

of the foreign corporation if more than a single block of stock of the foreign corporation is transferred in the section 361 exchange.

(12) *Section 1248 shareholder* is a domestic corporation that satisfies the ownership requirements of section 1248(a)(2) with respect to a foreign corporation, except that a domestic corporation, other than a domestic distributing corporation, that is a regulated investment company (as defined in section 851(a)), a real estate investment trust (as defined in section 856(a)), or an S corporation (as defined in section 1361(a)) cannot be a section 1248 shareholder.

(13) *Timely filed return* is a U.S. income tax return filed on or before the due date set forth in section 6072(b), including any extensions of time to file the return granted under section 6081.

(14) *Total section 1248(f) amount* is the sum of each section 1248(f) amount (as defined in paragraph (c)(10) of this section).

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**§ 1.1248(f)-2 Exceptions for certain distributions and attribution rules.**

(a) *Section 337 stock distribution*—(1) *General exception.* In the case of a section 337 distribution (as defined in § 1.1248-1(b)(1)), § 1.1248(f)-1(b)(1) shall not apply to the distribution of stock of the foreign distributed corporation to the 80-percent distributee if the conditions of paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) of this section are satisfied.

(i) *80-percent distributee is a section 1248 shareholder.* Immediately after the section 337 distribution, the 80-percent distributee is a section 1248 shareholder with respect to the foreign distributed corporation.

(ii) *Holding period.* The 80-percent distributee is treated as holding the stock of the foreign distributed corporation received in the section 337 distribution for the period during which the stock was held by the domestic distributing corporation.

(iii) *Basis.* The 80-percent distributee's basis in the stock of the foreign distributed corporation received in the section 337 distribution does not exceed the domestic distributing corporation's basis in such stock

at the time of the section 337 distribution.

(2) *Elective exception.* If the conditions of paragraph (a)(1)(ii) or (a)(1)(iii) of this section are not otherwise satisfied, the domestic distributing corporation and the 80-percent distributee may elect to make adjustments to the 80-percent distributee's holding period or basis in the stock of the foreign distributed corporation, as appropriate, such that the conditions described in paragraphs (a)(1)(ii) and (iii) of this section are satisfied. The conditions and procedures for making the election are described in paragraph (a)(3) of this section. See paragraphs (a)(4) and (5) of this section for adjustments that are required as a result of making the election.

(3) *Election and reporting*—(i) *Statement required by domestic distributing corporation and 80-percent distributee*—(A) *In general.* The domestic distributing corporation and the 80-percent distributee make the election described in paragraph (a)(2) of this section by each including a statement, described in paragraph (a)(3)(i)(B) of this section, with a timely filed return for the taxable year during which the section 337 distribution occurs, and by entering into a written agreement described in paragraph (a)(3)(ii) of this section. If the domestic distributing corporation or the 80-percent distributee are members of a consolidated group at the time of the section 337 distribution but not the common parent, the common parent of the consolidated group makes the election on behalf of the domestic distributing corporation or the 80-percent distributee. The election described in paragraph (a)(2) of this section and made pursuant to this paragraph (a)(3) is irrevocable.

(B) *Form and content.* The statement of election must be entitled, "STATEMENT TO ELECT TO APPLY EXCEPTION UNDER § 1.1248(f)-2(a)(2)," state that the domestic distributing corporation and the 80-percent distributee have entered into a written agreement described in paragraph (a)(3)(ii) of this section, set forth the date of the agreement and the names of the parties to the agreement, and the adjustments to

the 80-percent distributee's holding period and/or basis determined under section 334 in the stock of the foreign distributed corporation received in the section 337 distribution required under paragraphs (a)(4) and (a)(5) of this section.

(ii) *Written agreement.* The domestic distributing corporation and the 80-percent distributee must enter into a written agreement described in this paragraph (a)(3)(ii) on or before the due date (including extensions) of the domestic distributing corporation's U.S. income tax return for the taxable year during which the section 337 distribution occurs. Both the domestic distributing corporation and the 80-percent distributee must retain the original or a copy of the agreement as part of its records in the manner specified by § 1.6001-1(e). Both the domestic distributing corporation and the 80-percent distributee must provide a copy of the agreement to the Internal Revenue Service within 30 days of the receipt of a request for the agreement in connection with an examination of the taxable year during which the section 337 distribution occurs. The written agreement must—

(A) State the document is an agreement under paragraph (a)(3)(ii) of this section;

(B) Provide the name and taxpayer identification number (if any) of the domestic distributing corporation, the 80-percent distributee, and the foreign distributed corporation;

(C) With respect to the 80-percent distributee, state the holding period in the stock of the foreign distributed corporation received in the section 337 distribution as adjusted under paragraph (a)(4) of this section; and

(D) With respect to the 80-percent distributee, identify the basis as determined under section 334 of the stock of the foreign distributed corporation received in the section 337 distribution and the adjustment (if any) to such basis under paragraph (a)(5) of this section.

(4) *Holding period adjustment.* For purposes of section 1248, immediately after the section 337 distribution, the 80-percent distributee's holding period in the stock of the foreign distributed corporation received in the section 337 dis-

tribution shall equal the domestic distributing corporation's holding period in such stock at the time of the section 337 distribution.

(5) *Basis adjustments.* If the domestic distributing corporation's section 1248 amount with respect to the stock of the foreign distributed corporation received by the 80-percent distributee in the section 337 distribution exceeds the 80-percent distributee's postdistribution amount with respect to such stock (excess amount), the 80-percent distributee's basis as determined under section 334 in such stock shall be reduced by the excess amount.

(b) *Existing stock distribution under sections 355 or 361.* In the case of an existing stock distribution (as defined in § 1.1248(f)-1(b)(2)), § 1.1248(f)-1(b)(2) shall not apply to the distribution of stock of the foreign distributed corporation to a distributee that is a section 1248 shareholder with respect to the foreign distributed corporation immediately after the distribution if the domestic distributing corporation and all distributees that are section 1248 shareholders elect to apply the provisions of this paragraph (b) in accordance with paragraph (b)(1) of this section. See paragraphs (b)(2) and (3) of this section for adjustments that may be required if an election is made to apply the provisions of this paragraph (b).

(1) *Election and reporting—(i) Statement required by domestic distributing corporation and section 1248 shareholders—(A) In general.* The domestic distributing corporation and all distributees that are section 1248 shareholders elect to apply the provisions of paragraph (b) of this section by each including a statement, described in paragraph (b)(1)(i)(B) of this section, with a timely filed return for the taxable year during which the existing stock distribution occurs and by entering into a written agreement described in paragraph (b)(1)(ii) of this section. If the domestic distributing corporation or a section 1248 shareholder is a member of a consolidated group but not the common parent, the common parent of the consolidated group makes the election on behalf of the domestic distributing corporation or section 1248 shareholder. The election made under this paragraph (b)(1) is irrevocable.

