INTERNAL REVENUE
BULLETIN

IRS

HIGHLIGHTS
OF THIS ISSUE

Bulletin No. 2015–40
October 5, 2015

INCOME TAX

REG–139483–13, page 475.

The proposed regulations under section 367 primarily narrow the exception to section 367(a) for property transferred to a foreign corporation for use in the conduct of an active trade or business by limiting the exception to only certain classes of property, and eliminate the exception to section 367(d) for transfers of foreign goodwill or going concern value. The regulations also reorganize the regulations under section 367(a) and update cross-references where appropriate.

Rev. Rul. 2015–21, page 447.

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for October 2015.

Rev. Proc. 2015–43, page 467.

This revenue procedure supplements Rev. Proc. 2015–3, 2015–1 I.R.B. 129, which sets forth areas of the Internal Revenue Code (Code) on which the Internal Revenue Service will not issue letter rulings or determination letters (no-rule areas). The revenue procedure adds to the list of no-rule areas any issue relating to the qualification, under § 355 and related provisions of the Code, of certain distributions in which property becomes the property of a regulated investment company or a real estate investment trust, the active business is small relative to other assets, or there is a substantial amount of investment assets.

Rev. Proc. 2015–48, page 469.

The Tax Increase Prevention Act of 2014 generally extends the application of § 168(k) 50% bonus depreciation, § 168(k)(4) “extension property,” and § 179(f) real property, for property placed in service in 2014. This revenue procedure provides guidance to taxpayers for making certain elections and filing amended returns to avail themselves of these extenders.

Notice 2015–59, page 459.

This notice is issued concurrently with Rev. Proc. 2015–43, page 467, this Bulletin, and announces that the Treasury Department and the Internal Revenue Service (Service) are studying issues under §§ 337(d) and 355 of the Internal Revenue Code (Code) relating to certain distributions, described in § 355 of the Code, in which property becomes the property of a regulated investment company or a real estate investment trust, the active business is small relative to other assets, or there is a substantial amount of investment assets. The notice describes the transactions that concern the Treasury Department and the Service and requests comments concerning those transactions.

Notice 2015–64, page 464.

2015 Section 43 Inflation Adjustment: The notice announces the inflation adjustment factor and phase-out amount for the enhanced oil recovery credit for taxable years beginning in the 2015 calendar year. The format of the notice is identical to the format of previously published notices on this issue. The notice concludes that because the reference price for the 2014 calendar year ($87.39) exceeds $28 multiplied by the inflation adjustment factor for the 2014 calendar year ($28 multiplied by 1.6245 = $45.49) by $41.90, the enhanced oil recovery credit for qualified costs paid or incurred in 2015 is phased out completely. The notice also contains the previously published figures for taxable years beginning in the 1991 through 2014 calendar years.

Notice 2015–65, page 466.

2015 Marginal Production Rates: The notice announces that under § 613A(c)(6)(C) of the Internal Revenue Code, the applicable percentage for purposes of determining percentage depletion on marginal properties for calendar year 2015 is 15 percent. The format of the notice is identical to the format of notices previously published on this issue.

(Continued on the next page)

Finding Lists begin on page ii.

T.D. 9737, page 449.

This document contains final rules with revisions to examples that illustrate the controlled group rules applicable to regulated investment companies (RICs). The revised examples illustrate how the controlled group rules affect the RIC asset diversification tests.

T.D. 9738, page 453.

Temporary regulations clarify the coordination of transfer pricing rules with other Internal Revenue Code provisions.

ADMINISTRATIVE

Notice 2015–63, page 461.

Optional special per diem rates. This notice provides the 2015–2016 special per diem rates for taxpayers to use in substantiating the amount of ordinary and necessary business expenses incurred while traveling away from home. The notice includes (1) the special transportation industry rate, (2) the rate for the incidental expenses only deduction, and (3) the rates and list of high-cost localities for the high-low substantiation method.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

Rev. Rul. 2015–21

This revenue ruling provides various prescribed rates for federal income tax purposes for October 2015 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, with respect to housing credit dollar amount allocations made before January 1, 2015, shall not be less than 9%. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2015–21 TABLE 1
Applicable Federal Rates (AFR) for October 2015

	Period for Compounding			
	Annual	*Semiannual*	*Quarterly*	*Monthly*
		Short-term		
AFR	.55%	.55%	.55%	.55%
110% AFR	.61%	.61%	.61%	.61%
120% AFR	.66%	.66%	.66%	.66%
130% AFR	.72%	.72%	.72%	.72%
		Mid-term		
AFR	1.67%	1.66%	1.66%	1.65%
110% AFR	1.84%	1.83%	1.83%	1.82%
120% AFR	2.00%	1.99%	1.99%	1.98%
130% AFR	2.17%	2.16%	2.15%	2.15%
150% AFR	2.51%	2.49%	2.48%	2.48%
175% AFR	2.93%	2.91%	2.90%	2.89%
		Long-term		
AFR	2.58%	2.56%	2.55%	2.55%
110% AFR	2.84%	2.82%	2.81%	2.80%
120% AFR	3.09%	3.07%	3.06%	3.05%
130% AFR	3.36%	3.33%	3.32%	3.31%

REV. RUL. 2015–21 TABLE 2
Adjusted AFR for October 2015

	Period for Compounding			
	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term adjusted AFR	.42%	.42%	.42%	.42%
Mid-term adjusted AFR	1.58%	1.57%	1.57%	1.56%
Long-term adjusted AFR	2.58%	2.56%	2.55%	2.55%

REV. RUL. 2015–21 TABLE 3 Rates Under Section 382 for October 2015	
Adjusted federal long-term rate for the current month	2.58%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	2.82%

REV. RUL. 2015–21 TABLE 4 Appropriate Percentages Under Section 42(b)(1) for October 2015	
Note: Under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, with respect to housing credit dollar amount allocations made before January 1, 2015 shall not be less than 9%.	
Appropriate percentage for the 70% present value low-income housing credit	7.49%
Appropriate percentage for the 30% present value low-income housing credit	3.21%

REV. RUL. 2015–21 TABLE 5 Rate Under Section 7520 for October 2015	
Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	2.0%

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2015. See Rev. Rul. 2015–21, page 447.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of October 2015. See Rev. Rul. 2015–21, page 447.

Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

The adjusted applicable federal long-term rate is set forth for the month of October 2015. See Rev. Rul. 2015–21, page 447.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2015. See Rev. Rul. 2015–21, page 447.

Section 467.—Certain Payments for the Use of Property or Services

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2015. See Rev. Rul. 2015–21, page 447.

Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2015. See Rev. Rul. 2015–21, page 447.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of October 2015. See Rev. Rul. 2015–21, page 447.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2015. See Rev. Rul. 2015–21, page 447.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of October 2015. See Rev. Rul. 2015–21, page 447.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2015. See Rev. Rul. 2015–21, page 447.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2015. See Rev. Rul. 2015–21, page 447.

Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2015. See Rev. Rul. 2015–21, page 447.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2015. See Rev. Rul. 2015–21, page 447.

Section 7872.—Treatment of Loans With Below-Market Interest Rates

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2015. See Rev. Rul. 2015–21, page 447.

T.D. 9737

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Controlled Group Regulation Examples

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final rules with revisions to examples that illustrate the controlled group rules applicable to regulated investment companies (RICs). The revised examples illustrate how the controlled group rules affect the RIC asset diversification tests.

DATES: *Effective Date*: These regulations are effective on September 15, 2015.

Applicability Dates: For dates of applicability, see §§ 1.851–3(b), 1.851–5(b).

FOR FURTHER INFORMATION CONTACT: Julanne Allen or Susan Baker of the Office of Associate Chief Counsel (Financial Institutions and Products) at (202) 317-6945 (Julanne Allen) or (202) 317-7053 (Susan Baker) (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR, part 1) relating to the application of the controlled group rules under section 851(c) to RICs.

To qualify as a RIC, a taxpayer must meet asset diversification tests pursuant to which, at the close of each quarter of the RIC's taxable year, not more than 25 percent of the value of the taxpayer's total assets may be invested in (i) the securities (other than Government securities or the securities of other RICs) of any one issuer; (ii) the securities (other than the securities of other RICs) of two or more issuers that the taxpayer controls and that are determined, under regulations prescribed by the Secretary, to be engaged in the same or similar trades or businesses or related trades or businesses; or (iii) the securities of one or more qualified publicly traded partnerships (as defined in section 851(h)) (the 25 percent tests). *See* section 851(b)(3)(B).

Section 851(c) provides special rules applicable to the asset diversification requirements of section 851(b)(3), including the 25 percent tests. The controlled group rules in section 851(c)(1) provide that, when ascertaining the value of a taxpayer's investment in the securities of an issuer for purposes of determining whether the 25 percent tests have been met, the taxpayer's proper proportion of any investment in the securities of such issuer that are held by a member of the taxpayer's "controlled group" must be aggregated with the taxpayer's investment in such issuer, as determined under regulations.

Section 851(c)(3) defines a controlled group as one or more chains of corporations connected through stock ownership with the taxpayer if (i) 20 percent or more of the total combined voting power of all classes of stock entitled to vote of each of the corporations (except the taxpayer) is owned directly by one or more of the other corporations, and (ii) the taxpayer owns directly at least 20 percent or more of the total combined voting power of all classes of stock entitled to vote of at least one of the other corporations.

On August 2, 2013, the Treasury Department and the IRS published in the **Federal Register** a notice of proposed rulemaking (REG–114122–12 at 78 FR 46851) (NPRM). The proposed regulations would revise certain examples in § 1.851–5 to clarify that a RIC and its controlled subsidiary are a controlled group even if the group consists of only that RIC and its subsidiary.

No public hearing was requested or held. Written comments responding to the NPRM were received. The written comments are available for public inspection at http://www.regulations.gov or upon request. After consideration of all the comments, these final regulations adopt the provisions of the proposed regulations with certain clarifications. The comments and clarifications are discussed in this preamble.

Summary of Comments and Explanation of Revisions

Comments received in response to the NPRM's request for comments addressed three general categories of issues: (1) application of the proposed changes to a parent RIC investing in the stock of subsidiary RICs (a Fund of Funds structure); (2) application of the proposed changes to a RIC's indirect investment in qualified publicly traded partnerships, as defined in section 851(h) (QPTPs); and (3) clarification of existing regulatory language implementing the controlled group rules of section 851(c).

1. *Fund of Funds*

Commenters recognized that the changes to the examples in § 1.851–5 apply to structures in which the investments of a RIC (Upper RIC) include stock of one or more subsidiary RICs (Lower RICs). Commenters noted that there may be uncertainty in determining whether an Upper RIC satisfies its 25 percent tests when what might otherwise be a quarter-end violation by the Lower RIC is saved from being a violation by one or both of the relief provisions in section 851(d)(1) (sometimes called the "market value exception" and the "30-day cure provision") or when the Upper RIC and a Lower RIC have different quarter end testing dates.

To resolve this uncertainty, commenters urged the Treasury Department and the IRS either to provide a safe harbor for Fund of Funds structures or to exempt these structures from the controlled group rules. Commenters noted that securities of RICs are listed as qualifying assets for purposes of the "good asset" 50 percent test of section 851(b)(3)(A) and are correspondingly excluded from the categories of assets listed in the 25 percent tests set forth in sections 851(b)(3)(B)(i) and (ii). In response to these requests, the Treasury Department and the IRS are issuing Revenue Procedure 2015–45 (2015–39 IRB dated September 28, 2015), which describes conditions under which the IRS will treat an Upper RIC that invests in one or more Lower RICs as satisfying the 25 percent tests and provides procedures to lessen the burden of demonstrating compliance with the 25 percent tests, applying the market value exception and the 30-day cure provision, and dealing with different quarter-end testing dates.

2. *QPTPs*

Comments were received both on the revised language in *Example 1* and on proposed *Example 7*. *Example 7* illustrates the application of the controlled group rules to a RIC's indirect investment in securities of QPTPs.

