	Earnings & profits		Foreign taxes	
	Positive E&P	Hovering deficit	Foreign taxes available	Foreign taxes associated with hovering deficit
Post-1986 pool separate category:				
Passive	550u		$200	
General			$85	
Carryforward pre-pooling deficit from Corp B		(100u)		$0
2006 (from Corp B)	0u		50u	
2005 (from Corp B)	0u		25u	
	550u	(100u)		$0

(C) Under paragraph (d)(2)(iii) of this section, all of the $25 of post-1986 foreign income taxes related to the (300u) hovering deficit in the general category is added to the foreign surviving corporation's post-1986 foreign income taxes of $60 in that category (because post-transaction earnings in the general category have exceeded the deficit in that category). Under paragraph (e)(1)(iii)(C) of this section, the 50u and 25u of foreign income taxes associated with foreign corporation B's pre-1987 accumulated profits for 2006 and 2005 remain in those layers. These foreign income taxes generally will not be reduced or deemed paid unless a foreign tax refund restores a positive balance to the associated earnings pursuant to section 905(c), and thus will be trapped. See §1.902–2(b)(2).

(5) *Pro rata rule for earnings and deficits during transaction year.* (i) For purposes of offsetting post-transaction earnings of a foreign surviving corporation under the rules described in paragraphs (d)(2), (e)(1)(iii), and (e)(2)(iii) of this section, the earnings and profits, and any related foreign income taxes, in each separate category for the taxable year of the foreign surviving corporation in which the transaction occurs shall be deemed to have been accumulated after such transaction in an amount which bears the same ratio to the undistributed earnings and profits of the foreign surviving corporation for such taxable year (computed without regard to any earnings and profits carried over) as the number of days in the taxable year after the date of transaction bears to the total number of days in the taxable year. See, e.g., §1.381(c)(2)–1(a)(7) *Example 2* (illustrating application of this rule with respect to domestic corporations).

(ii) For purposes of determining the amount of pre-transaction deficits described in paragraphs (d)(2), (e)(1)(iii), and (e)(2)(iii) of this section, of a foreign surviving corporation that has a deficit in earnings and profits in any separate category for its taxable year in which the transaction occurs, unless the actual accumulated earnings and profits, or deficit, as of such date can be shown, such pre-transaction deficit, and any related foreign income taxes, shall be deemed to have accumulated in a manner similar to that described in paragraph (f)(5)(i) of this section. See, e.g., §1.381(c)(2)–1(a)(7) *Example 4* (illustrating application of this rule with respect to domestic corporations).

(g) *Effective date.* This section shall apply to section 367(b) transactions that occur on or after November 6, 2006.

[T.D. 9273, 71 FR 44985, Aug. 8, 2006; 71 FR 57889, Oct. 2, 2006, as amended at 71 FR 70876, Dec. 7, 2006]

§1.367(b)–8 Allocation of earnings and profits and foreign income taxes in certain foreign corporate separations. [Reserved]

§1.367(b)–9 Special rule for F reorganizations and similar transactions.

(a) *Scope.* This section applies to a foreign section 381 transaction (as defined in §1.367(b)–7(a)) either—

(1) That is described in section 368(a)(1)(F); or

(2) That involves—

(i) At least one foreign corporation that holds no property and has no tax attributes immediately before the transaction, other than a nominal amount of assets (and related tax attributes) to facilitate its organization or preserve its existence as a corporation; and

(ii) No more than one foreign corporation that holds more than a nominal amount of property or has more than a nominal amount of tax attributes immediately before the transaction.

(b) *Hovering deficit rules inapplicable.* If a transaction is described in paragraph (a) of this section, a foreign surviving corporation shall succeed to earnings and profits, deficits in earnings and profits, and foreign income taxes without regard to the hovering deficit rules of §1.367(b)–7(d)(2), (e)(1)(iii), and (e)(2)(iii).