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(B) *Form and content.* The statement of election must be entitled, "ELECTION TO APPLY EXCEPTION UNDER § 1.1248(f)-2(b)," state that the domestic distributing corporation and all distributees that are section 1248 shareholders have entered into a written agreement described in paragraph (b)(1)(ii) of this section, the date of the agreement and the names of the parties to the agreement, and set forth any required adjustment to each section 1248 shareholder's holding period or section 358 basis (if any) in the stock of the foreign distributed corporation received in the existing stock distribution under paragraph (b)(2) or (b)(3) of this section, respectively.

(ii) *Written agreement.* The domestic distributing corporation and the section 1248 shareholders must enter into a written agreement described in this paragraph (b)(1)(ii) on or before the due date (including extensions) of the domestic distributing corporation's U.S. income tax return for the taxable year during which the existing stock distribution occurs. Each party to the agreement must retain the original or a copy of the agreement as part of its records in the manner specified by § 1.6001-1(e). Each party to the agreement must provide a copy of the agreement to the Internal Revenue Service within 30 days of the receipt of a request for the agreement in connection with an examination of the taxable year during which the existing stock distribution occurs. The written agreement must—

(A) State the document is an agreement under paragraph (b)(1)(ii) of this section;

(B) Provide the name and taxpayer identification number (if any) of the domestic distributing corporation, the foreign distributed corporation, and each section 1248 shareholder;

(C) With respect to each section 1248 shareholder, state the holding period in the stock of the foreign distributed corporation received in the existing stock distribution as adjusted under paragraph (b)(2) of this section; and

(D) With respect to each section 1248 shareholder, identify the basis under section 358 of the stock of the foreign distributed corporation received in the existing stock distribution and the ad-

justment (if any) to the basis under paragraph (b)(3) of this section.

(2) *Holding period adjustments.* For purposes of section 1248, immediately after the existing stock distribution, each section 1248 shareholder's holding period in each share of stock of the foreign distributed corporation received in the existing stock distribution will be equal to the domestic distributing corporation's holding period in the share of stock at the time of the existing stock distribution.

(3) *Basis adjustments.* If the domestic distributing corporation's section 1248 amount with respect to a share of stock of the foreign distributed corporation received by a section 1248 shareholder in the existing stock distribution exceeds the section 1248 shareholder's postdistribution amount with respect to the share of stock (excess amount), the section 1248 shareholder's section 358 basis in the share of stock is reduced by the excess amount. For an illustration of the rule in this paragraph (b)(3), see paragraph (e) of this section, *Example 1* and *Example 3*.

(c) *New stock distribution under section 361.* In the case of a new stock distribution (as defined in § 1.1248(f)-1(b)(3)), the amount that the domestic distributing corporation is required to include in gross income as a dividend under § 1.1248(f)-1(b)(3) (total section 1248(f) amount) is reduced by the sum of the portions of any section 1248(f) amount attributable under paragraph (d) of this section to stock of the foreign distributed corporation distributed to distributees that are section 1248 shareholders, but only if the domestic distributing corporation and all the distributees that are section 1248 shareholders elect to apply the provisions of this paragraph (c) in accordance with paragraph (c)(1) of this section. See paragraphs (c)(2), (c)(3), and (c)(4) of this section for adjustments or income inclusions that are required if an election is made to apply the provisions of this paragraph (c). The adjustments or income inclusions provided in paragraphs (c)(2), (c)(3), and (c)(4) of this section apply after any adjustments required under section 367(a)(5) and § 1.367(a)-7(c). For illustrations of this

exception, see paragraph (e) of this section, *Example 2* and *Example 3* and §1.367(a)-3(e)(8), *Example 3*.

(1) *Election and reporting*—(i) *Statement required by domestic distributing corporation and section 1248 shareholders*—(A) *In general*. The domestic distributing corporation and all distributees that are section 1248 shareholders elect to apply the provisions of paragraph (c) of this section by each including a statement, in the form and containing the information listed in paragraph (c)(1)(i)(B) of this section, with a timely filed return for the taxable year during which the new stock distribution occurs and by entering into a written agreement described in paragraph (c)(1)(ii) of this section. If the domestic distributing corporation or a section 1248 shareholder is a member of a consolidated group at the time of the new stock distribution but is not the common parent, the common parent of the consolidated group makes the election on behalf of the domestic distributing corporation or section 1248 shareholder. The election made under this paragraph (c)(1) is irrevocable.

(B) *Form and content*. The statement of election must be entitled, “ELECTION TO APPLY EXCEPTION UNDER §1.1248(f)-2(c),” state that the domestic distributing corporation and each distributee that is a section 1248 shareholder have entered into a written agreement described in paragraph (c)(1)(ii) of this section, the date of the agreement and the names of the parties to the agreement, and describe, with respect to each section 1248 shareholder, the extent to which the shares of stock of the foreign distributed corporation received in the new stock distribution are divided into portions under paragraph (c)(2) of this section, any adjustments to the section 358 basis of the stock under paragraph (c)(3) of this section, and the amount the domestic distributing corporation must include in gross income as a dividend under paragraph (c)(3) of this section.

(ii) *Written agreement*. The domestic distributing corporation and all distributees that are section 1248 shareholders must enter into a written agreement described in this paragraph (c)(1)(ii) on or before the due date (in-

cluding extensions) of the domestic distributing corporation’s U.S. income tax return for the taxable year during which the new stock distribution occurs. Each party to the agreement must retain the original or a copy of the agreement as part of its records in the manner specified by §1.6001-1(e). Each party to the agreement must provide a copy of the agreement to the Internal Revenue Service within 30 days of the receipt of a request for the agreement in connection with an examination of the taxable year during which the new stock distribution occurs. The written agreement must—

(A) State the document is an agreement under paragraph (c)(1)(ii) of this section;

(B) Provide the name and taxpayer identification number (if any) of the domestic distributing corporation, the foreign distributed corporation, and each section 1248 shareholder;

(C) With respect to each section 1248 shareholder, describe the extent to which the shares of stock of the foreign distributed corporation are divided into portions under paragraph (c)(2) of this section;

(D) With respect to each section 1248 shareholder, state the amount of earnings and profits attributable to the stock (or each block of stock, as applicable) of each foreign corporation transferred in the section 361 exchange that is attributable under §1.1248-8(b)(2)(iv) to the stock of the foreign distributed corporation received in the new stock distribution;

(E) With respect to each section 1248 shareholder, state the amount of the section 1248(f) amount with respect to the stock (or each block of stock, as applicable) of each foreign corporation transferred in the section 361 exchange that is attributable under §1.1248(f)-2(d) to the stock of the foreign distributed corporation received in the new stock distribution;

(F) With respect to each section 1248 shareholder, state the amount of the adjustment to the section 358 basis of the stock of the foreign distributed corporation under paragraph (c)(3) of this section; and

(G) With respect to each section 1248 shareholder, state the amount the domestic distributing corporation must

include in gross income as a dividend under paragraph (c)(3) of this section.