In 2004, Congress enacted section 851(b)(2)(B), which facilitated investment by RICs in equity interests of QPTPs by providing that net income from an interest in a QPTP would be treated as qualifying income under the RIC income test set forth in section 851(b)(2) without regard to the character of the income earned by the QPTP. Congress provided for this new ability of RICs to invest in QPTPs to improve QPTP access to U.S. capital markets.[1]

At the same time, however, Congress enacted section 851(b)(3)(B)(iii), which limits a RIC's investment in securities of one or more QPTPs to not more than 25 percent of the value of the RIC's assets. The Ways and Means Committee report explained the rationale for this limitation by stating:

> [T]he Committee bill requires that present-law limitations on ownership and composition of assets of mutual funds apply to any investment in a publicly traded partnership by a mutual fund. The Committee believes that these limitations will serve to limit the use of mutual funds as conduits for avoidance of unrelated business income tax or withholding rules [for effectively connected income] that would otherwise apply with respect to publicly traded partnership income.

H.R. Rep. No. 108–548, pt. 1 at 152 (2004). Commenters relied on this legislative history in support of their position that the section 851(b)(3)(B)(iii) QPTP test (which focuses on a RIC's holdings of securities of a category of issuers) is fundamentally different from the section 851(b)(3)(B)(i) and (ii) tests (which focus on a RIC's holdings of securities of particular issuers). These commenters contended that an interest in a QPTP should not be subject to the clarified controlled group rules in the NPRM when the interest in the QPTP is held by a corporation that is not a RIC.

The Treasury Department and the IRS do not find this argument sufficiently persuasive to overcome the plain language of section 851(c) regarding the application of the controlled group rules. Pursuant to its introductory language, section 851(c) applies generally "[f]or purposes of subsection 851(b)(3)," and pursuant to section 851(c)(1), the look-through rule for controlled group members applies specifically "for purposes of subparagraph (B)" of section 851(b)(3), in each case without distinguishing between the various 25 percent tests. Moreover, the Treasury Department and the IRS note that Congress, in the same legislation in which it enacted section 851(b)(3)(B)(iii), had the opportunity to amend these rules in the manner urged by the commenters. In that legislation, Congress made other changes to conform section 851(c) to the changes relating to QPTPs by redesignating former section 851(c)(5) as section 851(c)(6) and adding a new section 851(c)(5), which defines the term "outstanding voting securities of such issuer" to include equity securities of QPTPs. Congress made no changes, however, to limit the application of the section 851(c) controlled group rules to solely the 25 percent tests under section 851(b)(3)(i) and (ii).

Thus, the Treasury Department and the IRS believe, consistent with the statutory language, that the controlled group rules should apply to section 851(b)(3)(B)(iii) because (1) Congress specifically provided that a RIC's investment in QPTP securities should be limited to 25 percent of the RIC's total asset value; (2) the controlled group rules of section 851(c) by their terms apply to all of section 851(b)(3), including section 851(b)(3)(B)(iii); and (3) Congress did not carve out section 851(b)(3)(B)(iii) when it updated section 851(c).

3. *Clarifying regulatory language*

Some practitioners have interpreted section 851(c)(3) to require the presence of at least two levels of controlled entities for a controlled group to exist and have relied on certain of the examples in the existing regulations to support this interpretation. These final regulations clarify, through revisions to the existing examples, that as few as two corporations are enough to constitute a controlled group if the ownership requirements of section 851(c)(3) are met.

The Treasury Department and the IRS believe that the interpretation of the controlled group rules reflected in these final regulations is consistent with both the statutory language of section 851(c)(3) and the well-established interpretation of analogous Code provisions. For example, for purposes of the consolidated return rules, the IRS has consistently treated a parent and its directly owned subsidiary as "affiliated" within the meaning of section 1504(a)(1). Similarly, in limiting certain tax benefits for affiliated corporations, the IRS treats a parent and its subsidiary as a "controlled group" under section 1563, which uses language similar to section 1504(a). *See* section 1563(a)(1) and § 1.1563–1(a)(2)(ii), *Example 1*. The interpretation reflected in these final regulations is also consistent with the purpose of section 851(c)(3), which is to aggregate the investments of a RIC's related corporations for purposes of determining whether the RIC satisfies its 25 percent tests.

[1]"The Congress understood that . . .[p]ublicly traded partnerships with specified types of income are not treated as corporations, however, for the reason that if the income is from sources that are commonly considered to be passive investments, then there is less reason to treat the publicly traded partnership as a corporation. The Congress understood that these types of publicly traded partnerships may have improved access to capital markets if their interests were permitted investments of mutual funds. Therefore, the Act treats publicly traded partnership interests as permitted investments for mutual funds ('RICs')." Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in the 108th Congress at 249 (JCS–5–05), May 2005 (footnote omitted).

As stated in the preamble to the NPRM, the Treasury Department and the IRS believe that the language in the examples in the existing regulations was intended merely to simplify the description of certain fact patterns and not to articulate a legal interpretation that is inconsistent with the statutory language of section 851(c) and the construction of substantially similar language elsewhere in the Code.

Commenters noted that § 1.851–3 states that "[i]n determining the value of the taxpayer's investment in the securities of *any one* issuer, for the purposes of subparagraph (B) of section 851(b)[(3)], there shall be included its proper proportion of the investment of any other corporation, a member of a controlled group, in the securities of such issuer" (emphasis added). Commenters cited the phrase "any one issuer" in support of the proposition that the controlled group rules should not be applied for purposes of section 851(b)(3)(B)(iii), which addresses not the value of a RIC's direct and indirect holdings of securities of any single issuer but rather a RIC's aggregate direct and indirect holdings of securities of a category of issuers (that is, QPTPs). While the Treasury Department and the IRS do not believe that the use of "any one issuer" in § 1.851–3 bears the weight these commenters attribute to it, in order to respond to the comment and more closely align § 1.851–3 with the statutory language of section 851(c)(1), these final regulations update the language of § 1.851–3 by changing "any one issuer" to "an issuer."

Commenters similarly maintained that because section 851(c)(1) refers to use of the controlled group rules "in ascertaining the value of the taxpayer's investment in the securities of *an issuer*" (emphasis added), the rules should not apply for purposes of a limitation that applies to holdings of securities in a category of issuers, such as the section 851(b)(3)(B)(iii) limitation on investment in QPTPs. The Treasury Department and the IRS do not agree with this reading of the statute. As noted above, the controlled group rules expressly apply for purposes of section 851(b)(3)(B) without qualification. The Treasury Department and the IRS believe that the more natural reading of the statutory language is that, in assessing compliance with section 851(b)(3), a RIC applies the controlled group rules to determine its indirect holdings in each individual issuer (including each QPTP), and the RIC then aggregates its direct and indirect holdings in each individual issuer for purposes of applying the test in section 851(b)(3)(B)(i); aggregates its direct and indirect holdings of securities of issuers engaged in the same or similar trades or businesses or related trades or businesses for purposes of applying the test in section 851(b)(3)(B)(ii); and aggregates its direct and indirect holdings of securities of issuers that are QPTPs for purposes of applying the test in section 851(b)(3)(B)(iii).

Finally, commenters suggested that operative rules should be set forth in substantive rules in addition to being demonstrated in the examples. They urged the Treasury Department and the IRS to provide regulatory text setting forth general rules, with the examples in § 1.851–5 demonstrating the application of those rules. The Treasury Department and the IRS believe that the revised examples are intended to, and do, make sufficiently clear how the statutory rules are to be interpreted and applied, and accordingly no changes are being made in response to this comment.

Applicability Date

The final regulations apply to quarters that begin on or after December 14, 2015. Under section 851(d)(1), whether a taxpayer loses status as a RIC in one quarter may depend on whether the taxpayer satisfied section 851(b)(3) and (c) at the close of one or more prior quarters. For purposes of applying the first sentence of section 851(d)(1) to a quarter that begins on or after March 14, 2016, these final regulations apply in determining whether the taxpayer met the requirements of section 851(b)(3) and (c) at the close of prior quarters.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses. No comments were received.

Drafting Information

The principal author of these regulations is Julanne Allen, Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the Treasury Department and the IRS participated in their development.

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List of Subjects in 26 CFR Part 1

Income taxes, Reporting and record keeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Sections 1.851–3 and 1.851–5 are also issued under 26 U.S.C. 851(c).

* * * * *

Par. 2. Section 1.851–3 is revised to read as follows:

§ 1.851–3 Rules applicable to section 851(b)(3).

(a) *In general*. In determining the value of the taxpayer's investment in the securities of an issuer, for purposes of subparagraph (B) of section 851(b)(3), there shall be included its proper proportion of the investment of any other corporation, a member of a controlled group, in the securities of such issuer. *See Example 4* in § 1.851–5. For purposes of §§ 1.851–2, 1.851–4, 1.851–5, and 1.851–6, the terms "controls," "controlled group," and "value" have the meaning assigned to them by section 851(c). All other terms used in these sections have the same meaning as when used in the Investment Company Act of 1940 (15 U.S.C., chapter 2D), as amended.

(b) *Effective/applicability dates*. The rules of this section apply to quarters that begin on or after December 14, 2015**.** For purposes of applying the first sentence of section 851(d)(1) to a quarter that begins on or after March 14, 2016, the rules of this section apply in determining whether the taxpayer met the requirements of section 851(b)(3) and (c) at the close of prior quarters.

Par. 3. Section 1.851–5 is revised to read as follows:

§ 1.851–5 Examples.

(a) *Examples*. The provisions of section 851 may be illustrated by the following examples:

Example 1. (i) Investment Company W at the close of its first quarter of its taxable year has its assets invested as follows:

	Percent
Cash	5
Government securities	10
Securities of regulated investment companies	20
Securities of Corporation A	10
Securities of Corporation B	15
Securities of Corporation C	20
Securities of various corporations (not exceeding 5 percent of its assets in any one company)	20
Total	100

(ii) Investment Company W owns all of the voting stock of Corporations A and B, 15 percent of the voting stock of Corporation C, and less than 10 percent of the voting stock of regulated investment companies and various other corporations. Neither Corporation A nor Corporation B owns:

(A) 20 percent or more of the voting stock of any other corporation;

(B) Securities issued by Corporation C; or

(C) Securities issued by any of the regulated investment companies or various corporations whose securities are owned by Investment Company W. Except for Corporation A and Corporation B, none of the corporations (including the regulated investment companies) is a member of a controlled group with Investment Company W.

(iii) Investment Company W meets the requirements under section 851(b)(3) at the end of its first quarter. It complies with subparagraph (A) of section 851(b)(3) because it has 55 percent of its assets invested as provided in that subparagraph. It complies with subparagraph (B) of section 851(b)(3) because it does not have more than 25 percent of its assets invested in the securities of any one issuer, of two or more issuers that it controls, or of one or more qualified publicly traded partnerships (as defined in section 851(h)).

Example 2. (i) Investment Company V at the close of a particular quarter of the taxable year has its assets invested as follows:

	Percent
Cash	10
Government securities	35
Securities of Corporation A	7
Securities of Corporation B	12
Securities of Corporation C	15
Securities of Corporation D	21
Total	100

(ii) Investment Company V fails to meet the requirements of subparagraph (A) of section 851(b)(3) since its assets invested in Corporations A, B, C, and D exceed in each case 5 percent of the value of the total assets of the company at the close of the particular quarter.

Example 3. (i) Investment Company X at the close of a particular quarter of the taxable year has its assets invested as follows:

	Percent
Cash and Government securities	20
Securities of Corporation A	5
Securities of Corporation B	10
Securities of Corporation C	25
Securities of various corporations (not exceeding 5 percent of its assets in any one company)	40
Total	100

(ii) Investment Company X owns more than 20 percent of the voting power of Corporations B and C and less than 10 percent of the voting power of all of the other corporations. Corporation B manufactures radios and Corporation C acts as its distributor and also distributes radios for other companies. Investment Company X fails to meet the requirements of subparagraph (B) of section 851(b)(3) since it has 35 percent of its assets invested in the securities of two issuers which it controls and which are engaged in related trades or businesses.

Example 4. (i) Investment Company Y at the close of a particular quarter of its taxable year has its assets invested as follows:

	Percent
Cash and Government securities	15
Securities of Corporation K (a regulated investment company)	30
Securities of Corporation A	10
Securities of Corporation B	20
Securities of various corporations (not exceeding 5 percent of its assets in any one company)	25
Total	100

(ii) Corporation K has 20 percent of its assets invested in Corporation L, and Corporation L has 40 percent of its assets invested in Corporation B. Corporation A also has 30 percent of its assets invested in Corporation B. Investment Company Y owns more than 20 percent of the voting power of Corporations A and K. Corporation K owns more than 20 percent of the voting power of Corporation L.

