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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