(2) *Portions.* If the domestic distributing corporation transfers property, other than a single block of stock of a foreign corporation with respect to which the domestic distributing corporation is a section 1248 shareholder immediately before the section 361 exchange, to the foreign distributed corporation in the section 361 exchange that precedes the new stock distribution, then each share of stock of the foreign distributed corporation received by a distributee that is a section 1248 shareholder must be divided into portions as follows:

(i) One portion attributable to all property transferred in the section 361 exchange, other than property that is stock of a foreign corporation with respect to which the domestic distributing corporation is a section 1248 shareholder immediately before the section 361 exchange; and

(ii) One portion attributable to each block of stock of each foreign corporation transferred in the section 361 exchange with respect to which the domestic distributing corporation is a section 1248 shareholder immediately before the section 361 exchange. For the determination of the earnings and profits attributable to the stock (or block of stock, as applicable) of each foreign corporation transferred in the section 361 exchange that are attributable to a portion of a share of stock of the foreign distributed corporation, see § 1.1248-8(b)(2)(iv). For the determination of the section 1248(f) amount with respect to the stock (or block of stock, as applicable) of each foreign corporation transferred in the section 361 exchange that is attributable to a portion of a share of stock of the foreign distributed corporation, see paragraph (d)(2) of this section.

(3) *Basis adjustments and income inclusions.* If the section 1248(f) amount attributable to a portion of a share of stock (or whole share, if no division is required) (as determined under paragraph (d) of this section) of the foreign distributed corporation received by a distributee that is a section 1248 shareholder in the new stock distribution exceeds the section 1248 shareholder's postdistribution amount in the portion

(or whole share, if no division is required) (excess amount), then the section 1248 shareholder's section 358 basis in the portion as determined under paragraph (c)(4) of this section (or whole share, if no division is required), as adjusted under § 1.367(a)-7(c)(3), is reduced by the excess amount, but not below zero. To the extent the excess amount exceeds the section 358 basis in the portion (or whole share, if no division is required), the domestic distributing corporation must include that portion of the section 1248(f) amount attributable to the portion of the share (or whole share, if no division is required) in gross income as a dividend. For an illustration of this rule, see paragraph (e) of this section, *Example 2*, and § 1.367(a)-3(e)(8), *Example 3*.

(4) *Divided shares of stock*—(i) *Basis.* The basis of a portion of a share of stock of the foreign distributed corporation created under paragraph (c)(2) of this section is the product of the section 1248 shareholder's section 358 basis, as adjusted under § 1.367(a)-7(c)(3), in the share of stock multiplied by the ratio of the basis determined under section 362 (taking into account any gain or deemed dividends recognized under section 367) of the property (section 362 basis) to which the portion relates, to the aggregate section 362 basis of all property received by the foreign distributed corporation in the section 361 exchange. For illustrations of this rule, see paragraph (e) of this section, *Example 2*, and § 1.367(a)-3(e)(8), *Example 3*.

(ii) *Fair market value.* The fair market value of a portion of a share of stock of the foreign distributed corporation created under paragraph (c)(2) of this section is the product of the fair market value of the share of stock multiplied by the ratio of the fair market value of the property to which the portion relates to the aggregate fair market value of all property received by the foreign distributed corporation in the section 361 exchange. For illustrations of this rule, see paragraph (e) of this section, *Example 2*, and § 1.367(a)-3(e)(8), *Example 3*.

(iii) *Subsequent exchanges.* For purposes of determining the gain realized on the sale or exchange of a share of

stock of the foreign distributed corporation that has divided portions under paragraph (c)(2) of this section, the amount realized on the sale or exchange of the share will be allocated to each divided portion based on the relative fair market value of the property to which the portion relates as determined at the time of the reorganization.

(iv) *Duration of divided shares.* Shares of stock of the foreign distributed corporation that are divided into portions under paragraph (c)(2) of this section must be divided so long as section 1248(a) would apply to a sale or exchange of the shares.

(d) *Attribution of all or a portion of section 1248(f) amount to certain stock of the foreign distributed corporation.* This paragraph (d) applies if there is a new stock distribution for which an election under §1.1248(f)-2(c)(1) is made. This paragraph (d) provides rules for attributing all or a portion, as applicable, of the section 1248(f) amount with respect to the stock of each foreign corporation transferred in the section 361 exchange by the domestic distributing corporation to shares of stock, or to portions of shares of stock, as applicable, received in the foreign distributed corporation and distributed to one or more distributees that are section 1248 shareholders with respect to the foreign distributed corporation. Paragraph (d)(1) of this section provides rules to attribute the applicable section 1248(f) amount among shares of stock of the foreign distributed corporation received by one or more distributees that are section 1248 shareholders. If shares of stock are divided into portions under paragraph (c)(2) of this section, paragraph (d)(2) of this section provides additional rules to attribute the applicable section 1248 amount to portions of shares of stock received by one or more distributees that are section 1248 shareholders.

(1) *Attribution of all or a portion of section 1248(f) amount among shares of stock.* With respect to one or more shares of stock of the foreign distributed corporation distributed to a distributee that is a section 1248 shareholder, the portion of the section 1248(f) amount with respect to the stock of the foreign corporation trans-

ferred in the section 361 exchange that is equal to the distributee's hypothetical section 1248 amount is attributed among those shares of stock of the foreign distributed corporation based on the ratio of the value of a share distributed to the distributee to the value of all shares of stock distributed to the distributee (attributable share amount).

(2) *Attribution of all or a portion of section 1248(f) amount to portions of a share of stock—(i) Single block of stock.* If a single block of stock of the foreign corporation is transferred in the section 361 exchange, the attributable share amount (as determined under paragraph (d)(1) of this section) is attributed to the portion of the share that relates to the single block of stock of the foreign corporation.

(ii) *Multiple blocks of stock.* If multiple blocks of stock of the foreign corporation are transferred in the section 361 exchange, the attributable share amount (as determined under paragraph (d)(1) of the section) is attributed among the portions of the share that relate to such multiple blocks of stock of the foreign corporation. The portion of the attributable share amount that is attributable to a portion to which a block of stock relates is that amount that bears the same ratio that the section 1248(f) block amount with respect to that block of stock bears to the section 1248(f) amount with respect to the stock of the foreign corporation.

