

out as an Effective Date of 1976 Amendment note under section 2 of this title.

SUBPART D—SPECIAL RULE; DEFINITIONS

Sec.

367. Foreign corporations.  
368. Definitions relating to corporate reorganizations.

**§ 367. Foreign corporations**

**(a) Transfers of property from the United States**

**(1) General rule**

If, in connection with any exchange described in section 332, 351, 354, 356, or 361, a United States person transfers property to a foreign corporation, such foreign corporation shall not, for purposes of determining the extent to which gain shall be recognized on such transfer, be considered to be a corporation.

**(2) Exception for certain stock or securities**

Except to the extent provided in regulations, paragraph (1) shall not apply to the transfer of stock or securities of a foreign corporation which is a party to the exchange or a party to the reorganization.

**(3) Special rule for transfer of partnership interests**

Except as provided in regulations prescribed by the Secretary, a transfer by a United States person of an interest in a partnership to a foreign corporation in an exchange described in paragraph (1) shall, for purposes of this subsection, be treated as a transfer to such corporation of such person's pro rata share of the assets of the partnership.

**(4) Paragraph (2) not to apply to certain section 361 transactions**

Paragraph (2) shall not apply in the case of an exchange described in subsection (a) or (b) of section 361. Subject to such basis adjustments and such other conditions as shall be provided in regulations, the preceding sentence shall not apply if the transferor corporation is controlled (within the meaning of section 368(c)) by 5 or fewer domestic corporations. For purposes of the preceding sentence, all members of the same affiliated group (within the meaning of section 1504) shall be treated as 1 corporation.

**(5) Secretary may exempt certain transactions from application of this subsection**

Paragraph (1) shall not apply to the transfer of any property which the Secretary, in order to carry out the purposes of this subsection, designates by regulation.

**(b) Other transfers**

**(1) Effect of section to be determined under regulations**

In the case of any exchange described in section 332, 351, 354, 355, 356, or 361 in connection with which there is no transfer of property described in subsection (a)(1), a foreign corporation shall be considered to be a corporation except to the extent provided in regulations prescribed by the Secretary which are necessary or appropriate to prevent the avoidance of Federal income taxes.

**(2) Regulations relating to sale or exchange of stock in foreign corporations**

The regulations prescribed pursuant to paragraph (1) shall include (but shall not be limited to) regulations dealing with the sale or exchange of stock or securities in a foreign corporation by a United States person, including regulations providing—

(A) the circumstances under which—

(i) gain shall be recognized currently, or amounts included in gross income currently as a dividend, or both, or

(ii) gain or other amounts may be deferred for inclusion in the gross income of a shareholder (or his successor in interest) at a later date, and

(B) the extent to which adjustments shall be made to earnings and profits, basis of stock or securities, and basis of assets.

**(c) Transactions to be treated as exchanges**

**(1) Section 355 distribution**

For purposes of this section, any distribution described in section 355 (or so much of section 356 as relates to section 355) shall be treated as an exchange whether or not it is an exchange.

**(2) Contribution of capital to controlled corporations**

For purposes of this chapter, any transfer of property to a foreign corporation as a contribution to the capital of such corporation by one or more persons who, immediately after the transfer, own (within the meaning of section 318) stock possessing at least 80 percent of the total combined voting power of all classes of stock of such corporation entitled to vote shall be treated as an exchange of such property for stock of the foreign corporation equal in value to the fair market value of the property transferred.

**(d) Special rules relating to transfers of intangibles**

**(1) In general**

Except as provided in regulations prescribed by the Secretary, if a United States person transfers any intangible property (within the meaning of section 936(h)(3)(B)) to a foreign corporation in an exchange described in section 351 or 361—

(A) subsection (a) shall not apply to the transfer of such property, and

(B) the provisions of this subsection shall apply to such transfer.

