.) imposed on an employer for any period with respect to

the taxes imposed by the Federal Insurance Contributions Act are hereby made applicable to a domestic corporation with respect to its obligations and liabilities, for the same period, under an agreement entered into as provided in § 36.3121(l)(1)–1.

### § 36.3121(l)(10)–2 Identification.

(a) *Domestic corporation.* A domestic corporation which has secured, or is required to secure, an identification number as an employer having in its employ one or more individuals in employment for wages is not required to secure an identification number under the regulations in this part.

(b) *Employees.* Every employee performing services covered by an agreement shall have the same duties in respect of an account number as would be the case if the employee were performing services in employment for the domestic corporation.

### § 36.3121(l)(10)–3 Returns.

(a) The forms prescribed for use in making returns of the taxes imposed by the Federal Insurance Contributions Act (except any forms particularly prescribed for use by household employers or by employers filing returns in Puerto Rico) shall be used by a domestic corporation in making returns of its liability under an agreement entered into as provided in § 36.3121(l)(1)–1. Returns of such liability shall be made separate and apart from any returns required of the domestic corporation in respect of the taxes imposed by the Federal Insurance Contributions Act. The domestic corporation shall plainly mark ''3121(l) Agreement'' at the top of each return, each detachable schedule thereof, and each paper or document constituting a part of the return, filed by the domestic corporation pursuant to the regulations in this part. Returns required under the regulations in this part shall be made by the domestic corporation as if all services covered by the agreement, whether performed in the employ of one or more than one foreign subsidiary, were performed in the employ of the domestic corporation as an employer in its separate capacity as a party to the agreement.

(b) Each return required under the regulations in this part must be filed on or before the last day of the month following the period for which the return is made.

[T.D. 6145, 20 FR 6577, Sept. 8, 1955, as amended by T.D. 6390, 24 FR 4832, June 13, 1959]

### § 36.3121(l)(10)–4 Payment of amounts equivalent to tax.

A domestic corporation which has entered into an agreement as provided in § 36.3121(l)(1)–1 is not required to make deposits with an authorized financial institution of any amount for which liability is incurred under its agreement.

[T.D. 6145, 20 FR 6577, Sept. 8, 1955; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7953, 49 FR 19646, May 9, 1984; T.D. 8952, 66 FR 33832, June 26, 2001]

## PARTS 37–39 [RESERVED]