(e) *Examples.* The rules of this section are illustrated by the following examples. See also §1.367(a)-3T(e)(8), *Example 3*. For purposes of the examples, unless otherwise indicated: DP and DC are domestic corporations; X is a United States citizen; FP is a foreign corporation; CFC1, CFC2, and FA are controlled foreign corporations; each corporation has a single class of stock outstanding and uses the calendar year as its taxable year; each shareholder of a corporation owns a single block of stock in the corporation; DC owns Business A, which consists solely of property whose fair market value exceeds its basis and could satisfy the requirements of the active foreign trade or business exception under section 367(a)(3) and §1.367(a)-2T; DC owns no other assets and has no liabilities; the

requirements in § 1.367(a)-7(c)(5) are satisfied; no earnings and profits of a foreign corporation are described in section 1248(d); and none of the foreign corporations in the examples is a surrogate foreign corporation (within the meaning of section 7874) as a result of the transactions described in the examples because one or more of the conditions of section 7874(a)(2)(B) is not satisfied.

*Example 1. Existing stock distribution under section 355(c)(1); gain recognition and adjustment to stock basis.* (i) *Facts.* DP, FP, and X own 80%, 10%, and 10%, respectively, of the outstanding stock of DC. DP's DC stock has a \$140x basis, \$160x fair market value, and a 2-year holding period. DC wholly owns CFC1. DC's CFC1 stock has a \$50x basis, \$100x fair market value (therefore a gain of \$50x), \$25x of earnings and profits attributable to it for purposes of section 1248, and a \$25x section 1248 amount (computed as the lesser of \$50x gain in the CFC1 stock and \$25x of section 1248 earnings and profits), and a 3-year holding period. On December 31, year 3, DC distributes all of the CFC1 stock to DP, FP, and X on a pro-rata basis in a distribution to which section 355 applies. The fair market value of the CFC1 stock received by DP, FP, and X is \$80x, \$10x, and \$10x, respectively. After the distribution, DP's stock in DC has a fair market value of \$80x and DP's section 358 basis in the CFC1 stock is \$70x (a pro rata portion, or 50%, of DP's \$140x basis in the DC stock immediately before the distribution). See § 1.358-2(a)(iv).

(ii) *Result.* (A) Under § 1.367(e)-1(b)(1), DC must recognize \$5x gain on the distribution of CFC1 stock to FP (10% of the \$50x gain in the CFC1 stock). Under § 1.367(b)-5(b)(1)(ii), DC must also recognize \$5x gain on the distribution of CFC1 stock to X (10% of the \$50x gain in the CFC1 stock). Of the aggregate \$10x gain recognized by DC, \$5x is recharacterized as a dividend under section 1248(a), computed as 20% of the \$25x section 1248 amount with respect to the CFC1 stock. See § 1.1248-1 for additional consequences.

(B) DC's distribution of CFC1 stock to DP is described in section 1248(f)(1) and § 1.1248(f)-1(b)(2) because the distribution is pursuant to section 355(c)(1) (an existing stock distribution). As a result, the general rule is that DC must include in gross income as a dividend the section 1248 amount with respect to the CFC1 stock distributed to DP, or \$20x (computed as 80% of the \$25x section 1248 amount). However, if DP and DC make the election under paragraph (b)(1) of this section, § 1.1248(f)-1(b)(2) will not apply to DC's distribution of CFC1 stock to DP. If DP and DC make the election, then:

(1) Under paragraph (b)(2) of this section, for purposes of section 1248, immediately

after the distribution DP will have a 3-year holding period in the CFC1 stock, the same holding period DC had in the CFC1 stock at the time of the distribution.

(2) Under paragraph (b)(3) of this section, DP's section 358 basis in the CFC1 stock (\$70x) is reduced by \$10x, the amount by which DC's section 1248 amount with respect to the CFC1 stock (\$20x) distributed to DP exceeds DP's postdistribution amount with respect to the CFC1 stock (\$10x). Under § 1.1248(f)-1(c)(6), DP's postdistribution amount equals the amount that DP would include in gross income as a dividend under section 1248(a) if DP sold the CFC1 stock immediately after the distribution, or \$10x, which is computed as the lesser of the \$10x gain in the CFC1 stock (\$80x fair market value, less \$70x basis) and \$20x of section 1248 earnings and profits attributable to the CFC1 stock, taking into account DP's 3-year holding period in the stock as required by paragraph (b)(2) of this section. As adjusted under paragraph (b)(3) of this section, DP's basis in the CFC1 stock is \$60x (\$70x basis, less \$10x required basis reduction).

*Example 2. New stock distribution under section 361(c)(1); adjustment to stock basis.* (i) *Facts.* DP wholly owns DC. DP's DC stock has a \$180x basis and \$200x fair market value. DC wholly owns CFC1 and CFC2. DC's CFC1 stock has a \$70x basis, \$100x fair market value (therefore a gain of \$30x), \$40x of earnings and profits attributable to it for purposes of section 1248, and a section 1248 amount of \$30x (computed as the lesser of the \$30x gain in CFC1 stock and \$40x section 1248 earnings and profits). DC's CFC2 stock has a \$130x basis, \$100x fair market value (therefore a loss of \$30x), \$80x of earnings and profits attributable to it for purposes of section 1248, and a section 1248 amount of \$0x (computed as the lesser of the \$0x gain and \$80x section 1248 earnings and profits). On December 31, Year 1, in a reorganization described in section 368(a)(1)(F), DC transfers the CFC1 stock and the CFC2 stock to FA, a newly formed corporation, in exchange for 100 shares of FA stock. DC distributes the 100 shares of FA stock to DP. DC's transfer of the CFC1 stock and CFC2 stock to FA in exchange for FA stock qualifies as a section 361 exchange, and DC's distribution of the 100 shares of FA stock to DP is pursuant to section 361(c)(1). DP exchanges its DC stock for the 100 shares of FA stock pursuant to section 354. Immediately after the transaction, DP wholly owns FA. DP and DC elect to apply the provisions of § 1.367(a)-7(c) in accordance with § 1.367(a)-7(c)(5). Pursuant to § 1.367(a)-3T(e)(3)(iii)(A), DP properly files a gain recognition agreement with respect to the CFC1 stock that satisfies the conditions of §§ 1.367(a)-3T(e)(6) and 1.367(a)-8.