(c) *Foreign divisive transactions.* [Reserved]

(d) *Examples.* The following examples illustrate the principles of this section:

Example 1. (i) *Facts.* (A) Foreign corporation A is and always has been a wholly owned subsidiary of USP, a domestic corporation. Foreign corporation A was incorporated in 1995, and has always had a calendar taxable year. Foreign corporation A (and all of its respective qualified business units as defined in section 989) maintains a ''u'' functional currency. On December 31, 2006, foreign corporation A has the following post-1986 undistributed earnings and post-1986 foreign income taxes:

Separate Category	E&P	Foreign taxes
Passive	(1,000u)	$5
General	200u	200
	(800u)	205

(B) On January 1, 2007, foreign corporation A moves its place of incorporation from Country 1 to Country 2 in a reorganization described in section 368(a)(1)(F).

(ii) *Result.* Under §1.367(b)–7(d), as modified by paragraph (b) of this section, the pre-transaction deficit of foreign corporation A will not hover. Accordingly, foreign surviving corporation has the following post-1986 undistributed earnings and post-1986 foreign income taxes immediately after the foreign section 381 transaction:

Separate category	E&P	Foreign taxes
Passive	(1,000u)	$5
General	200u	200
	(800u)	205

Example 2. (i) *Facts.* (A) Foreign corporations B, C and D are and always have been wholly owned subsidiaries of USP, a domestic corporation. Foreign corporation B was incorporated in 2000 and foreign corporations C and D were incorporated in 2001. Foreign corporation B does not own any significant property and has no earnings and profits or foreign income taxes accounts. Both foreign corporations C and D have always had a calendar taxable year. Foreign corporations C and D (and all of their respective qualified business units as defined in section 989) maintain a ''u'' functional currency. On December 31, 2006, foreign corporations C and D have the following post-1986 undistributed earnings and post-1986 foreign income taxes:

	E&P	Foreign taxes
Foreign corporation C Separate Category:		
Passive	(900u)	$50
General	(200u)	100
	(1100u)	150
Foreign corporation D Separate Category:		
Passive	1200u	400
General	400u	100
	1600u	500

(B) On January 1, 2007, USP foreign corporations C and D merge into foreign corporation B in a reorganization described in section 368(a)(1)(A).

(ii) *Result.* Although the merger is a foreign section 381 transaction involving a foreign corporation with no property or tax attributes, paragraph (b) of this section does not apply because more than one foreign corporation with significant tax attributes is involved in the foreign section 381 transaction. Accordingly, under §1.367(b)-7(d), foreign surviving corporation B has the following post-1986 undistributed earnings and post-1986 foreign income taxes immediately after the foreign section 381 transaction:

Separate Category	Earnings & profits		Foreign taxes	
	Positive E&P	Hovering deficit	Foreign taxes available	Foreign taxes associated with hovering deficit
General	1200u	(900u)	$400	$50
Passive	400u	(200u)	100	100
	1600u	(1100u)	500	150

(e) *Effective date.* This section shall apply to section 367(b) transactions that occur on or after November 6, 2006.

[T.D. 9273, 71 FR 44913, Aug. 8, 2006]

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

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

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

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

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

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

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

§ 1.367(b)–13 Special rules for determining basis and holding period.

(a) *Scope and definitions*—(1) *Scope.* This section provides special basis and holding period rules to determine the basis and holding period of stock of certain foreign surviving corporations held by a controlling corporation whose stock is issued in an exchange under section 354 or 356 in a triangular reorganization. This section applies to transactions that are subject to section 367(b) as well as section 367(a), including transactions concurrently subject to sections 367(a) and (b).

(2) *Definitions.* For purposes of this section, the following definitions apply:

(i) A block of stock has the meaning provided in §1.1248–2(b).

(ii) The terms *P*, *S*, and *T* have the meanings set forth in §1.358–6(b)(1)(i), (ii), and (iii), respectively.

(iii) A triangular reorganization is a reorganization described in §1.358–6(b)(2)(i), (ii), or (iii), or (v) (a forward triangular merger, triangular C reorganization, reverse triangular merger, or triangular G reorganization, respectively).

(b) *Determination of basis for exchanges of foreign stock or securities under section 354 or 356.* For rules determining the basis of stock or securities in a foreign corporation received in a section 354 or 356 exchange, see §1.358–2.

(c) *Determination of basis and holding period for triangular reorganizations*—(1) *Application.* In the case of a triangular reorganization described in paragraph