(iii) At the end of that quarter, Investment Company Y is disqualified under subparagraph (B)(i) of section 851(b)(3) because, after applying section 851(c)(1), more than 25 percent of the value of Investment Company Y's total assets is invested in the securities of Corporation B. This result is shown by the following calculation:

	Percent
Percentage of assets invested directly in Corporation B	20.0
Percentage invested indirectly through K and L (30% × 20% × 40%)	2.4
Percentage invested indirectly through A (10% × 30%)	3.0
Total percentage of assets of Investment Company Y invested in Corporation B	25.4

Example 5. Investment Company Z, which keeps its books and makes its returns on the basis of the calendar year, at the close of the first quarter of 2016 meets the requirements of section 851(b)(3) and has 20 percent of its assets invested in Corporation A. Later during the taxable year it makes distributions to its shareholders and because of such distributions, it finds at the close of the taxable year that it has more than 25 percent of its remaining assets invested in Corporation A. Investment Company Z does not lose its status as a regulated investment company for the taxable year 2016 because of such distributions, nor will it lose its status as a regulated investment company for any subsequent year solely as a result of such distributions. *See* section 851(d)(1).

Example 6. Investment Company Q, which keeps its books and makes its returns on the basis of the calendar year, at the close of the first quarter of 2016 meets the requirements of section 851(b)(3) and has 20 percent of its assets invested in Corporation P. At the close of the taxable year 2016, it finds that it has more than 25 percent of its assets invested in Corporation P. This situation results entirely from fluctuations in the market values of the securities in Investment Company Q's portfolio and is not due in whole or in part to the acquisition of any security or other property. Investment Company Q does not lose its status as a regulated investment company for the taxable year 2016 because of such fluctuations in the market values of the securities in its portfolio, nor will it lose its status as a regulated investment company for any subsequent year solely as a result of such market value fluctuations. *See* section 851(d)(1).

Example 7. (i) Investment Company T at the close of a particular quarter of its taxable year has its assets invested as follows:

	Percent
Cash and Government securities	40
Securities of Corporation A	20
Securities of various qualified publicly traded partnerships (within the meaning of sections 851(b)(3) and 851(h))	15
Securities of various corporations (not exceeding 5 percent of its assets in any one company)	25
Total	100

(ii) Investment Company T owns more than 20 percent of the voting power of Corporation A and less than 10 percent of the voting power of all of the other corporations. Corporation A has 80 percent of its assets invested in qualified publicly traded partnerships.

(iii) Investment Company T is disqualified under subparagraph (B)(iii) of section 851(b)(3), because, after applying section 851(c)(1), more than 25 percent of the value of Investment Company T's total assets is invested in the securities of one or more qualified publicly traded partnerships. This result is shown by the following calculation:

	Percent
Percentage of assets invested directly in qualified publicly traded partnerships	15.0
Percentage invested in qualified publicly traded partnerships indirectly through A (20% × 80%)	16.0
Total percentage of assets of Investment Company T invested in qualified publicly traded partnerships	31.0

(b) *Effective/applicability dates*. The rules of this section apply to quarters that begin on or after December 14, 2015**.** For purposes of applying the first sentence of section 851(d)(1) to a quarter that begins on or after March 14, 2016, the rules of this section apply in determining whether the taxpayer met the requirements of section 851(b)(3) and (c) at the close of prior quarters.

John Dalrymple,
Deputy Commissioner for Services and Enforcement.

Approved: September 2, 2015.

Mark J. Mazur,
Assistant Secretary of the Treasury (Tax Policy).

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T.D. 9738

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Clarification of the Coordination of the Transfer Pricing Rules with Other Code Provisions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations that clarify the coordination of the application of the arm's length standard and the best method rule under section 482 of the Internal Revenue Code (Code) in conjunction with other provisions of the Code. The text of the temporary regulations also serves in part as the text of the proposed regulations (REG–139483–13) published in the Proposed Rules section of this issue of the **Federal Register**. This document also contains final regulations that add cross-references in the existing final regulations under section 482 to relevant sections of these temporary regulations.

DATES: *Effective date*: These regulations are effective on September 14, 2015.

Applicability date: For dates of applicability, see § 1.482–1T(j)(7)(i).

FOR FURTHER INFORMATION CONTACT: Frank W. Dunham III, (202) 317-6939 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Regulations under section 482 published in the **Federal Register** (33 FR 5848) on April 16, 1968, provided guidance on methods for applying the arm's length standard to evaluate controlled transactions, including transfers of tangible and intangible property, the provision of services, and loans or advances. Subsequent revisions and updates of the transfer pricing regulations were published in the **Federal Register** on July 8, 1994, Dec. 20, 1995, May 13, 1996, Aug. 26, 2003, Aug. 4, 2009, Dec. 22, 2011, and Aug. 27, 2013 (59 FR 34971, 60 FR 65553, 61 FR 21955, 68 FR 51171, 74 FR 38830, 76 FR 80082, and 78 FR 52854, respectively).

Explanation of Provisions

I. *Overview – Consistent Valuation of Controlled Transactions for All Code Purposes*

Section 482 authorizes the Secretary, and the regulations under section 482 authorize the IRS, to adjust the results of controlled transactions to clearly reflect the income of commonly controlled taxpayers in accordance with the arm's length standard and, in the case of the transfer of intangible property (within the meaning of section 936(h)(3)(B)), so as to be commensurate with the income attributable to the intangible. While the determination of arm's length prices for controlled transactions is governed by section 482, the tax treatment of controlled transactions is also governed by other Code and regulatory rules applicable to both controlled and uncontrolled transactions. Controlled transactions always remain subject to section 482 in addition to these generally applicable provisions. These temporary regulations clarify the coordination of section 482 and the regulations thereunder with such other Code and regulatory provisions.

The coordination rules in these temporary regulations apply to controlled transactions, including controlled transactions that are subject in whole or part to both sections 367 and 482. Transfers of property subject to section 367 that occur between controlled taxpayers require a consistent and coordinated application of sections 367 and 482 to the controlled transfer of property and any related transactions between controlled taxpayers. The controlled transactions may include transfers of property subject to section 367(a) or (e), transfers of intangible property subject to section 367(d) or (e), and the provision of services that contribute significantly to maintaining, exploiting, or further developing the transferred properties. All of the transactions (and any elements thereof) must be analyzed and valued on a consistent basis under section

482 in order to achieve the intended purposes of sections 367 and 482.

The consistent analysis and valuation of transactions subject to multiple Code and regulatory provisions is required under the best method rule described in § 1.482–1(c). A best method analysis under section 482 begins with a consideration of the facts and circumstances related to the functions performed, the resources employed, and the risks assumed in the actual transaction or transactions among the controlled taxpayers, as well as in any uncontrolled transactions used as comparables. See § 1.482–1(c)(2)(i) and (d)(3). For example, if consideration of the facts and circumstances reveals synergies among interrelated transactions, an aggregate evaluation under section 482 may provide a more reliable measure of an arm's length result than a separate evaluation of the transactions. In contrast, an inconsistent or uncoordinated application of section 482 to interrelated controlled transactions that are subject to tax under different Code and regulatory provisions may lead to inappropriate conclusions.

The best method rule requires a determination of the arm's length result of controlled transactions under the method, and particular application of that method, that provides the most reliable measure of an arm's length result. Under the regulations, the reliability of the measure depends on the economics of the controlled transactions, not their formal character. See, e.g., §§ 1.482–2A(e)(3)(vii) and 1.482–3(c)(3)(ii)(D) (use of sales agent's commission as comparable for reseller's appropriate markup under the resale price method); §§ 1.482–2A(e)(4)(iv) and 1.482–3(d)(3)(ii)(D) (use of purchasing agent's commission as comparable for producer's appropriate gross profit percentage under the cost-plus method); and § 1.482–9(i)(4) and (5), *Examples 1* and *3* (reference to charges for transfers of property as relevant to the determination of a contingent-payment services charge). Realistic alternative transactions that, on a risk-adjusted basis, reflect arrangements that are economically equivalent to those in the controlled transactions may provide the basis for application of unspecified methods to determine the most reliable measure of an arm's length result in the controlled transactions. See, e.g., §§ 1.482–1(f)(2)(ii)(A), 1.482–3(e)(1), 1.482–4(d)(1), 1.482–7(g)(8), and 1.482–9(h). Thus, although a taxpayer may choose among different transactional forms—for example, a long-term license, research and development services, a cost sharing arrangement, or a transfer subject to section 367—specified and unspecified methods applicable to each form will provide consistent arm's length results for economically equivalent transactions.

Based upon taxpayer positions that the IRS has encountered in examinations and controversy, the Treasury Department and the IRS are concerned that certain results reported by taxpayers reflect an asserted form or character of the parties' arrangement that involves an incomplete assessment of relevant functions, resources, and risks and an inappropriately narrow analysis of the scope of the transfer pricing rules. In particular, the Treasury Department and the IRS are concerned about situations in which controlled groups evaluate economically integrated transactions involving economically integrated contributions, synergies, and interrelated value on a separate basis in a manner that results in a misapplication of the best method rule and fails to reflect an arm's length result. Taxpayers may assert that, for purposes of section 482, separately evaluating interrelated transactions is appropriate simply because different statutes or regulations apply to the transactions (for example, where section 367 and the regulations thereunder apply to one transaction and the general recognition rules of the Code apply to another related transaction). These positions are often combined with inappropriately narrow interpretations of § 1.482–4(b)(6), which provides guidance on when an item is considered similar to the other items identified as constituting intangibles for purposes of section 482. The interpretations purport to have the effect, contrary to the arm's length standard, of requiring no compensation for certain value provided in controlled transactions despite the fact that compensation would be paid if the same value were provided in uncontrolled transactions.

As discussed in the following portion of this preamble, these temporary regulations address the aforementioned concerns by clarifying the coordination of the application of section 482 in conjunction with other Code and regulatory provisions in determining the proper tax treatment of controlled transactions.

II. *Detailed Explanation of Provisions*

A. *Compensation Independent of the Form or Character of Controlled Transaction – § 1.482–1T(f)(2)(i)(A)*

New § 1.482–1T(f)(2)(i)(A) provides that arm's length compensation must be consistent with, and must account for all of, the value provided between the parties in a controlled transaction, without regard to the form or character of the transaction. For this purpose, it is necessary to consider the entire arrangement between the parties, as determined by the contractual terms, whether written or imputed in accordance with the economic substance of the arrangement, in light of the actual conduct of the parties. This requirement is consistent with the principles underlying the arm's length standard, which require arm's length compensation in controlled transactions equal to the compensation that would have occurred if a similar transaction had occurred between similarly situated uncontrolled taxpayers. See § 1.482–1(b)(1). Accordingly, no inference may be drawn from any provision in the section 482 regulations that any transfer of value may be made without arm's length compensation.

B. *Aggregate or Separate Analysis, Depending on Economic Interrelatedness of Controlled Transactions, including Synergies – § 1.482–1T(f)(2)(i)(B)*

Section 1.482–1T(f)(2)(i)(B) clarifies § 1.482–1(f)(2)(i)(A), which provided that the combined effect of two or more separate transactions (whether before, during, or after the year under review) may be considered if such transactions, taken as a whole, are so interrelated that an aggregate analysis of such transactions provides the most reliable measure of an arm's length result determined under the best method rule of § 1.482–1(c). Specifically, a new clause is added to clarify that this aggregation principle also applies for purposes of an analysis under multiple provisions of the Code or regulations. In addition, a new sentence elaborates on the aggregation principle by noting that consideration of the combined effect of two or more transactions may be appropriate to determine whether the overall compensation is consistent with the value provided, including any synergies among items and services provided. Finally, § 1.482–1T(f)(2)(i)(B) does not retain the statement in § 1.482–1(f)(2)(i)(A) that transactions generally will be aggregated only when they involve "related products or services, as defined in § 1.6038A–3(c)(7)(vii)." The eliminated sentence had the unintended potential to be misconstrued by taxpayers as limiting the aggregation analysis pursuant to the best method rule.