(ii) *Result.* (A) DC does not recognize gain under § 1.367(a)-3T(e)(2) with respect to the transfer of the CFC1 stock to FA because the

three conditions in § 1.367(a)-3T(e)(3)(i), (e)(3)(ii), and (e)(3)(iii) are satisfied. First, § 1.367(a)-3T(e)(3)(i) is satisfied because the requirements of § 1.367(a)-7(c) are satisfied, including that an election is made to apply § 1.367(a)-7(c). Second, the requirements under § 1.367(a)-3T(e)(3)(ii) related to transfers of domestic stock are not applicable because CFC1 is a foreign corporation. Third, because DC owns all the stock of FA immediately after DC's receipt of the FA stock in the section 361 exchange but prior to, and without taking into account, DC's distribution of the FA stock to DP, for purposes of satisfying the requirements of § 1.367(a)-3T(e)(3)(iii), DP properly files a gain recognition agreement with respect to the CFC1 stock that satisfies the conditions of §§ 1.367(a)-3T(e)(6) and 1.367(a)-8. Furthermore, DC is not required to recognize gain under § 1.367(a)-7(c)(2)(ii), and DP is not required to reduce its \$180x section 358 basis in the FA stock under § 1.367(a)-7(c)(3), because the inside gain (within the meaning of § 1.367(a)-7(f)(5)) is \$0x (\$200x aggregate fair market value of CFC1 stock and CFC2 stock, less \$200x aggregate basis of CFC1 stock and CFC2 stock). In addition, DC is not required to include in income as a deemed dividend the \$30x section 1248 amount with respect to the CFC1 stock under § 1.367(b)-4(b)(1)(i) because immediately after DC's receipt of the FA stock in the section 361 exchange but prior to, and without taking into account, DC's distribution of the FA stock to DP, CFC1 and FA are controlled foreign corporations as to which DC is a section 1248 shareholder. See § 1.367(b)-4(b)(1)(ii)(A). With respect to the transfer of the CFC2 stock to FA, DC's section 1248 amount with respect to the CFC2 stock is \$0x; therefore, § 1.367(b)-4(b)(1)(i) has no application.

(B) Under § 1.1248(f)-1(b)(3), as a result of the section 361(c)(1) distribution of the FA stock to DP (a new stock distribution), the general rule is that DC must include in gross income as a dividend the total section 1248(f) amount (defined in § 1.1248(f)-1(c)(14)). The total section 1248(f) amount is \$30x, the sum of the section 1248(f) amount (defined in § 1.1248(f)-1(c)(10)) with respect to the CFC1 stock (\$30x) and CFC2 stock (\$0x). The section 1248(f) amount with respect to the CFC1 stock is the amount that DC would have included in income as a deemed dividend under § 1.367(b)-4(b)(1)(i) with respect to the CFC1 stock if the requirements under § 1.367(b)-4(b)(1)(ii)(A) had not been satisfied (\$30x), less the amount of gain recognized by DC under § 1.367(a)-7(c)(2) that is allocable to the CFC1 stock under § 1.367(a)-7(e)(1) and treated as a dividend under section 1248(a) (\$0x). Similarly, the section 1248(f) amount with respect to the CFC2 stock is the amount that DC would have included in income as a deemed dividend under § 1.367(b)-4(b)(1)(i) with respect to the CFC2 stock if the re-

quirements under § 1.367(b)-4(b)(1)(ii)(A) had not been satisfied (\$0x), less the amount of gain recognized by DC under § 1.367(a)-7(c)(2) that is allocable to the CFC2 stock under § 1.367(a)-7(e)(1) and treated as a dividend under section 1248(a) (\$0x).

(C) If, however, DP and DC make the election provided in paragraph (c)(1) of this section, the amount that DC is required to include in gross income as a dividend under § 1.1248(f)-1(b)(3) (the total section 1248(f) amount of \$30x) is reduced to the extent the section 1248(f) amount with respect to the CFC1 stock (\$30x) and CFC2 stock (\$0x) is attributable under paragraph (d) of this section to the shares of FA stock distributed to one or more distributees that are section 1248 shareholders of FA. The only distributee is DP, and DP is a section 1248 shareholder with respect to FA. If DP and DC elect to apply paragraph (c) of this section, then:

(1) Under paragraph (d)(1) of this section, the portion of the section 1248(f) amount with respect to the CFC1 stock that is attributed to the shares of FA stock distributed to DP is equal to DP's hypothetical section 1248 amount (as defined in § 1.1248(f)-1(c)(4)) with respect to the CFC1 stock. Because DP is the only shareholder of DC, DP's hypothetical section 1248 amount equals the section 1248(f) amount with respect to the CFC1 stock (\$30x). The \$30x hypothetical section 1248 amount is attributed pro rata (based on relative values) among the 100 shares of FA stock distributed to DP, and the attributable share amount (as defined in paragraph (d)(1) of this section) is \$.30x. Paragraph (d)(1) of this section has no application with respect to the CFC2 stock because there is no section 1248(f) amount with respect to the CFC2 stock.

(2) If the shares of FA stock are divided into portions, the rules of paragraph (d)(2) of this section apply to attribute the attributable share amount (\$.30x) to portions of shares of FA stock distributed to DP. Under paragraph (c)(2)(ii) of this section, the 100 shares of FA stock are divided into two portions, one portion related to the single block of CFC1 stock and one portion related to the single block of CFC2 stock. Under paragraph (d)(2)(i) of this section, the attributable share amount of \$.30x is attributed to the portion of the 100 shares of FA stock that relates to the single block of CFC1 stock. Thus, all of the \$30x section 1248(f) amount with respect to the CFC1 stock is attributable to the 100 shares of FA stock.

(3) Because the election under paragraph (c)(1) of this section is made, the total section 1248(f) amount (\$30x) that DC is otherwise required to include in gross income as a dividend under § 1.1248(f)-1(b)(3) is reduced by \$30x, the portion of the section 1248(f) amount with respect to the CFC1 stock that is attributable under paragraph (d) of this section to the shares of FA stock distributed



to DP. Thus, the amount DC is required to include in gross income as a dividend under § 1.1248(f)-1(b)(3) is \$0x (\$30x less \$30x).

(4) Under paragraph (c)(4)(i) of this section, the basis of each portion is the product of DP's section 358 basis in the share of FA stock multiplied by the ratio of the section 362 basis of the property (CFC1 stock or CFC2 stock, as applicable) to which the portion relates, to the aggregate section 362 basis of all property (CFC1 stock and CFC2 stock) received by FA in the section 361 exchange. Under paragraph (c)(4)(ii) of this section, the fair market value of each portion is the product of the fair market value of the share of FA stock multiplied by the ratio of the fair market value of the property (CFC1 stock or CFC2 stock, as applicable) to which the portion relates, to the aggregate fair market value of all property (CFC1 stock and CFC2 stock) received by FA in the section 361 exchange. The section 362 basis of the CFC1 stock and CFC2 stock is \$70x and \$130x, respectively, for a total section 362 basis of \$200x. The CFC1 stock and CFC2 stock each has a fair market value of \$100x, for a total fair market value of \$200x. Therefore, the portions attributable to the CFC1 stock have an aggregate basis of \$63x (\$180x multiplied by \$70x/\$200x) and fair market value of \$100x (\$200x multiplied by \$100x/\$200x), resulting in aggregate gain in such portions of \$37x (or \$.37x per portion in each of the 100 shares). The portions attributable to the CFC2 stock have an aggregate basis of \$117x (\$180x multiplied by \$130x/\$200x) and fair market value of \$100x (\$200x multiplied by \$100x/\$200x), resulting in aggregate losses in such portions of \$17x (or \$.17x per portion in each of the 100 shares).