**(2) Transfer of intangibles treated as transfer pursuant to sale of contingent payments**

**(A) In general**

If paragraph (1) applies to any transfer, the United States person transferring such property shall be treated as—

(i) having sold such property in exchange for payments which are contingent upon the productivity, use, or disposition of such property, and

(ii) receiving amounts which reasonably reflect the amounts which would have been received—

(I) annually in the form of such payments over the useful life of such property, or

(II) in the case of a disposition following such transfer (whether direct or indirect), at the time of the disposition.

The amounts taken into account under clause (ii) shall be commensurate with the income attributable to the intangible.

**(B) Effect on earnings and profits**

For purposes of this chapter, the earnings and profits of a foreign corporation to which the intangible property was transferred shall be reduced by the amount required to be included in the income of the transferor of the intangible property under subparagraph (A)(ii).

**(C) Amounts received treated as ordinary income**

For purposes of this chapter, any amount included in gross income by reason of this subsection shall be treated as ordinary income. For purposes of applying section 904(d), any such amount shall be treated in the same manner as if such amount were a royalty.

**(D) Regulatory authority**

For purposes of the last sentence of subparagraph (A), the Secretary shall require—

- (i) the valuation of transfers of intangible property, including intangible property transferred with other property or services, on an aggregate basis, or
- (ii) the valuation of such a transfer on the basis of the realistic alternatives to such a transfer,

if the Secretary determines that such basis is the most reliable means of valuation of such transfers.

**(3) Regulations relating to transfers of intangibles to partnerships**

The Secretary may provide by regulations that the rules of paragraph (2) also apply to the transfer of intangible property by a United States person to a partnership in circumstances consistent with the purposes of this subsection.

**(e) Treatment of distributions described in section 355 or liquidations under section 332**

**(1) Distributions described in section 355**

In the case of any distribution described in section 355 (or so much of section 356 as relates to section 355) by a domestic corporation to a person who is not a United States person, to the extent provided in regulations, gain shall be recognized under principles similar to the principles of this section.

**(2) Liquidations under section 332**

In the case of any liquidation to which section 332 applies, except as provided in regulations, subsections (a) and (b)(1) of section 337 shall not apply where the 80-percent distributee (as defined in section 337(c)) is a foreign corporation.

**(f) Other transfers**

To the extent provided in regulations, if a United States person transfers property to a foreign corporation as paid-in surplus or as a con-

tribution to capital (in a transaction not otherwise described in this section), such transfer shall be treated as a sale or exchange for an amount equal to the fair market value of the property transferred, and the transferor shall recognize as gain the excess of—

- (1) the fair market value of the property so transferred, over
- (2) the adjusted basis (for purposes of determining gain) of such property in the hands of the transferor.

(Aug. 16, 1954, ch. 736, 68A Stat. 119; Pub. L. 91-681, §1(a), Jan. 12, 1971, 84 Stat. 2065; Pub. L. 94-455, title X, §1042(a), Oct. 4, 1976, 90 Stat. 1634; Pub. L. 97-248, title II, §213(d), Sept. 3, 1982, 96 Stat. 465; Pub. L. 98-369, div. A, title I, §131(a)-(c), July 18, 1984, 98 Stat. 662-664; Pub. L. 99-514, title VI, §631(d)(1), title XII, §1231(e)(2), title XVIII, §1810(g)(1), (4), Oct. 22, 1986, 100 Stat. 2272, 2563, 2828, 2829; Pub. L. 100-647, title I, §1006(e)(13)(A), Nov. 10, 1988, 102 Stat. 3402; Pub. L. 101-508, title XI, §11702(a)(1), Nov. 5, 1990, 104 Stat. 1388-514; Pub. L. 105-34, title XI, §1131(b)(2), (4), (5)(A), Aug. 5, 1997, 111 Stat. 979, 980; Pub. L. 106-170, title V, §532(c)(1)(C), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 108-357, title IV, §406(a), Oct. 22, 2004, 118 Stat. 1498; Pub. L. 115-97, title I, §§14102(e)(1), (2), 14221(b)(1), Dec. 22, 2017, 131 Stat. 2194, 2218.)