C. *Aggregation and Allocation for Purposes of Coordinated Analysis under Multiple Code or Regulatory Provisions – §§ 1.482–1T(f)(2)(i)(C) and 1.482–1T(f)(2)(i)(D)*

Section 1.482–1T(f)(2)(i)(C) provides that, for one or more controlled transactions governed by more than one provision of the Code and regulations, a coordinated best method analysis and evaluation of the transactions may be necessary to ensure that the overall value provided (including any synergies) is properly taken into account. A coordinated best method analysis of the transactions includes a consistent consideration of the facts and circumstances of the functions performed, resources employed, and risks assumed, and a consistent measure of the arm's length results, for purposes of all relevant Code and regulatory provisions. For example, situations in which a coordinated best method analysis and evaluation may be necessary include (1) two or more interrelated transactions when either all such transactions are governed by one regulation under section 482 or all such transactions are governed by one subsection of section 367, (2) two or more interrelated transactions governed by two or more regulations under section 482, (3) a transfer of property subject to section 367(a) and an interrelated transfer of property subject to section 367(d), (4) two or more interrelated transactions where section 367 applies to one transaction and the general recognition rules of the Code apply to another interrelated transaction, and (5) other circumstances in which controlled transactions require analysis under multiple Code and regulatory provisions.

Section 1.482–1T(f)(2)(i)(D) provides that it may be necessary to allocate the arm's length result that was properly determined under a coordinated best method analysis described in § 1.482–1T(f)(2)(i)(C) among the interrelated transactions. Any such allocation must be made using the method that, under the facts and circumstances, provides the most reliable measure of an arm's length result for each allocated amount.

D. *Examples of Coordinated Best Method Analysis under Multiple Code or Regulatory Provisions – § 1.482–1T(f)(2)(i)(E)*

Section 1.482–1T(f)(2)(i)(E) provides eleven examples to illustrate the guidance in § 1.482–1T(f)(2)(i)(A) through (D). *Examples 1* through *4* are materially the same as the *Examples* in § 1.482–1(f)(2)(i)(B). The Treasury Department and the IRS do not intend for the revisions to those examples to be interpreted as substantive. The rest of the examples are new.

Section 1.482–1T(f)(2)(ii)(B) replaces § 1.482–1(f)(2)(ii)(B). The *Example* included in § 1.482–1T(f)(2)(ii)(B) is materially the same as the old example and has been updated to replace the term "district director" and to include cross-references to *Examples 7* and *8* in § 1.482–1T(f)(2)(i)(E). The Treasury Department and the IRS do not intend for the revisions to this example to be interpreted as substantive.

No inference is intended as to the application of the provisions amended by these temporary regulations under current law. The IRS may, where appropriate, challenge transactions, including those described in these temporary regulations and this preamble, under currently applicable Code or regulatory provisions or judicial doctrines.

Effective/Applicability Date

These regulations apply to taxable years ending on or after September 14, 2015.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Frank W. Dunham III of the Office of the Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in the development of the regulations.

* * * * *

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Sections 1.482–1 and 1.482–1T are also issued under 26 U.S.C. 482. * * *

Par. 2. Section 1.482–0 is amended by revising the entries for § 1.482–1(f)(2)(i) and (ii)(B) to read as follows:

§ 1.482–0 Outline of regulations under section 482.

* * * * *

§ 1.482–1 Allocation of income and deductions among taxpayers.

* * * * *

(f) * * *

(2)* * *

(i) [Reserved]

(ii) * * *

(B) [Reserved]

* * * * *

Par. 3. Section 1.482–1 is amended by revising paragraphs (f)(2)(i) and (ii)(B) and adding paragraph (j)(7) to read as follows:

§ 1.482–1 Allocation of income and deductions among taxpayers.

* * * * *

(f) * * *

(2) * * *

(i)(A) through (E) [Reserved]. For further guidance see § 1.482–1T(f)(2)(i)(A) through (E).

(ii) * * *

(B) [Reserved]. For further guidance see § 1.482–1T(f)(2)(ii)(B).

* * * * *

(j) * * *

(7) [Reserved]. For further guidance see § 1.482–1T(j)(7).

Par. 4. Section 1.482–1T is added to read as follows:

§ 1.482–1T Allocation of income and deductions among taxpayers (temporary).

(a) through (f)(2) [Reserved]. For further guidance see § 1.482–1(a) through (f)(2).

(i) *Compensation independent of the form or character of controlled transaction*—(A) *In general*. All value provided between controlled taxpayers in a controlled transaction requires an arm's length amount of compensation determined under the best method rule of § 1.482–1(c). Such amount must be consistent with, and must account for all of, the value provided between the parties in the transaction, without regard to the form or character of the transaction. For this purpose, it is necessary to consider the entire arrangement between the parties, as determined by the contractual terms, whether written or imputed in accordance with the economic substance of the arrangement, in light of the actual conduct of the parties. See, e.g., § 1.482–1(d)(3)(ii)(B) (identifying contractual terms) and (f)(2)(ii)(A) (regarding reference to realistic alternatives).

(B) *Aggregation*. The combined effect of two or more separate transactions (whether before, during, or after the year under review), including for purposes of an analysis under multiple provisions of the Code or regulations, may be considered if the transactions, taken as a whole, are so interrelated that an aggregate analysis of the transactions provides the most reliable measure of an arm's length result determined under the best method rule of § 1.482–1(c). Whether two or more transactions are evaluated separately or in the aggregate depends on the extent to which the transactions are economically interrelated and on the relative reliability of the measure of an arm's length result provided by an aggregate analysis of the transactions as compared to a separate analysis of each transaction. For example, consideration of the combined effect of two or more transactions may be appropriate to determine whether the overall compensation in the transactions is consistent with the value provided, including any synergies among items and services provided.

(C) *Coordinated best method analysis and evaluation*. Consistent with the principles of paragraphs (f)(2)(i)(A) and (B) of this section, a coordinated best method analysis and evaluation of two or more controlled transactions to which one or more provisions of the Code or regulations apply may be necessary to ensure that the overall value provided, including any synergies, is properly taken into account. A coordinated best method analysis would include a consistent consideration of the facts and circumstances of the functions performed, resources employed, and risks assumed in the relevant transactions, and a consistent measure of the arm's length results, for purposes of all relevant statutory and regulatory provisions.

(D) *Allocations of value*. In some cases, it may be necessary to allocate one or more portions of the arm's length result that was properly determined under a coordinated best method analysis described in paragraph (f)(2)(i)(C) of this section. Any such allocation of the arm's length result determined under the coordinated best method analysis must be made using the method that, under the facts and circumstances, provides the most reliable measure of an arm's length result for each allocated amount. For example, if the full value of compensation due in controlled transactions whose tax treatment is governed by multiple provisions of the Code or regulations has been most reliably determined on an aggregate basis, then that full value must be allocated in a manner that provides the most reliable measure of each allocated amount.

(E) *Examples*. The following examples illustrate the provisions of this paragraph (f)(2)(i). For purposes of the examples in this paragraph (E), P is a domestic corporation, and S1, S2, and S3 are foreign corporations that are wholly owned by P.

Example 1. Aggregation of interrelated licensing, manufacturing, and selling activities. P enters into a license agreement with S1 that permits S1 to use a proprietary manufacturing process and to sell the output from this process throughout a specified region. S1 uses the manufacturing process and sells its output to S2, which in turn resells the output to uncontrolled parties in the specified region. In evaluating whether the royalty paid by S1 to P is an arm's length amount, it may be appropriate to evaluate the royalty in combination with the transfer prices charged by S1 to S2 and the aggregate profits earned by S1 and S2 from the use of the manufacturing process and the sale to uncontrolled parties of the products produced by S1.

Example 2. Aggregation of interrelated manufacturing, marketing, and services activities. S1 is the exclusive Country Z distributor of computers manufactured by P. S2 provides marketing services in connection with sales of P computers in Country Z and in this regard uses significant marketing intangibles provided by P. S3 administers the warranty program with respect to P computers in Country Z, including maintenance and repair services. In evaluating whether the transfer prices paid by S1 to P, the fees paid by S2 to P for the use of P marketing intangibles, and the service fees earned by S2 and S3 are arm's length amounts, it would be appropriate to perform an aggregate analysis that considers the combined effects of these interrelated transactions if they are most reliably analyzed on an aggregated basis.

Example 3. Aggregation and reliability of comparable uncontrolled transactions. The facts are the same as in *Example 2*. In addition, U1, U2, and U3 are uncontrolled taxpayers that carry out functions comparable to those of S1, S2, and S3, respectively, with respect to computers produced by unrelated manufacturers. R1, R2, and R3 constitute a controlled group of taxpayers (unrelated to the P controlled group) that carry out functions comparable to those of S1, S2, and S3 with respect to computers produced by their common parent. Prices charged to uncontrolled customers of the R group differ from the prices charged to customers of U1, U2, and U3. In determining whether the transactions of U1, U2, and U3, or the transactions of R1, R2, and R3, would provide a more reliable measure of the arm's length result, it is determined that the interrelated R group transactions are more reliable than the wholly independent transactions of U1, U2, and U3, given the interrelationship of the P group transactions.

Example 4. Non-aggregation of transactions that are not interrelated. P enters into a license agreement with S1 that permits S1 to use a proprietary process for manufacturing product X and to sell product X to uncontrolled parties throughout a specified region. P also sells to S1 product Y, which is manufactured by P in the United States and unrelated to product X. Product Y is resold by S1 to uncontrolled parties in the specified region. There is no connection between product X and product Y other than the fact that they are both sold in the same specified region. In evaluating whether the royalty paid by S1 to P for the use of the manufacturing process for product X and the transfer prices charged for unrelated product Y are arm's length amounts, it would not be appropriate to consider the combined effects of these separate and unrelated transactions.

Example 5. Aggregation of interrelated patents. P owns 10 individual patents that, in combination, can be used to manufacture and sell a successful product. P anticipates that it could earn profits of $25x from the patents based on a discounted cash flow analysis that provides a more reliable measure of the value of the patents exploited as a bundle rather than separately. P licenses all 10 patents to S1 to be exploited as a bundle. Evidence of uncontrolled licenses of similar individual patents indicates that, exploited separately, each license of each patent would warrant a price of $1x, implying a total price for the patents of $10x. Under paragraph (f)(2)(i)(B) of this section, in determining the arm's length royalty for the license of the bundle of patents, it would not be appropriate to use the uncontrolled licenses as comparables for the license of the bundle of patents, because, unlike the discounted cash flow analysis, the uncontrolled licenses considered separately do not reliably reflect the enhancement to value resulting from the interrelatedness of the 10 patents exploited as a bundle.

Example 6. Consideration of entire arrangement, including imputed contractual terms—(i) P conducts a business ("Business") from the United States, with a worldwide clientele, but until Date X has no foreign operations. The success of Business significantly depends on intangibles (including marketing, manufacturing, technological, and goodwill or going concern value intangibles, collectively the "IP"), as well as ongoing support activities performed by P (including related research and development, central marketing, manufacturing process enhancement, and oversight activities, collectively "Support"), to maintain and improve the IP and otherwise maximize the profitability of Business.

(ii) On Date X, Year 1, P contributes the foreign rights to conduct Business, including the foreign rights to the IP, to newly incorporated S1. S1, utilizing the IP of which it is now the owner, commences foreign operations consisting of local marketing, manufacturing, and back office activities in order to conduct and expand Business in the foreign market.

(iii) Later, on Date Y, Year 1, P and S1 enter into a cost sharing arrangement ("CSA") to develop and exploit the rights to conduct the Business. Under the CSA, P is entitled to the U.S. rights to conduct the Business, and S1 is entitled to the rest-of-the-world ("ROW") rights to conduct the Business. P continues after Date Y to perform the Support, employing resources, capabilities, and rights that as a factual matter were not contributed to S1 in the Date X transaction, for the benefit of the Business worldwide. Pursuant to the CSA, P and S1 share the costs of P's Support in proportion to their reasonably anticipated benefit shares from their respective rights to the Business.

(iv) P treats the Date X transaction as a transfer described in section 351 that is subject to 367 and treats the Date Y transaction as the commencement of a CSA subject to section 482 and § 1.482–7. P takes the position that the only platform contribution transactions ("PCTs") in connection with the Date Y CSA consist of P's contribution of the U.S. Business IP rights and S1's contribution of the ROW Business IP rights of which S1 had become the owner on account of the prior Date X transaction.