(5) Under § 1.1248-8(b)(2)(iv), the \$40x earnings and profits attributable to the single block of CFC1 stock are attributed to the portions of the 100 shares of FA stock that relate to the CFC1 stock. Similarly, the \$80x of earnings and profits attributable to the single block of CFC2 stock are attributed to the portions of the 100 shares of the FA stock that relate to the CFC2 stock. Thus, DP's postdistribution amount (defined in § 1.1248(f)-1(c)(6)) with respect to the portions of the shares of FA attributable to the CFC1 stock is \$37x, the lesser of the aggregate gain in the portions attributable to the CFC1 stock of \$37x (computed in paragraph (ii)(C)(4) of this *Example 2*) and the \$40x earnings and profits attributable to such portions. Furthermore, DP's postdistribution amount with respect to the portions of the shares of FA attributable to the CFC2 stock is \$0x, the lesser of the aggregate gain in the portions attributable to the CFC2 stock of \$0x (computed in paragraph (ii)(C)(4) of this *Example 2* to be an aggregate loss of \$17x) and the \$80x earnings and profits attributable to such portions.

(6) Under paragraph (c)(3) of this section, DP's section 358 basis in the portions of the 100 shares of FA stock attributable to the CFC1 stock (\$63x, computed in paragraph (ii)(C)(4) of this *Example 2*) is reduced by the amount (if any) by which the section 1248(f) amount attributable to such portions under paragraph (d) of this section (\$30x, as computed in paragraph (ii)(C)(2) of this *Example 2*) exceeds DP's postdistribution amount with respect to such portions (\$37x, computed in paragraph (ii)(C)(5) of this *Example 2*). Thus, there is no basis reduction in the portions of the 100 shares of FA stock attributable to the CFC1 stock. DP's section 358 basis in the portions of the 100 shares of FA stock attributable to the CFC2 stock is not reduced because the section 1248(f) amount attributable to such portions under paragraph (d) of this section is \$0x (computed in paragraph (ii)(C)(2) of this *Example 2*), which equals DP's postdistribution amount with respect to such portions of \$0x (as computed in paragraph (ii)(C)(5) of this *Example 2*).

*Example 3. Combined existing stock distribution and new stock distribution under sections 355(c)(1) and 361(c)(1).* (i) *Facts.* DP owns all 100 outstanding shares of stock of DC. DP's DC stock has a \$180x basis (each of the 100 shares having a basis of \$18), \$200x fair market value, and 2-year holding period. DC owns all 60 shares of the outstanding stock of CFC1; all such shares constitute a single block of stock. DC's CFC1 stock has a \$50x basis, \$60x fair market value, \$30x of earnings and profits attributable to it for purposes of section 1248, a \$10x section 1248 amount (computed as the lesser of \$10x gain and \$30x of section 1248 earnings and profits), and a 3-year holding period. DC also owns all 40 shares of the outstanding stock of CFC2; all such shares constitute a single block of stock. DC's CFC2 stock has a \$30x basis, \$40x fair market value, \$20x of earnings and profits attributable to it for purposes of section 1248, and a \$10x section 1248 amount (computed as the lesser of \$10x gain and \$20x of section 1248 earnings and profits). DC also owns Business A, which has a fair market value of \$100x. On December 31, year 4, in a divisive reorganization described in section 368(a)(1)(D), DC transfers the CFC2 stock to CFC1 in exchange for 40 shares of newly issued CFC1 stock. DC's transfer of the CFC2 stock to CFC1 qualifies as a section 361 exchange. DC then distributes the 100 shares of CFC1 stock (60 shares held prior to the transaction and 40 shares received in the section 361 exchange) to DP in a transaction that qualifies under section 355. DP properly files a gain recognition agreement with respect to the CFC2 stock that satisfies the conditions of §§ 1.367(a)-3T(e)(6) and 1.367(a)-8. DP and DC properly make the elections provided in § 1.367(a)-7(c)(5) and paragraphs (b) and (c) of this section.

(ii) *Result.* (A) DC does not recognize gain under §1.367(a)-3T(e)(2) with respect to the transfer of the CFC2 stock to CFC1 because the three conditions in §1.367(a)-3T(e)(3)(i), (e)(3)(ii), and (e)(3)(iii) are satisfied. First, §1.367(a)-3T(e)(3)(i) is satisfied because the requirements of §1.367(a)-7(c) are satisfied, including that an election is made to apply §1.367(a)-7(c). Second, the requirements under §1.367(a)-3T(e)(3)(ii) related to transfers of domestic stock are not applicable because CFC2 is a foreign corporation. Third, because DC and DP own all the stock of CFC1 for purposes of satisfying the requirements of §1.367(a)-3T(e)(3)(iii), DP properly files a gain recognition agreement with respect to the CFC2 stock that satisfies the conditions of §§1.367(a)-3T(e)(6) and 1.367(a)-8. See paragraph (ii)(G) of this example for the computation of the amount of gain subject to the gain recognition agreement. In addition, DC is not required to include in income as a dividend the \$10x section 1248 amount with respect to the CFC2 stock under §1.367(b)-4(b)(1)(i) because immediately after DC's receipt of the CFC1 stock in the section 361 exchange but prior to, and without taking into account, DC's distribution of the CFC1 stock to DP, CFC1 and CFC2 are controlled foreign corporations as to which DC is a section 1248 shareholder. See §1.367(b)-4(b)(1)(ii)(A).

