(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)