(v) Pursuant to paragraph (f)(2)(i)(A) of this section, in determining whether an allocation of income is appropriate in Year 1 or subsequent years, the Commissioner may consider the economic substance of the entire arrangement between P and S1, including the parties' actual conduct throughout their relationship, regardless of the form or character of the contractual arrangement the parties have expressly adopted. The Commissioner determines that the parties' formal arrangement fails to reflect the full scope of the value provided between the parties in accordance with the economic substance of their arrangement. Therefore, the Commissioner may impute one or more agreements between P and S1, consistent with the economic substance of their arrangement, that fully reflect their respective reasonably anticipated commitments in terms of functions performed, resources employed, and risks assumed over time. For example, because P continues after Date Y to perform the Support, employing resources, capabilities, and rights not contributed to S1, for the benefit of the Business worldwide, the Commissioner may impute another PCT on Date Y pursuant to which P commits to so continuing the Support. See § 1.482–7(b)(1)(ii). The taxpayer may present additional facts that could indicate whether this or another alternative agreement best reflects the economic substance of the underlying transactions and course of conduct, provided that the taxpayer's position fully reflects the value of the entire arrangement consistent with the realistic alternatives principle.

Example 7. Distinguishing provision of value from characterization—(i) P developed a collection of resources, capabilities, and rights ("Collection") that it uses on an interrelated basis in ongoing research and development of computer code that is used to create a successful line of software products. P can continue to use the Collection on such interrelated basis in the future to further develop computer code and, thus, further build on its successful line of software products. Under § 1.482–7(g)(2)(ix), P determines that the interquartile range of the net present value of its own use of the Collection in future research and development and software product marketing is between $1000x and $1100x, and this range provides the most reliable measure of the value to P of continuing to use the Collection on an interrelated basis in future research, development, and exploitation. Instead, P enters into an exchange described in section 351 in which it transfers certain intangible property related to the Collection to S1 for use in future research, development, and exploitation but continues to perform the same development functions that it did prior to the exchange, now on behalf of S1, under express or implied commitments in connection with S1's use of the intangible property. P takes the position that a portion of the Collection, consisting of computer code and related instruction manuals and similar intangible property (Portion 1), was transferrable intangible property and was the subject of the section 351 exchange and compensable under section 367(d). P claims that another portion of the Collection consists of items that either do not constitute property for purposes of section 367 or are not transferrable (Portion 2). P then takes the position that the value of Portion 2 does not give rise to income under section 367(d) or gain under section 367(a).

(ii) Under paragraphs (f)(2)(i)(A) and (C) of this section, any part of the value in Portion 2 that is not taken into account in an exchange under section 367 must nonetheless be evaluated under section 482 and the regulations thereunder to determine arm's length compensation for any value provided to S1. Accordingly, even if P's assertion that certain items were either not property or not capable of being transferred were correct, arm's length compensation is nonetheless required for all of the value associated with P's contributions under the section 482 regulations. Alternatively, the Commissioner may determine under all the facts and circumstances that P's assertion is incorrect and that the transaction in fact constitutes an exchange of property subject to, and therefore to be taken into account under, section 367. Thus, whether any item that P identifies as being within Portion 2 is properly characterized as property under section 367 (transferable or otherwise) is irrelevant because any value in Portion 2 that is provided to S1 must be compensated by S1 in a manner consistent with the $1000x to $1100x interquartile range of the overall value.

Example 8. Arm's length compensation for equivalent provisions of intangibles under sections 351 and 482. P owns the worldwide rights to manufacturing and marketing intangibles that it uses to manufacture and market a product in the United States ("US intangibles") and the rest of the world ("ROW intangibles"). P transfers all the ROW intangibles to S1 in an exchange described in section 351 and retains the US intangibles. Immediately after the exchange, P and S1 entered into a CSA described in § 1.482–7(b) that covers all research and development of intangibles conducted by the parties. A realistic alternative that was available to P and that would have involved the controlled parties performing similar functions, employing similar resources, and assuming similar risks as in the controlled transaction, was to transfer all ROW intangibles to S1 upon entering into the CSA in a platform contribution transaction described in § 1.482–7(c), rather than in an exchange described in section 351 immediately before entering into the CSA. Under paragraph (f)(2)(i)(A) of this section, the arm's length compensation for the ROW intangibles must correspond to the value provided between the parties, regardless of the form of the transaction. Accordingly, the arm's length compensation for the ROW intangibles is the same in both scenarios, and the analysis of the amount to be taken into account under section 367(d) pursuant to §§ 1.367(d)–1T(c) and 1.482–4 should include consideration of the amount that P would have charged for the realistic alternative determined under § 1.482–7(g) (and § 1.482–4, to the extent of any make-or-sell rights transferred). See §§ 1.482–1(b)(2)(iii) and 1.482–4(g).

Example 9. Aggregation of interrelated manufacturing and marketing intangibles governed by different statutes and regulations. The facts are the same as in *Example 8* except that P transfers only the ROW intangibles related to manufacturing to S1 in an exchange described in section 351 and, upon entering into the CSA, then transfers the ROW intangibles related to marketing to S1 in a platform contribution transaction described in § 1.482–7(c) (rather than transferring all ROW intangibles only upon entering into the CSA or only in a prior exchange described in section 351). The value of the ROW intangibles that P transferred in the two transactions is greater in the aggregate, due to synergies among the different types of ROW intangibles, than if valued as two separate transactions. Under paragraph (f)(2)(i)(B) of this section, the arm's length standard requires these synergies to be taken into account in determining the arm's length results for the transactions.

Example 10. Services provided using intangibles.—(i) P's worldwide group produces and markets Product X and subsequent generations of products, which result from research and development performed by P's R&D Team. Through this collaboration with respect to P's proprietary products, the members of the R&D Team have individually and as a group acquired specialized knowledge and expertise subject to non-disclosure agreements (collectively, "knowhow").

(ii) P arranges for the R&D Team to provide research and development services to create a new line of products, building on the Product X platform, to be owned and exploited by S1 in the overseas market. P asserts that the arm's length charge for the services is only reimbursement to P of its associated R&D Team compensation costs.

(iii) Even though P did not transfer the platform or the R&D Team to S1, P is providing value associated with the use of the platform, along with the value associated with the use of the knowhow, to S1 by way of the services performed by the R&D Team for S1 using the platform and the knowhow. The R&D Team's use of intangible property, and any other valuable resources, in P's provision of services (regardless of whether the service effects a transfer of intangible property or valuable resources and regardless of whether the property is relatively high or low value) must be evaluated under the section 482 regulations, including the regulations specifically applicable to controlled services transactions in § 1.482–9, to ensure that P receives arm's length compensation for any value (attributable to such property or services) provided to S1 in a controlled transaction. See §§ 1.482–4 and 1.482–9(m). Under paragraph (f)(2)(i)(A) of this section, the arm's length compensation for the services performed by the R&D Team for S1 must be consistent with the value provided to S1, including the value of the knowhow and any synergies with the platform. Under paragraphs (f)(2)(i)(B) and (C) of this section, the best method analysis may determine that the compensation is most reliably determined on an aggregate basis reflecting the interrelated value of the services and embedded value of the platform and knowhow.

(iv) In the alternative, the facts are the same as above, except that P assigns to S1 all or a pertinent portion of the R&D Team and the relevant rights in the platform. P takes the position that, although the transferred platform rights must be compensated, the knowhow does not have substantial value independent of the services of any individual on the R&D Team and therefore is not an intangible within the meaning of § 1.482–4(b). In P's view, S1 owes no compensation to P on account of the R&D Team, as S1 will directly bear the cost of the relevant R&D Team compensation. However, in assembling and arranging to assign the relevant R&D Team, and thereby making available the value of the knowhow to S1, rather than other employees without the knowhow, P is performing services for S1 under imputed contractual terms based on the parties' course of conduct. Therefore, even if P's position were correct that the knowhow is not an intangible under § 1.482–4(b), a position that the Commissioner may challenge, arm's length compensation is required for all of the value that P provides to S1 through the interrelated provision of platform rights, knowhow, and services under paragraphs (f)(2)(i)(A), (B), and (C) of this section.

Example 11. Allocating arm's length compensation determined under an aggregate analysis —(i) P provides services to S1, which is incorporated in Country A. In connection with those services, P licenses intellectual property to S2, which is incorporated in Country B. S2 sublicenses the intellectual property to S1.

(ii) Under paragraph (f)(2)(i)(B) of this section, if an aggregate analysis of the service and license transactions provides the most reliable measure of an arm's length result, then an aggregate analysis must be performed. Under paragraph (f)(2)(i)(D) of this section, if an allocation of the value that results from such an aggregate analysis is necessary, for example, for purposes of sourcing the services income that P receives from S1 or determining deductible expenses incurred by S1, then the value determined under the aggregate analysis must be allocated using the method that provides the most reliable measure of the services income and deductible expenses.

(ii)(A) [Reserved]. For further guidance see § 1.482–1(f)(2)(ii)(A).

(B) *Example*. The following example illustrates this paragraph (f)(2)(ii):

Example. P and S are controlled taxpayers. P licenses a proprietary process to S for S's use in manufacturing product X. Using its sales and marketing employees, S sells product X to related and unrelated customers outside the United States. If the license between P and S has economic substance, the Commissioner ordinarily will not restructure the taxpayer's transaction to treat P as if it had elected to exploit directly the manufacturing process. However, because P could have directly exploited the manufacturing process and manufactured product X itself, this realistic alternative may be taken into account under § 1.482–4(d) in determining the arm's length consideration for the controlled transaction. For examples of such an analysis, see *Examples 7* and *8* in paragraph (f)(2)(i)(E) of this section and the *Example* in § 1.482–4(d)(2).

(iii) through (j)(6) [Reserved]. For further guidance see § 1.482–1(f)(2)(iii) through (j)(6).

(7) *Certain effective/applicability dates*—(i) Paragraphs (f)(2)(i)(A) through (E) and (f)(2)(ii)(B) of this section apply to taxable years ending on or after September 14, 2015.

(ii) *Expiration date*. The applicability of paragraphs (f)(2)(i)(A) through (E) and (f)(2)(ii)(B) of this section expires on or before September 14, 2018.

John Dalrymple,
Deputy Commissioner for Services and Enforcement.

Approved: September 10, 2015.

Mark J. Mazur,
Assistant Secretary of the Treasury (Tax Policy).

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Part III. Administrative, Procedural, and Miscellaneous

Request for Comments; Areas Under Study Relating to §§ 337(d) and 355 of the Internal Revenue Code

Notice 2015–59

SECTION 1. PURPOSE

The Treasury Department and the Internal Revenue Service (Service) are studying issues under §§ 337(d) and 355 of the Internal Revenue Code (Code) relating to transactions having one or more of the following characteristics: (i) ownership by the distributing corporation or the controlled corporation of investment assets, within the meaning of § 355(g)(2)(B), with modifications (Investment Assets), having substantial value in relation to (a) the value of all of such corporation's assets and (b) the value of the assets of the active trade(s) or business(es) on which the distributing corporation or the controlled corporation relies to satisfy the requirements of § 355(b) (a Qualifying Business or Qualifying Business Assets); (ii) a significant difference between the distributing corporation's ratio of Investment Assets to assets other than Investment Assets and such ratio of the controlled corporation; (iii) ownership by the distributing corporation or the controlled corporation of a small amount of Qualifying Business Assets in relation to all of its assets; and (iv) an election by the distributing corporation or the controlled corporation (but not both) to be a regulated investment company (RIC), within the meaning of § 851, or a real estate investment trust (REIT), within the meaning of § 856.

Concurrently with the issuance of this notice, the Service is issuing Rev. Proc. 2015–43, page 467, this Bulletin, which supplements Rev. Proc. 2015–3, 2015–1 I.R.B. 129, by adding certain of these transactions to the list of no-rule areas. This notice describes transactions that concern the Treasury Department and the Service, including transactions on which, while the relevant areas are under study, the Service ordinarily will not rule under sections 4.01(57) and (58) of Rev. Proc. 2015–3 (section 3.01 of Rev. Proc. 2015–43) and transactions on which the Service will not rule under section 5.01(26) of Rev. Proc. 2015–3 (section 3.02 of Rev. Proc. 2015–43). This notice also requests comments concerning the transactions described in this notice.

SECTION 2. DISCUSSION

Background

Section 355 of the Code generally provides that, if certain requirements are satisfied, a distributing corporation may distribute the stock (or stock and securities) of a controlled corporation to its shareholders and security holders without the distributing corporation, its shareholders, or its security holders recognizing income, gain, or loss on the distribution. However, § 355 does not apply to a distribution if the transaction is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (a device). Section 355(a)(1)(B). Numerous other requirements also must be satisfied for § 355 to apply to a distribution.