(B) DC is not required to recognize gain under §1.367(a)-7(c)(2)(i) because DP, a control group member (as defined in §1.367(a)-7(f)(1)), owns 100% of DC. DC is not required to recognize gain under §1.367(a)-7(c)(2)(ii) because the amount described in §1.367(a)-7(c)(2)(ii)(A) (\$10x) does not exceed the amount described in §1.367(a)-7(c)(2)(ii)(B) (\$40x). The \$10x described in §1.367(a)-7(c)(2)(ii)(A) equals the product of the inside gain (as defined in §1.367(a)-7(f)) (\$10x) multiplied by DP's ownership interest percentage (as defined in §1.367(a)-7(f)) (100%), reduced by the sum of the amounts in §1.367(a)-7(c)(2)(ii)(A)(1), (c)(2)(ii)(A)(2), and (c)(2)(ii)(A)(3) (\$0x). Under §1.367(a)-7(f)(5), the \$10x of inside gain is the amount by which the aggregate fair market value of the section 367(a) property (CFC2 stock with a fair market value of \$40x) exceeds the sum of the inside basis (\$30x) of such property, and \$0x (the product of the section 367(a) percentage (100%) multiplied by DC's deductible liabilities assumed by CFC1 (\$0x)). Under §1.367(a)-7(f)(4), the \$30x inside basis equals the aggregate basis of the section 367(a) property transferred in the section 361 exchange (\$30x), increased by any gain or deemed dividends recognized by DC with respect to the section 367(a) property under section 367 (\$0x). The \$40x described in §1.367(a)-7(c)(2)(ii)(B) is the product of the section 367(a) percentage (100%) multiplied by the fair market value of the 40 shares of

CFC1 stock received by DC in the section 361 exchange and distributed to DP (\$40x).

(C) Under section 358, DP must allocate the \$180x basis in its 100 shares of DC stock between the 100 shares of DC stock (fair market value of \$100x) and the 100 shares of CFC1 stock (fair market value of \$100x) held after the distribution based on the relative fair market values of the shares. Accordingly, after the allocation of the basis under section 358, but prior to the application of §1.367(a)-7(c)(3), the basis of DP's DC stock is \$90x and the basis of DP's CFC1 stock is \$90x. With respect to the \$90x basis in the 100 shares of CFC1 stock, \$36x is attributable to the 40 shares of CFC1 stock received by DC in the section 361 exchange (\$90x multiplied by 40/100), and \$54x is attributable to the 60 shares of CFC1 stock owned by DC prior to the section 361 exchange (\$90x multiplied by 60/100). See §1.358-2(a)(2)(iv).

(D) Pursuant to §1.367(a)-7(c)(3)(ii), any adjustment to DP's basis in the CFC1 stock required under §1.367(a)-7(c)(3)(i) can only be made with respect to the 40 shares of CFC1 stock received by DC in the section 361 exchange. Under §1.367(a)-7(c)(3)(i)(A), DP must reduce its section 358 basis (\$36x) in the 40 shares of CFC1 stock by \$6x, the amount by which DP's attributable inside gain (\$10x), reduced by the sum of the amounts in §1.367(a)-7(c)(2)(ii)(A)(1), (c)(2)(ii)(A)(2), and (c)(2)(ii)(A)(3) (\$0x) (as computed in paragraph (ii)(B) of this *Example 3*) exceeds DP's outside gain (as defined in §1.367(a)-7(f)) (\$4x). DP's \$4x outside gain equals the product of the section 367(a) percentage (as defined in §1.367(a)-7(f)) (100%) multiplied by the amount by which the fair market value (\$40x) of the 40 shares of CFC1 stock is greater than DP's section 358 basis in the stock (\$36x). After the \$6x reduction to stock basis required under §1.367(a)-7(c)(3), but before the application of §1.1248(f)-2(c)(3), DP's basis in the 40 shares of CFC1 stock is \$30x.

(E) DC's distribution of the 40 shares of newly issued CFC1 stock is subject to §1.1248(f)-1(b)(3) (a new stock distribution). Except as provided in §1.1248(f)-2(c), under §1.1248(f)-1(b)(3) DC must include in gross income as a dividend the total section 1248(f) amount (as defined in §1.1248(f)-1(c)(14)). The total section 1248(f) amount is \$10x, the sum of the section 1248(f) amount (as defined in §1.1248(f)-1(c)(10)) with respect to the stock of each foreign corporation transferred in the section 361 exchange. Only the CFC2 stock is transferred in the section 361 exchange; therefore, the total section 1248(f) amount is equal to the section 1248(f) amount with respect to the CFC2 stock (\$10x). The \$10x section 1248(f) amount with respect to the CFC2 stock is the amount that DC would have included in income as a deemed dividend under §1.367(b)-4(b)(1)(i) with respect to the CFC2 stock if the requirements of §1.367(b)-4(b)(1)(ii)(A) had not

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been satisfied (\$10x), reduced by the amount of gain recognized by DC under § 1.367(a)-7(c)(2) allocable to the CFC2 stock and treated as a dividend under section 1248(a) (in this case, \$0x, as described in paragraph (ii)(B) of this *Example 3*).

(F) However, because DC and DP (a section 1248 shareholder of CFC1 immediately after the distribution) elect to apply the provisions of § 1.1248(f)-2(c) (as provided in § 1.1248(f)-2(c)(1)), the amount that DC is required to include in income as a dividend under § 1.1248(f)-1(b)(3) (\$10x total section 1248(f) amount as computed in paragraph (ii)(E) of this *Example 3*) is reduced by the sum of the portions of the section 1248(f) amount with respect to the CFC2 stock that is attributable (under the rules of § 1.1248(f)-2(d)) to the 40 shares of CFC1 stock distributed to DP. As stated in the facts, the election is made to apply § 1.1248(f)-2(c).

(I) Under paragraph (d)(1) of this section, the portion of the section 1248(f) amount with respect to the CFC2 stock that is attributed to the 40 shares of CFC1 stock distributed to DP is equal to DP's hypothetical section 1248 amount (as defined in § 1.1248(f)-1(c)(4)) with respect to the CFC2 stock. Because DP is the only shareholder of DC, DP's hypothetical section 1248 amount equals the section 1248(f) amount with respect to the CFC2 stock (\$10x). The \$10x hypothetical section 1248 amount is attributed pro rata (based on relative values) among the 40 shares of CFC1 stock distributed to DP, and the attributable share amount (as defined in paragraph (d)(1) of this section) is \$.25x.

(2) The 40 shares of CFC1 stock are not divided into portions under paragraph (c)(2) of this section because the only property transferred by DC to CFC1 is a single block of stock of CFC2. If the 40 shares of CFC1 stock were required to be divided into portions, however, the rules of paragraph (d)(2) of this section apply to attribute the attributable share amount (\$.25x) to portions of shares of CFC1 stock distributed to DP.

(3) Because the election under paragraph (c)(1) of this section is made, the total section 1248(f) amount (\$10x) that DC is otherwise required to include in gross income as a dividend under § 1.1248(f)-1(b)(3) is reduced by \$10x, the portion of the section 1248(f) amount with respect to the CFC2 stock that is attributable under paragraph (d) of this section to the 40 shares of CFC1 stock distributed to DP. Thus, the amount DC is required to include in gross income as a dividend under § 1.1248(f)-1(b)(3) is \$0x (\$30x less \$30x).