CODIFICATION

Another section 1131(b) of Pub. L. 105-34 enacted section 684 of this title.

AMENDMENTS

2017—Subsec. (a)(3). Pub. L. 115-97, §14102(e)(1), redesignated par. (4) as (3) and struck out former par. (3) which related to exception for transfers of certain property used in the active conduct of a trade or business.

Subsec. (a)(4). Pub. L. 115-97, §14102(e)(1), (2), redesignated par. (5) as (4) and substituted “Paragraph (2)” for “Paragraphs (2) and (3)” in heading and text. Former par. (4) redesignated (3).

Subsec. (a)(5), (6). Pub. L. 115-97, §14102(e)(1), redesignated pars. (5) and (6) as (4) and (5), respectively.

Subsec. (d)(2)(D). Pub. L. 115-97, §14221(b)(1), added subpar. (D).

2004—Subsec. (d)(2)(C). Pub. L. 108-357 inserted at end “For purposes of applying section 904(d), any such amount shall be treated in the same manner as if such amount were a royalty.”

1999—Subsec. (a)(3)(B)(i). Pub. L. 106-170 substituted “section 1221(a)” for “section 1221”.

1997—Subsec. (d)(2)(C). Pub. L. 105-34, §1131(b)(4), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: “For purposes of this chapter, any amount included in gross income by reason of this subsection shall be treated as ordinary income from sources within the United States.”

Subsec. (d)(3). Pub. L. 105-34, §1131(b)(5)(A), added par. (3).

Subsec. (f). Pub. L. 105-34, §1131(b)(2), added subsec. (f).

1990—Subsec. (a)(5). Pub. L. 101-508 substituted “subsection (a) or (b) of section 361” for “section 361”.

1988—Subsec. (a)(5), (6). Pub. L. 100-647 added par. (5) and redesignated former par. (5) as (6).

1986—Subsec. (a)(1). Pub. L. 99-514, §1810(g)(4)(A), struck out “355,” after “354.”

Subsec. (d)(2)(A). Pub. L. 99-514, §1231(e)(2), inserted at end “The amounts taken into account under clause (ii) shall be commensurate with the income attributable to the intangible.”

Subsec. (e). Pub. L. 99-514, §631(d)(1), amended subsec. (e) generally. Prior to amendment, subsec. (e), treat-

ment of distributions described in section 336 or 355, read as follows: “In the case of any distribution described in section 336 or 355 (or so much of section 356 as relates to section 355) by a domestic corporation which is made to a person who is not a United States person, to the extent provided in regulations, gain shall be recognized under principles similar to the principles of this section.”

Subsec. (f). Pub. L. 99-514, §1810(g)(1), struck out subsec. (f) which related to transitional rules in the case of any exchanges beginning before Jan. 1, 1978.

Pub. L. 99-514, §1810(g)(4)(B), in heading substituted “distributions described in section 336 or 355” for “liquidations under section 336”, and in text inserted “or 355 (or so much of section 356 as relates to section 355)”.

1984—Subsec. (a). Pub. L. 98-369, §131(a), amended subsec. (a) generally, revising provisions of pars. (1) and (2), and adding pars. (3) to (5).

Subsec. (d). Pub. L. 98-369, §131(b), amended subsec. (d) generally, substituting provision providing special rules relating to transfers of intangibles for provision providing special rules relating to transfers of intangibles by possession corporation.

Subsecs. (e), (f). Pub. L. 98-369, §131(c), added subsec. (e) and redesignated former subsec. (e) as (f).

1982—Subsecs. (d), (e). Pub. L. 97-248 added subsec. (d) and redesignated former subsec. (d) as (e).