One such requirement is that the distributing corporation and the controlled corporation each be engaged in the active conduct of a trade or business immediately after the distribution (active trade or business requirement). Section 355(a)(1)(C) and (b)(1)(A). For this purpose, § 355(b)(3)(A) provides that all members of a corporation's separate affiliated group are treated as one corporation. Another such requirement is that the transaction must be carried out for one or more corporate business purposes (business purpose requirement). Section 1.355–2(b)(1).

The Treasury Department and the Service have become aware, in part through requests for letter rulings, that some taxpayers are taking the position that certain distributions that have one or more of the characteristics described in section 1 of this notice satisfy the requirements of § 355. The Treasury Department and the Service believe that these transactions may present evidence of device for the distribution of earnings and profits, may lack an adequate business purpose or a Qualifying Business, or may violate other § 355 requirements. In addition, these transactions may circumvent the purposes of Code provisions intended to repeal the Supreme Court's decision in *General Utilities & Operating Co. v. Helvering*, 296 U.S. 200 (1935) (*General Utilities* repeal). *See, e.g.*, §§ 311(b), 337(d), 367(a)(5), and 367(e); H.R. Rep. No. 100–391, at 1080–1084 (1987).

Nature of Assets of Distributing Corporation and Controlled Corporation

The Treasury Department and the Service are most concerned about transactions that result in (i) the distributing corporation or the controlled corporation owning a substantial amount of cash, portfolio stock or securities, or other Investment Assets, in relation to the value of all of its assets and its Qualifying Business Assets, and (ii) one of the corporations having a significantly higher ratio of Investment Assets to Non-Investment Assets than the other corporation. While these matters are under study, the Service will not rule on any issue that relates to the qualification of a distribution under § 355 and related provisions and is presented in a distribution described in section 5.01(26) of Rev. Proc. 2015–3.

Small Amounts of Qualifying Business Assets

The Treasury Department and the Service are also concerned about transactions in which the distributing corporation or the controlled corporation owns a small amount of Qualifying Business Assets compared to its other assets (non-Qualifying Business Assets). Before enactment of § 355(b)(3), such transactions were common due to the restrictive nature of the "holding company" rule (§ 355(b)(2)(A) prior to its amendment by the Technical Corrections Act of 2007, Pub. L. No. 110–172, § 4(b)(1), 121 Stat. 2473, 2476 (2007)). The Treasury Department and the Service have concluded that, under current law, distributions involving small Qualifying Businesses may have become less justifiable. Accordingly, the Service ordinarily will not rule on any issue that relates to the qualification of a distribution under § 355 and related provisions and is presented in a distribution described in section 4.01(58) of Rev. Proc. 2015–3, but will consider ruling in unique and compelling circumstances.

In determining whether unique and compelling circumstances exist to justify the issuance of a ruling or determination letter, the Service will consider all facts and circumstances, including whether a substantial portion of the non-Qualifying Business Assets would be Qualifying Business Assets but for the five-year requirement of § 355(b)(2)(B) and whether there is a relationship between the business purpose for the distribution and the Qualifying Business of the distributing corporation or the controlled corporation.

Exception for Certain Intra-Group Distributions

The Treasury Department and the Service generally are more concerned about transactions in which the stock of a controlled corporation is distributed outside an affiliated group (within the meaning of § 243(b)(2)(A)), including a distribution which is part of a series of related transactions in which the stock of a controlled corporation (including, for example, a controlled corporation that was a distributing corporation with respect to a lower-tier distribution) is distributed outside an affiliated group. Accordingly, while these matters are under study, the Service will continue to follow its current ruling practice with respect to distributions within affiliated groups if there is no plan or intention for stock of any corporation to be distributed outside the affiliated group in a distribution described in section 4.01(57), 4.01(58), or 5.01(26) of Rev. Proc. 2015–3. The Treasury Department and the Service request comments concerning whether these transactions should be treated differently from other transactions, and whether other classes of transactions should be subject to similar exceptions.

Distributions Involving RICs or REITs

The Treasury Department and the Service also have become concerned that an increasing number of distributions intended to qualify under § 355 involve a distributing corporation or a controlled corporation that elects to be a REIT. These distributions may involve corporations that, prior to the distribution, do not meet the requirements to be REITs and intend to separate REIT-qualifying assets from non-qualifying assets so that the distributing corporation or the controlled corporation can meet the requirements to be a REIT. In some situations, a REIT election may be made or become effective within a short period of time before the distribution. These transactions may involve relatively small Qualifying Businesses and retention of control over or use of the REIT's assets through long-term leases or other arrangements. As with the other transactions described in this notice and in Rev. Proc. 2015–43, these transactions, and similar transactions involving RICs, involve significant concerns relating to the device prohibition, and the business purpose and active trade or business requirements under § 355, as well as the Code provisions intended to repeal the *General Utilities* decision. Accordingly, the Service ordinarily will not rule on any issue that relates to the qualification of a distribution under § 355 and related provisions and is presented in such distributions, but will consider ruling in unique and compelling circumstances.

The Treasury Department and the Service generally are not concerned about transactions in which both the distributing corporation and the controlled corporation will be and will continue to be RICs or will be and will continue to be REITs, or transactions in which the distributing corporation has been a RIC or REIT for a substantial period of time, whether or not the controlled corporation will be a RIC or REIT after the distribution. The Service will continue to consider these transactions under its current ruling practice.

Pro Rata Distributions and Non-Pro Rata Exchanges of Stock Treated Similarly

The Treasury Department and the Service understand that, in many instances, a publicly traded corporation may structure a distribution intended to qualify under § 355 as either a pro rata distribution with respect to its stock or a non-pro rata exchange of the stock of the controlled corporation for some shareholders' stock in the distributing corporation. If the distribution is structured as a pro rata distribution, § 355(g) will not disqualify the distribution from nonrecognition treatment. Furthermore, in most instances, even if the distribution is structured as a non-pro rata exchange, § 355(g) will not disqualify the distribution from nonrecognition treatment because no single shareholder or group of related shareholders will own 50 percent or more of the stock of either the distributing corporation or the controlled corporation after the distribution. In this regard, the Treasury Department and the Service have considered § 1.355–2(d)(3)(iii) ("The fact that the distributing corporation is publicly traded and has no shareholder who is directly or indirectly the beneficial owner of more than five percent of any class of stock is evidence of nondevice.") and § 1.355–2(d)(5)(iv) ("A distribution is ordinarily considered not to have been used principally as a device, if, in the absence of section 355, with respect to each shareholder distributee, the distribution would be a redemption to which section 302(a) applied.").

The Treasury Department and the Service believe, however, that certain characteristics of a transaction may overcome both the nondevice factor of public trading and the non-pro rata structure of a distribution. These characteristics include, as described above, (i) the distributing corporation or the controlled corporation owning Investment Assets with substantial value in relation to the value of all of the corporation's assets and the value of its Qualifying Business Assets, together with a disparity of such relationships between the distributing corporation and the controlled corporation (*see* § 1.355–2(d)(2)(iv), relating to the nature and use of assets); (ii) in certain situations, the distributing corporation or the controlled corporation owning a small amount of Qualifying Business Assets in relation to all of its assets; and (iii) a prompt or planned RIC or REIT election by the distributing corporation or the controlled corporation. In addition, the Treasury Department and the Service believe that these characteristics may make it less likely that a nontax business purpose for the distribution will satisfy the independent business purpose requirement set forth in § 1.355–2(b) or will qualify as a strong corporate business purpose constituting a nondevice factor. *See* § 1.355–2(d)(3)(ii) (relationship between business purpose and device). Thus, sections 4.01(57), 4.01(58), and 5.01(26) of Rev. Proc. 2015–3 do not distinguish between transactions involving distributing corporations the stock of which is or is not publicly traded or between pro rata and non-pro rata distributions.

SECTION 3. REQUEST FOR COMMENTS

The Treasury Department and the Service request comments concerning the transactions described in this notice. In particular, comments are requested with respect to: (i) the facts and circumstances relevant to whether the transactions satisfy the requirements of § 355 and/or circumvent the purposes of *General Utilities* repeal; (ii) whether investment assets, within the meaning of § 355(g)(2)(B), as modified by section 5.01(26) of Rev. Proc. 2015–3, are the appropriate assets to consider in addressing the concerns raised by the transactions; (iii) whether the treatment of transactions solely within an affiliated group should differ from the treatment of transactions in which stock of one or more corporations will be distributed outside the affiliated group; (iv) whether the Service should rule on issues presented in distributions in which the distributing corporation or the controlled corporation owns a relatively small amount of Qualifying Business Assets, and if so in what circumstances; and (v) whether other classes of transactions subject to section 4.01(57), 4.01(58), or 5.01(26) of Rev. Proc. 2015–3 should be excepted therefrom.

Written comments may be submitted to the Internal Revenue Service, CC:PA:LPD (Notice 2015–59), Room 5207, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044. Comments also may be hand-delivered Monday through Friday between the hours of 8:00 a.m. to 4:00 p.m. to the Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Attn: CC:PA:LPD:PR (Notice 2015–59). Comments also may be submitted electronically to *notice.comments@irscounsel.treas.gov*. Please include "Notice 2015–59" in the subject line of any electronic submission. Comments will be available for public inspection and copying.

SECTION 4. DRAFTING INFORMATION

The principal author of this notice is Stephanie D. Floyd of the Office of Associate Chief Counsel (Corporate). For further information regarding this notice, contact Stephanie D. Floyd at (202) 317-6848 (not a toll-free number).

2015–2016 Special Per Diem Rates

Notice 2015–63

SECTION 1. PURPOSE

This annual notice provides the 2015–2016 special *per diem* rates for taxpayers to use in substantiating the amount of ordinary and necessary business expenses incurred while traveling away from home, specifically (1) the special transportation industry meal and incidental expenses (M&IE) rates, (2) the rate for the incidental expenses only deduction, and (3) the rates and list of high-cost localities for purposes of the high-low substantiation method.

SECTION 2. BACKGROUND

Rev. Proc. 2011–47, 2011–42 I.R.B. 520, provides rules for using a *per diem* rate to substantiate, under § 274(d) of the Internal Revenue Code and § 1.274–5 of the Income Tax Regulations, the amount of ordinary and necessary business expenses paid or incurred while traveling away from home. Taxpayers using the rates and list of high-cost localities provided in this notice must comply with Rev. Proc. 2011–47. Notice 2014–57, 2014–42 I.R.B. 723, provides the rates and list of high-cost localities for the period October 1, 2014, to September 30, 2015.

Section 3.02(3) of Rev. Proc. 2011–47 provides that the term "incidental expenses" has the same meaning as in the Federal Travel Regulations, 41 C.F.R. 300–3.1, and that future changes to the definition of incidental expenses in the Federal Travel Regulations would be announced in the annual *per diem* notice. Subsequent to the publication of Rev. Proc. 2011–47, the General Services Administration published final regulations revising the definition of incidental expenses under the Federal Travel Regulations to include only fees and tips given to porters, baggage carriers, hotel staff, and staff on ships. Transportation between places of lodging or business and places where meals are taken, and the mailing cost of filing travel vouchers and paying employer-sponsored charge card billings, are no longer included in incidental expenses. Accordingly, taxpayers using the *per diem* rates may separately deduct or be reimbursed for transportation and mailing expenses.

SECTION 3. SPECIAL M&IE RATES FOR TRANSPORTATION INDUSTRY

The special M&IE rates for taxpayers in the transportation industry are $63 for any locality of travel in the continental United States (CONUS) and $68 for any locality of travel outside the continental United States (OCONUS). *See* section 4.04 of Rev. Proc. 2011–47.

SECTION 4. RATE FOR INCIDENTAL EXPENSES ONLY DEDUCTION

The rate for any CONUS or OCONUS locality of travel for the incidental expenses only deduction is $5 per day. *See* section 4.05 of Rev. Proc. 2011–47.

SECTION 5. HIGH-LOW SUBSTANTIATION METHOD

1. *Annual high-low rates*. For purposes of the high-low substantiation method, the *per diem* rates in lieu of the rates described in Notice 2014–57 (the *per diem* substantiation method) are $275 for travel to any high-cost locality and $185 for travel to any other locality within CONUS. The amount of the $275 high rate and $185 low rate that is treated as paid for meals for purposes of § 274(n) is $68 for travel to any high-cost locality and $57 for travel to any other locality within CONUS. *See* section 5.02 of Rev. Proc. 2011–47. The *per diem* rates in lieu of the rates described in Notice 2014–57 (the meal and incidental expenses only substantiation method) are $68 for travel to any high-cost locality and $57 for travel to any other locality within CONUS.

