

**§ 1.367(b)-8**

(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)

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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 |
|---|---------|---------------|
| <i>Foreign corporation C Separate Category:</i> |         |               |
| Passive .....                                   | (900u)  | \$50          |
| General .....                                   | (200u)  | 100           |
|   | (1100u) | 150           |
| <i>Foreign corporation D Separate Category:</i> |         |               |
| 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).

(i) *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