under §1.367(b)-2(d)(3), FC has paid foreign taxes that are not eligible for credit under section 906. In a liquidation described in section 332, FC distributes all of its property to DC, and the FC stock held by DC is canceled.

(ii) **Result.** The liquidation of FC into DC is a section 367(b) exchange. Thus, DC is subject to the section 367(b) regulations, and must file a section 367(b) notice pursuant to §1.367(b)-1(c). Pursuant to the provisions of paragraph (d)(1) of this section, the foreign taxes paid by FC do not carryover to DC because FC’s foreign taxes are not eligible for credit under section 906.

(e) **Net operating loss and capital loss carryovers.** A net operating loss or capital loss carryover of the foreign acquired corporation is described in section 381(c)(1) and (c)(3) and thus is eligible to carry over from the foreign acquired corporation to the domestic acquiring corporation only to the extent the underlying deductions or losses were allowable under chapter 1 of subtitle A of the Internal Revenue Code. Thus, only a net operating loss or capital loss carryover that is effectively connected with the conduct of a trade or business within the United States (or that is attributable to a permanent establishment, in the context of an applicable United States income tax treaty) is eligible to be carried over under section 381. For further guidance, see Rev. Rul. 72-421 (1972-2 C.B. 166) (see also §601.601(d)(2) of this chapter).

(f) **Carryover of earnings and profits—(1) General rule.** Except to the extent otherwise specifically provided (see, e.g., Notice 89-79 (1989-2 C.B. 392) (see also §601.601(d)(2) of this chapter)), earnings and profits of the foreign acquired corporation that are not included in income as a deemed dividend under the section 367(b) regulations (or deficit in earnings and profits) are eligible to carry over from the foreign acquired corporation to the domestic acquiring corporation under section 381(c)(2) only to the extent such earnings and profits (or deficit in earnings and profits) of the foreign acquired corporation shall not carry over to the domestic acquiring corporation and, as a result, shall be eliminated.

(2) **Previously taxed earnings and profits.** [Reserved]


§1.367(b)-3T Repatriation of foreign corporate assets in certain non-recognition transactions (temporary).

(a)-(b)(3). [Reserved]. For further guidance, see §1.367(b)-3(a) through (b)(3).

(4) **Election of taxable exchange treatment—(i) Rules—(A) In general.** In lieu of the treatment prescribed by §1.367(b)-3(b)(3)(i), an exchanging shareholder described in §1.367(b)-3(b)(1) may instead elect to recognize the gain (but not loss) that it realizes in the exchange (taxable exchange election). To make a taxable exchange election, the following requirements must be satisfied—

(I) The exchanging shareholder (and its direct or indirect owners that would be affected by the election, in the case of an exchanging shareholder that is a foreign corporation) reports the exchange in a manner consistent with (see, e.g., sections 954(c)(1)(B)(i), 1001 and 1248);

(II) The transaction is described in section 332 or is an asset acquisition described in section 368(a)(1), with respect to the exchange exceeds the amount recognized by the exchanging shareholder.

(B) **Attribute reduction—(I) Reduction of NOL carryovers.** The amount by which the all earnings and profits amount exceeds the gain recognized by the exchanging shareholder (the excess
§ 1.367(b)-4 Acquisition of foreign corporate stock or assets by a foreign corporation in certain nonrecognition transactions.

(a) Scope. This section applies to an acquisition by a foreign corporation of foreign corporate stock or assets by a foreign corporation in certain nonrecognition transactions.