2. *High-cost localities*. The following localities have a federal *per diem* rate of $230 or more, and are high-cost localities for all of the calendar year or the portion of the calendar year specified in parentheses under the key city name.

Key city	*County or other defined location*
California	Mono
Mammoth Lakes	
(December 1–February 29)	
Monterey	Monterey
(July 1–August 31)	
Napa	Napa
(October 1–October 31 and May 1–September 30)	
San Francisco	San Francisco
San Mateo/Foster City/Belmont	San Mateo
Santa Barbara	Santa Barbara
Santa Monica	City limits of Santa Monica
Sunnyvale/Palo Alto/San Jose	Santa Clara
Colorado	
Aspen	Pitkin
(December 1–March 31 and June 1–August 31)	
Denver/Aurora	Denver, Adams, Arapahoe, and Jefferson
Grand Lake	Grand
(December 1–March 31)	
Silverthorne/Breckenridge	Summit
(December 1–March 31)	
Steamboat Springs	Routt
(December 1–March 31)	
Telluride	San Miguel
(December 1–March 31 and June 1–August 31)	
Vail	Eagle
(December 1–March 31 and July 1–August 31)	

District of Columbia

Washington D.C. (also the cities of Alexandria, Falls Church, and Fairfax, and the counties of Arlington and Fairfax, in Virginia; and the counties of Montgomery and Prince George's in Maryland) (See also Maryland and Virginia)

Florida	
Boca Raton/Delray Beach/Jupiter	Palm Beach and Hendry
(January 1–April 30)	
Fort Lauderdale	Broward
(January 1–March 31)	
Fort Walton Beach/De Funiak Springs	Okaloosa and Walton
(June 1–July 31)	
Key West	Monroe
Miami	Miami-Dade
(December 1–March 31)	
Naples	Collier
(January 1–April 30)	
Illinois	
Chicago	Cook and Lake
(October 1–November 30 and March 1–September 30)	

Key city	*County or other defined location*
Maine	
Bar Harbor	Hancock
(July 1–August 31)	
Maryland	
Ocean City	Worcester
(June 1–August 31)	
Washington, DC Metro Area	Montgomery and Prince George's
Massachusetts	
Boston/Cambridge	Suffolk, City of Cambridge
Falmouth	City limits of Falmouth
(July 1–August 31)	
Martha's Vineyard	Dukes
(June 1–September 30)	
Nantucket	Nantucket
(October 1–December 31 and June 1–September 30)	
Michigan	
Traverse City/Leland	Grand Traverse/Leelanau
(July 1–August 31)	
New York	
Lake Placid	Essex
(July 1–August 31)	
New York City	Bronx, Kings, New York, Queens, and Richmond
Saratoga Springs/Schenectady	Saratoga and Schenectady
(July 1–August 31)	
Pennsylvania	
Hershey	Hershey
(June 1–August 31)	
Philadelphia	Philadelphia
(October 1–November 30, March 1–June 30, and September 1–September 30)	
Rhode Island	
Jamestown/Middletown/Newport	Newport
(June 1–August 31)	
South Carolina	
Charleston	Charleston, Berkeley and Dorchester
(October 1–November 30 and March 1–September 30)	
Texas	
Midland	Midland
Utah	
Park City	Summit
(December 1–March 31)	
Virginia	
Virginia Beach	City of Virginia Beach
(June 1–August 31)	
Wallops Island	Accomack
(July 1–August 31)	

Key city	*County or other defined location*
Washington, DC Metro Area	Cities of Alexandria, Fairfax, and Falls Church; counties of Arlington and Fairfax
Washington	
Seattle	King
Wyoming	
Jackson/Pinedale (June 1–September 30)	Teton and Sublette

3. *Changes in high-cost localities*. The list of high-cost localities in this notice differs from the list of high-cost localities in section 5 of Notice 2014–57.

a. The following localities have been added to the list of high-cost localities: Mammoth Lakes, California; Grand Lake, Colorado; Silverthorne/Breckenridge, Colorado; Traverse City/Leland, Michigan; Hershey, Pennsylvania; Wallops Island, Virginia.

b. The following localities have changed the portion of the year in which they are high-cost localities: Napa, California; Telluride, Colorado; Miami, Florida; Martha's Vineyard, Massachusetts; Nantucket, Massachusetts; Jamestown/Middletown/Newport, Rhode Island; Charleston, South Carolina; Jackson/Pinedale, Wyoming.

c. The following localities have been removed from the list of high-cost localities: Sedona, Arizona; Santa Cruz, California; New Orleans, Louisiana; Baltimore City, Maryland; Cambridge/St. Michaels, Maryland; Glendive/Sidney, Montana; Conway, New Hampshire; Glens Falls, New York; Tarrytown/White Plains/New Rochelle, New York; Kill Devil, North Carolina; Williston, North Dakota.

SECTION 6. EFFECTIVE DATE

This notice is effective for *per diem* allowances for lodging, meal and incidental expenses, or for meal and incidental expenses only, that are paid to any employee on or after October 1, 2015, for travel away from home on or after October 1, 2015. For purposes of computing the amount allowable as a deduction for travel away from home, this notice is effective for meal and incidental expenses or for incidental expenses only paid or incurred on or after October 1, 2015. See sections 4.06 and 5.04 of Rev. Proc. 2011–47 for transition rules for the last 3 months of calendar year 2015.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Notice 2014–57 is superseded.

DRAFTING INFORMATION

The principal author of this notice is Kari Fisher of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice contact Kari Fisher at (202) 317-7007 (not a toll-free number).

2015 Section 43 Inflation Adjustment

Notice 2015–64

Section 43(b)(3)(B) of the Internal Revenue Code requires the Secretary to publish an inflation adjustment factor. The enhanced oil recovery credit under § 43 for any taxable year is reduced if the "reference price," determined under § 45K(d)(2)(C), for the calendar year preceding the calendar year in which the taxable year begins is greater than $28 multiplied by the inflation adjustment factor for that year. The credit is phased out in any taxable year in which the reference price for the preceding calendar year exceeds $28 (as adjusted) by at least $6.

The term "inflation adjustment factor" means, with respect to any calendar year, a fraction the numerator of which is the GNP implicit price deflator for the preceding calendar year and the denominator of which is the GNP implicit price deflator for 1990.

Because the reference price for the 2014 calendar year ($87.39) exceeds $28 multiplied by the inflation adjustment factor for the 2014 calendar year ($28 multiplied by 1.6245 = $45.49) by $41.90, the enhanced oil recovery credit for qualified costs paid or incurred in 2015 is phased out completely.

Table 1 contains the GNP implicit price deflator used for the 2015 calendar year, as well as the previously published GNP implicit price deflators used for the 1991 through 2014 calendar years.

Notice 2015–64 TABLE 1
GNP IMPLICIT PRICE DEFLATORS

Calendar Year	*GNP Implicit Price Deflator*
1990	112.9 (used for 1991)
1991	117.0 (used for 1992)
1992	120.9 (used for 1993)

Notice 2015–64 TABLE 1
GNP IMPLICIT PRICE DEFLATORS

Calendar Year	*GNP Implicit Price Deflator*
1993	124.1 (used for 1994)
1994	126.0 (used for 1995)*
1995	107.5 (used for 1996)
1996	109.7 (used for 1997)**
1997	112.35 (used for 1998)
1998	112.64 (used for 1999)***
1999	104.59 (used for 2000)
2000	106.89 (used for 2001)
2001	109.31 (used for 2002)
2002	110.63 (used for 2003)
2003	105.67 (used for 2004)****
2004	108.23 (used for 2005)
2005	112.129 (used for 2006)
2006	116.036 (used for 2007)
2007	119.656 (used for 2008)
2008	122.407 (used for 2009)
2009	109.764 (used for 2010)*****
2010	110.654 (used for 2011)
2011	113.347 (used for 2012)******
2012	115.387 (used for 2013)
2013	106.710 (used for 2014)*******
2014	108.407 (used for 2015)********

* Beginning in 1995, the GNP implicit price deflator was rebased relative to 1992. The 1990 GNP implicit price deflator used to compute the 1996 § 43 inflation adjustment factor is 93.6.

** Beginning in 1997, two digits follow the decimal point in the GNP implicit price deflator. The 1990 GNP price deflator used to compute the 1998 § 43 inflation adjustment factor is 93.63.

*** Beginning in 1999, the GNP implicit price deflator was rebased relative to 1996. The 1990 GNP implicit price deflator used to compute the 2000 § 43 inflation adjustment factor is 86.53.

**** Beginning in 2003, the GNP implicit price deflator was rebased, and the 1990 GNP implicit price deflator used to compute the 2004 § 43 inflation adjustment factor is 81.589.

***** Beginning in 2009, the GNP implicit price deflator was rebased, and the 1990 GNP implicit price deflator used to compute the 2010 § 43 inflation adjustment factor is 72.199.

****** Beginning in 2011, the 1990 GNP implicit price deflator used to compute the 2012 § 43 inflation adjustment factor is 72.260.

******* Beginning in 2013, the GNP implicit price deflator was rebased, and the 1990 GNP implicit price deflator used to compute the 2014 § 43 inflation adjustment factor is 66.803.

******** Beginning in 2014, the 1990 GNP implicit price deflator used to compute the 2015 § 43 inflation adjustment factor is 66.732.

Table 2 contains the inflation adjustment factor and the phase-out amount for taxable years beginning in the 2015 calendar year as well as the previously published inflation adjustment factors and phase-out amounts for taxable years beginning in the 1991 through 2014 calendar years.

Notice 2015–64 TABLE 2
INFLATION ADJUSTMENT FACTORS AND PHASE-OUT AMOUNTS

Calendar Year	*Inflation Adjustment Factor*	*Phase-out Amount*
1991	1.0000	0
1992	1.0363	0
1993	1.0708	0
1994	1.0992	0
1995	1.1160	0
1996	1.1485	0
1997	1.1720	0
1998	1.1999	0
1999	1.2030	0
2000	1.2087	0
2001	1.2353	0
2002	1.2633	0
2003	1.2785	0
2004	1.2952	0
2005	1.3266	0
2006	1.3743	100 percent
2007	1.4222	100 percent
2008	1.4666	100 percent
2009	1.5003	100 percent
2010	1.5203	100 percent
2011	1.5326	100 percent
2012	1.5686	100 percent
2013	1.5968	100 percent
2014	1.5974	100 percent
2015	1.6245	100 percent

DRAFTING INFORMATION

The principal author of this notice is Martha M. Garcia of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Ms. Garcia at (202) 317-6853 (not a toll-free number).

2015 Marginal Production Rates

Notice 2015–65

This notice announces the applicable percentage under § 613A of the Internal Revenue Code to be used in determining percentage depletion for marginal properties for the 2015 calendar year.

Section 613A(c)(6)(C) defines the term "applicable percentage" for purposes of determining percentage depletion for oil and gas produced from marginal properties. The applicable percentage is the percentage (not greater than 25 percent) equal to the sum of 15 percent, plus one percentage point for each whole dollar by which $20 exceeds the reference price (determined under § 45K(d)(2)(C)) for crude oil for the calendar year preceding the calendar year in which the taxable year begins. The reference price determined under § 45K(d)(2)(C) for the 2014 calendar year is $87.39.

The following table contains the applicable percentages for marginal production for taxable years beginning in calendar years 1991 through 2015.

Notice 2015–65
APPLICABLE PERCENTAGE FOR MARGINAL PRODUCTION

Calendar Year	*Applicable Percentage*
1991	15 percent
1992	18 percent
1993	19 percent
1994	20 percent
1995	21 percent
1996	20 percent
1997	16 percent
1998	17 percent
1999	24 percent
2000	19 percent
2001	15 percent
2002	15 percent
2003	15 percent
2004	15 percent
2005	15 percent
2006	15 percent
2007	15 percent
2008	15 percent
2009	15 percent
2010	15 percent
2011	15 percent
2012	15 percent
2013	15 percent
2014	15 percent
2015	15 percent

The principal author of this notice is Martha M. Garcia of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice contact Ms. Garcia at (202) 317-6853 (not a toll-free number).