1976—Pub. L. 94-455, among other changes, inserted provisions permitting nonrecognition of gain if a request for a ruling that tax avoidance is not present is filed within 183 days after beginning of an exchange, relating to an organization, reorganization, and liquidation of a foreign corporation, in the case of outbound transfers, however, for all other transfers, regulations are to provide the extent that earnings are to be taken into account as dividends and provisions relating to Tax Court review of the tax avoidance rulings.

1971—Subsec. (a). Pub. L. 91-681 designated existing provisions as subsec. (a), and, as so designated, inserted provisions relating to instances of an exchange, described in subsec. (b). Provisions relating to distributions described in section 355 (or so much of section 356 as relates to section 355) were stricken and were transferred to subsec. (c).

Subsec. (b). Pub. L. 91-681 added subsec. (b).

Subsec. (c). Pub. L. 91-681 designated as subsec. (c) provisions relating to distribution described in section 355 (or so much of section 356 as relates to section 355).

Subsec. (d). Pub. L. 91-681 added subsec. (d).

#### EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115-97, title I, §14102(e)(3), Dec. 22, 2017, 131 Stat. 2195, provided that: “The amendments made by this subsection [amending this section] shall apply to transfers after December 31, 2017.”

Pub. L. 115-97, title I, §14221(c)(1), Dec. 22, 2017, 131 Stat. 2219, provided that: “The amendments made by this section [amending this section and sections 482 and 936 of this title] shall apply to transfers in taxable years beginning after December 31, 2017.”

#### EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title IV, §406(b), Oct. 22, 2004, 118 Stat. 1498, provided that: “The amendment made by this section [amending this section] shall apply to amounts treated as received pursuant to section 367(d)(2) of the Internal Revenue Code of 1986 on or after August 5, 1997.”

#### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106-170, set out as a note under section 170 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title XI, §1131(d), Aug. 5, 1997, 111 Stat. 980, provided that: “The amendments made by this sec-

tion [enacting section 684 of this title, amending this section and sections 721, 814, 1035, and 6422 of this title, and repealing sections 1057, 1491, 1492, and 1494 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].”

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 11702(j) of Pub. L. 101-508, set out as a note under section 59 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, §1006(e)(13)(B), Nov. 10, 1988, 102 Stat. 3402, provided that: “The amendment made by subparagraph (A) [amending this section] shall apply to exchanges on or after June 21, 1988, except that such amendment shall not apply to any exchange pursuant to any reorganization for which a plan of reorganization was adopted before June 21, 1988.”

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 631(d)(1) of Pub. L. 99-514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99-514, set out as an Effective Date note under section 336 of this title.

Amendment by section 1231(e)(2) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, but only with respect to transfers after Nov. 16, 1985, or licenses granted after such date, or before such date with respect to property not in existence or owned by taxpayer on such date, except that for purposes of section 936(h)(5)(C) of this title, such amendment applicable to taxable years beginning after Dec. 31, 1986, without regard to when the transfer or license was made, see section 1231(g)(2) of Pub. L. 99-514, set out as a note under section 936 of this title.

Amendment by section 1810(g)(1), (4) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title I, §131(g), July 18, 1984, 98 Stat. 665, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting section 6038B of this title, amending this section and sections 1492, 1494, 6501, and 7482 of this title, and repealing section 7477 of this title] shall apply to transfers or exchanges after December 31, 1984, in taxable years ending after such date.

“(2) SPECIAL RULE FOR CERTAIN TRANSFERS OF INTANGIBLES.—

“(A) IN GENERAL.—If, after June 6, 1984, and before January 1, 1985, a United States person transfers any intangible property (within the meaning of section 936(h)(3)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) to a foreign corporation or in a transfer described in section 1491, such transfer shall be treated for purposes of sections 367(a), 1492(2), and 1494(b) of such Code as pursuant to a plan having as 1 of its principal purposes the avoidance of Federal income tax.