(4) Under § 1.1248-8(b)(2)(iv), the \$20x earnings and profits attributable to the single block of CFC2 stock are attributed pro rata to the 40 shares of CFC1 stock. Thus, DP's postdistribution amount (defined in § 1.1248(f)-1(c)(6)) with respect to the 40 shares of CFC1 stock attributable to the

CFC2 stock is \$10x, the lesser of the aggregate gain in the 40 shares of CFC1 stock of \$10x (\$40x fair market value, less \$30x section 358 basis, as described in paragraph (ii)(D) of this *Example 3*) and the \$20x earnings and profits attributable to such shares.

(5) Under paragraph (c)(3) of this section, DP's section 358 basis in the 40 shares of CFC1 stock (\$30x) is reduced by the amount (if any) by which the section 1248(f) amount attributable to such shares under paragraph (d) of this section (\$10x, as computed in paragraph (ii)(E) of this *Example 3*) exceeds DP's postdistribution amount with respect to such shares (\$10x). Thus, there is no basis reduction in the 40 shares of CFC1 stock.

(G) Pursuant § 1.367(a)-3T(e)(6), the amount of gain subject to the gain recognition agreement entered into by DP with respect to the CFC2 stock is \$10x, which is the product of DP's ownership interest percentage (100%) multiplied by the gain realized by DC in the 361 exchange prior to taking into account the application of any other provision of section 367 (\$10x), reduced by the sum of the amounts described in § 1.367(a)-3T(e)(6)(i)(A), (e)(6)(i)(B), (e)(6)(i)(C), and (e)(6)(i)(D) (\$0x).

(H) DC's distribution of the 60 shares of CFC1 stock it held before the section 361 exchange is subject to § 1.1248(f)-1(b)(2) (an existing stock distribution); however, because DC and DP make the election provided in paragraph (b)(1) of this section, § 1.1248(f)-1(b)(2) does not apply to the distribution.

(I) Under paragraph (b)(2) of this section, for purposes of section 1248, DP will have a 3-year holding period in the 60 shares of CFC1 stock received, the same holding period that DC had in the 60 shares of CFC1 stock.

(2) Under paragraph (b)(3) of this section, DP's section 358 basis in the 60 shares of CFC1 stock received (\$54x, as computed in paragraph (ii)(C) of this *Example 3*) is reduced by \$4x, the amount by which DC's section 1248 amount (\$10x) with respect to the 60 shares of CFC1 stock exceeds DP's postdistribution amount (\$6x) with respect to the 60 shares of CFC1 stock. Under § 1.1248(f)-1(c)(6), DP's postdistribution amount with respect to the 60 shares of CFC1 stock equals the amount that DP would include in gross income as a dividend under section 1248(a) if DP sold the 60 shares of CFC1 stock immediately after the distribution, or \$6x, which is computed as the lesser of the \$6x gain in the such shares of CFC1 stock (\$60x fair market value, less \$54x basis) and \$30x of section 1248 earnings and profits attributable to the CFC1 stock, taking into account DP's 3-year holding period in the stock as required by paragraph (b)(2) of this section. As adjusted under paragraph (b)(3) of this section, DP's basis in the 60 shares of CFC1 stock is \$50x (\$54x basis, less \$4x basis reduction).

(f) *Applicable cross-references.* For rules relating to the attribution of earnings and profits to the stock of a foreign corporation following certain nonrecognition transactions, see § 1.1248-8. For rules relating to a transfer of property by a domestic corporation to a foreign corporation in a section 361 exchange that precedes a new stock distribution, see § 1.367(a)-7. If the property transferred includes stock of a corporation, see also §§ 1.367(a)-3T(e) and 1.367(b)-4. For other rules that may apply if a domestic corporation distributes the stock of a foreign corporation in a new stock distribution or an existing stock distribution satisfying the requirements of section 355, see §§ 1.367(b)-5(b)(1) and 1.367(e)-1.

[T.D. 9614, 78 FR 17044, Mar. 19, 2013]

**§ 1.1248(f)-3 Reasonable cause and effective/applicability dates.**

(a) *Reasonable cause for failure to comply* [Reserved] For further guidance, see § 1.1248(f)-3T(a).

(b) *Effective/applicability date*—(1) *General rule.* Except as provided in paragraph (b)(2)(ii) of this section, §§ 1.1248(f)-1 and 1.1248(f)-2 apply to distributions occurring on or after April 18, 2013.

(2) *Transactions described in Notice 87-64*—(i) *Gain not otherwise recognized.* For distributions occurring on or after September 21, 1987, and before April 18, 2013, section 1248(f)(1) shall not apply to the extent the domestic distributing corporation recognizes gain with respect to the stock of the foreign distributed corporation as a result of the distribution under another provision of subtitle A of the Internal Revenue Code.

(ii) *Section 355 distributions.* Taxpayers may apply the provisions of § 1.1248(f)-2(b) to distributions occurring on or after September 21, 1987.

[T.D. 9614, 78 FR 17050, Mar. 19, 2013]

**§ 1.1248(f)-3T Reasonable cause and effective/applicability dates (temporary).**

(a) *Reasonable cause for failure to comply*—(1) *Request for relief.* If an 80-percent distributee, a distributee that is a section 1248 shareholder, or the domestic distributing corporation (reporting

person) fails to timely comply with any requirement under § 1.1248(f)-2, the failure shall be deemed not to have occurred if the reporting person is able to demonstrate that the failure was due to reasonable cause and not willful neglect using the procedure set forth in paragraph (a)(2) of this section. Whether the failure to timely comply was due to reasonable cause and not willful neglect will be determined by the Director of Field Operations International, Large Business & International (or any successor to the roles and responsibilities of such person) (Director) based on all the facts and circumstances.

(2) *Procedures for establishing that a failure to timely comply was due to reasonable cause and not willful neglect*—(i) *Time of submission.* A reporting person's statement that the failure to timely comply was due to reasonable cause and not willful neglect will be considered only if, promptly after the reporting person becomes aware of the failure, an amended return is filed for the taxable year to which the failure relates that includes the information that should have been included with the original return for such taxable year or that otherwise complies with the rules of this section, and that includes a written statement explaining the reasons for the failure to timely comply.

(ii) *Notice requirement.* In addition to the requirements of paragraph (a)(2)(i) of this section, the reporting person must comply with the notice requirements of this paragraph (a)(2)(ii). If any taxable year of the reporting person is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Internal Revenue Service personnel conducting the examination. If no taxable year of the reporting person is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Director.

(3) *Effective/applicability date.* This section applies to distributions occurring on or after April 17, 2013.