“(B) WAIVER.—Subject to such terms and conditions as the Secretary of the Treasury or his delegate may prescribe, the Secretary may waive the application of subparagraph (A) with respect to any transfer.

“(3) RULING REQUEST BEFORE MARCH 1, 1984.—The amendments made by this section (and the provisions

of paragraph (2) of this subsection) shall not apply to any transfer or exchange of property described in a request filed before March 1, 1984, under section 367(a), 1492(2), or 1494(b) of the Internal Revenue Code of 1986 (as in effect before such amendments).”

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to taxable years ending after Aug. 14, 1982, see section 213(e)(3) of Pub. L. 97-248, set out as a note under section 936 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title X, §1042(e), Oct. 4, 1976, 90 Stat. 1639, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) The amendments made by this section (other than by subsection (d)) [amending this section and sections 751 and 1248 of this title] shall apply to transfers beginning after October 9, 1975, and to sales, exchanges, and distributions taking place after such date. The amendments made by subsection (d) [enacting section 7477 of this title and amending sections 7476 and 7482 of this title] shall apply with respect to pleadings filed with the Tax Court after the date of the enactment of this Act [Oct. 4, 1976] but only with respect to transfers beginning after October 9, 1975.

“(2) In the case of any exchange described in section 367 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on December 31, 1974) in any taxable year beginning after December 31, 1962, and before the date of the enactment of this Act [Oct. 4, 1976], which does not involve the transfer of property to or from a United States person, a taxpayer shall have for purposes of such section until 183 days after the date of the enactment of this Act [Oct. 4, 1976] to file a request with the Secretary of the Treasury or his delegate seeking to establish to the satisfaction of the Secretary of the Treasury or his delegate that such exchange was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes and that for purposes of such section a foreign corporation is to be treated as a foreign corporation.”

#### EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 91-681, §1(c), Jan. 12, 1971, 84 Stat. 2066, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by this section [amending this section and section 1492 of this title] shall apply to transfers made after December 31, 1967; except that sections 367(d) and 1492 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by this section) shall apply only with respect to transfers made after December 31, 1970.”

#### APPLICABILITY OF SUBSECTION (e)(2)

Pub. L. 100-647, title I, §1006(e)(13)(C), Nov. 10, 1988, 102 Stat. 3402, provided that: “Section 367(e)(2) of the 1986 Code (as amended by the Reform Act [Pub. L. 99-514]) shall not apply in the case of any corporation completely liquidated before June 10, 1987, into a corporation organized in a country which has an income tax treaty with the United States.”

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

## § 368. Definitions relating to corporate reorganizations

### (a) Reorganization

#### (1) In general

For purposes of parts I and II and this part, the term “reorganization” means—

(A) a statutory merger or consolidation;

(B) the acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition);

(C) the acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of substantially all of the properties of another corporation, but in determining whether the exchange is solely for stock the assumption by the acquiring corporation of a liability of the other shall be disregarded;

(D) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor, or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, is in control of the corporation to which the assets are transferred; but only if, in pursuance of the plan, stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 354, 355, or 356;

(E) a recapitalization;

(F) a mere change in identity, form, or place of organization of one corporation, however effected; or

(G) a transfer by a corporation of all or part of its assets to another corporation in a title 11 or similar case; but only if, in pursuance of the plan, stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 354, 355, or 356.

#### (2) Special rules relating to paragraph (1)

##### (A) Reorganizations described in both paragraph (1)(C) and paragraph (1)(D)

If a transaction is described in both paragraph (1)(C) and paragraph (1)(D), then, for purposes of this subchapter (other than for purposes of subparagraph (C)), such transaction shall be treated as described only in paragraph (1)(D).

##### (B) Additional consideration in certain paragraph (1)(C) cases

If—

(i) one corporation acquires substantially all of the properties of another corporation,

(ii) the acquisition would qualify under paragraph (1)(C) but for the fact that the