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26 CFR 601.201: Rulings and determination letters.
(Also Part I, §§ 337, 355, 851, 856.)

Rev. Proc. 2015–43

SECTION 1. PURPOSE

This revenue procedure supplements Rev. Proc. 2015–3, 2015–1 I.R.B. 129, which sets forth areas of the Internal Revenue Code (Code) on which the Internal Revenue Service (Service) will not issue letter rulings or determination letters (no-rule areas).

SECTION 2. BACKGROUND

In the interest of sound tax administration, the Service answers inquiries from individuals and organizations regarding their status for tax purposes and the tax effects of their acts or transactions before the filing of returns or reports that are required by the Code. *See* Rev. Proc. 2015–1, 2015–1 I.R.B. 1. There are, however, areas in which the Service will not issue letter rulings or determination letters because the issues are inherently factual or for other reasons. The Service publishes guidance setting forth these no-rule areas throughout the year and incorporates them annually into the third revenue procedure of the year, currently Rev. Proc. 2015–3.

Section 4 of Rev. Proc. 2015–3 sets forth areas in which the Service ordinarily will not issue letter rulings or determination letters. "Not ordinarily" means that unique and compelling reasons must be demonstrated to justify the issuance of a letter ruling or determination letter. Section 2.01 of Rev. Proc. 2015–3.

Section 5 of Rev. Proc. 2015–3 sets forth areas in which the Service temporarily will not issue letter rulings or determination letters because those areas are under study.

Section 2.01 of Rev. Proc. 2015–3 provides that the Service may decline to issue a letter ruling or a determination letter, including a letter ruling on a significant issue requested under section 6.03 of Rev. Proc. 2015–1, when appropriate in the interest of sound tax administration, including due to resource constraints, or on other grounds whenever warranted by the facts or circumstances of a particular case.

SECTION 3. PROCEDURE

.01 Rev. Proc. 2015–3 is supplemented by adding new paragraphs (57) and (58) to section 4.01 to read as follows:

(57) Section 355.—Distribution of Stock and Securities of a Controlled Corporation.—Any issue relating to the qualification, under § 355 and related provisions, of a distribution, or another distribution which is part of the same plan or series of related transactions, if property owned by any distributing corporation or any controlled corporation becomes the property of a regulated investment company (RIC), within the meaning of § 851, or a real estate investment trust (REIT), within the meaning of § 856, in a "conversion transaction" (as defined in § 1.337(d)–7(a)(2)(ii)) with respect to which no deemed sale election described in § 1.337(d)–7(c) is made, and the conversion transaction and the distribution are parts of a plan or series of related transactions. This paragraph (57) shall not apply if, immediately after the date of the distribution, both the distributing corporation and the controlled corporation will be RICs, or both of such corporations will be REITs, and there is no plan or intention on the date of the distribution for either the distributing corporation or the controlled corporation to cease to be a RIC or a REIT.

(58) Section 355.—Distribution of Stock and Securities of a Controlled Corporation.—Any issue relating to the qualification, under § 355 and related provisions, of a distribution, or another distribution which is part of the same plan or series of related transactions, if, immediately after any such distribution, the fair market value of the gross assets of the trade(s) or business(es) on which the distributing corporation or the controlled corporation relies to satisfy the active trade or business requirement of § 355(b) is less than five percent of the total fair market value of the gross assets of such corporation.

For purposes of determining the fair market value of the gross assets of such corporation and of the gross assets of such trade(s) or business(es), (i) all members of a separate affiliated group, within the meaning of § 355(b)(3)(B), shall be treated as one corporation; and (ii) if the distributing corporation or the controlled corporation relies on an active trade or business of a partnership for purposes of § 355(b), such corporation shall be treated as owning its ratable share of the gross assets of the partnership.

This paragraph (58) shall not apply if (i) all the stock of the controlled corporation that is distributed in the distribution is distributed to one or more members of the affiliated group, as defined in § 243(b)(2)(A), of which the distributing corporation is a member; and (ii) such distribution is not part of a plan or series of related transactions pursuant to which stock of any corporation will be distributed outside such affiliated group in a distribution described in this paragraph (58), in paragraph (57) of section 4.01 of this revenue procedure, or in paragraph (26) of section 5.01 of this revenue procedure.

.02 Rev. Proc. 2015–3 is supplemented by adding new paragraph (26) to section 5.01 to read as follows:

(26) Section 355.—Distribution of Stock and Securities of a Controlled Corporation.—Any issue relating to the qualification, under § 355 and related provisions, of a distribution, or another distribution which is part of the same plan or series of related transactions, if, immediately after any such distribution, all of the following conditions exist: (i) the fair market value of the investment assets of the distributing corporation or the controlled corporation is two-thirds or more of the total fair market value of its gross assets; (ii) the fair market value of the gross assets of the trade(s) or business(es) on which the distributing corporation or the controlled corporation relies to satisfy the active trade or business requirement of § 355(b) is less than 10 percent of the fair market value of its investment assets; and (iii) the ratio of the fair market value of the investment assets to the fair market value of the assets other than investment assets of the distributing corporation or the controlled corporation is three times or more of such ratio for the other corporation (*i.e.*, the controlled corporation or the distributing corporation, respectively).

For purposes of determining the fair market value of the distributing corporation's and the controlled corporation's investment assets, assets other than investment assets, assets of the trade or business, and total assets, all members of such corporation's separate affiliated group, within the meaning of § 355(b)(3)(B), shall be treated as one corporation.

If the distributing corporation or the controlled corporation relies on an active trade or business of a partnership for purposes of § 355(b), then for purposes of determining the fair market value of the gross assets of the trade(s) or business(es) on which the distributing corporation or the controlled corporation relies to satisfy the active trade or business requirement of § 355(b), such corporation shall be treated as owning its ratable share of the gross assets of the partnership.

For purposes of this paragraph (26), "investment assets" has the meaning given such term by § 355(g)(2)(B), except as follows: (i) in the case of stock or securities in a corporation any stock of which is traded on (or subject to the rules of) an established financial market within the meaning of § 1.1092(d)–1(b) (publicly traded stock), § 355(g)(2)(B)(iv) shall be applied by substituting "50-percent" for "20-percent;" (ii) except as provided in clause (iv) of this sentence, an interest in a publicly traded partnership (as defined in § 7704(b), regardless of whether such partnership is treated as a corporation pursuant to § 7704(a)) shall be treated in the same manner as publicly traded stock; (iii) except as provided in clause (iv) of this sentence, an interest in a partnership that is not a publicly traded partnership shall be treated in the same manner as stock which is not publicly traded stock; and (iv) in the case of an interest in a partnership (other than a publicly traded partnership treated as a corporation pursuant to § 7704(a)), the active trade or business of which is taken into account by the distributing corporation or the controlled corporation for purposes of § 355(b), or would be taken into account without regard to the five-year requirement of § 355(b)(2)(B), clauses (ii) and (iii) of this sentence shall not apply.

The Service also will not rule on any issue relating to the qualification, under § 355 and related provisions, of a distribution if, as part of a plan or series of related transactions, investment assets are disposed of, or property, including property qualifying as an active trade or business within the meaning of § 355(b), is acquired with a principal purpose of avoiding this paragraph (26).

This paragraph (26) shall not apply if (i) all the stock of the controlled corporation that is distributed in the distribution is distributed to one or more members of the affiliated group, as defined in § 243(b)(2)(A), of which the distributing corporation is a member; and (ii) such distribution is not part of a plan or series of related transactions pursuant to which stock of any corporation will be distributed outside such affiliated group in a distribution described in this paragraph (26), or in paragraph (57) or (58) of section 4.01 of this revenue procedure.

SECTION 4. EFFECTIVE DATE

This revenue procedure applies to all ruling requests that are postmarked or, if not mailed, received on or after September 14, 2015, and relate to distributions that occur after such date.

SECTION 5. EFFECT ON OTHER REVENUE PROCEDURE

Rev. Proc. 2015–3 is supplemented.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Stephanie D. Floyd of the Office of Associate Chief Counsel (Corporate). For further information regarding this revenue procedure, contact Stephanie D. Floyd at (202) 317-6848 (not a toll-free number).

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26 CFR 1.168(k)–1: Additional first year depreciation. (Also Part 1, § 179.)

Rev. Proc. 2015–48

SECTION 1. PURPOSE

This revenue procedure provides guidance for issues related to the enactment of § 125(a), § 125(c)(2), and § 127(d) of the Tax Increase Prevention Act of 2014, Pub. L. No. 113–295, 128 Stat. 4010 (December 19, 2014) (TIPA). Section 125(a) of the TIPA amended § 168(k)(2) of the Internal Revenue Code (Code) by extending the placed-in-service date for property to qualify for the 50-percent additional first year depreciation deduction. Section 125(c)(2) of the TIPA amended § 168(k)(4) by allowing corporations to elect not to claim the 50-percent additional first year depreciation deduction for certain property placed in service generally after December 31, 2013, and before January 1, 2015, and instead to increase their alternative minimum tax (AMT) credit limitation under § 53(c). Section 127(d) of the TIPA amended § 179(f) by extending the application of § 179(f) from any taxable year beginning after 2009 and before 2014 to any taxable year beginning after 2009 and before 2015.

SECTION 2. BACKGROUND

.01 *Extension of 50-Percent Additional First Year Depreciation Deduction.*

(1) Prior to amendment by the TIPA, § 168(k)(1) allowed a 50-percent additional first year depreciation deduction for qualified property acquired by a taxpayer after 2007 and placed in service by the taxpayer before 2014 (before 2015 in the case of property described in § 168(k)(2)(B) and (C)). Section 125(a) of the TIPA amended § 168(k)(2) by extending the placed-in-service date to before 2015 (before 2016 in the case of property described in § 168(k)(2)(B) and (C)), and extending other dates in § 168(k)(2) by changing "2014" to "2015" or "January 1, 2014" to "January 1, 2015" (for example, the self-constructed property rules in § 168(k)(2)(E)(i)).

(2) Section 168(k)(2)(D)(iii) provides that a taxpayer may elect not to deduct additional first year depreciation for any class of property placed in service by the taxpayer during the taxable year. The term "class of property" is defined in § 1.168(k)–1(e)(2)(i) of the Income Tax Regulations to mean, in general, each class of property described in § 168(e) (for example, 5-year property). If the taxpayer makes this election, it applies to all qualified property that is in the same class and placed in service in the same taxable year.

(3) Section 1.168(k)–1(e)(3)(i) provides that the election not to deduct additional first year depreciation must be made by the due date, including extensions, of the federal tax return for the taxable year in which the taxpayer places the property in service. Section 1.168(k)–1(e)(3)(ii) provides that this election generally must be made in the manner prescribed on Form 4562, *Depreciation and Amortization*, and its instructions. The instructions to Form 4562 for the 2013 and 2014 taxable years provide that the election is made by attaching a statement to the taxpayer's timely filed tax return indicating that the taxpayer is electing not to deduct the additional first year depreciation and the class of property for which the taxpayer is making the election. Section 1.168(k)–1(e)(7)(i) provides that once the election is made, it generally may be revoked only with the written consent of the Commissioner of Internal Revenue.

(4) Taxpayers with a taxable year beginning in 2013 and ending in 2014 that filed their 2013 federal tax returns before the enactment of the TIPA may be uncertain how to claim the 50-percent additional first year depreciation for qualified property placed in service after December 31, 2013, in taxable years ending in 2014. Section 3 of this revenue procedure provides the procedures for claiming or not claiming the 50-percent additional first year depreciation for this property.

.02 *TIPA Amendment of § 168(k)(4).*

(1) Prior to amendment by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111–312, 124 Stat. 3296 (December 17, 2010) (TRUIRJCA), § 168(k)(4) allowed a corporation or an S corporation to elect not to claim the additional first year depreciation deduction allowable under § 168(k) for eligible qualified property or extension property and instead increase the business credit limitation under § 38(c) and the AMT credit limitation under § 53(c). As a result, a corporation or S corporation was able to claim unused credits from taxable years beginning before January 1, 2006, that were allocable to research expenditures or AMT liabilities, and accelerate such credits as refundable credits. With the exception of revised dates, eligible qualified property or extension property is property eligible for the additional first year depreciation deduction under § 168(k)(1).

(2) Section 401(c) of TRUIRJCA amended § 168(k)(4) by adding § 168(k)(4)(I)

to the Code. Section 168(k)(4)(I) applied to property placed in service generally after 2010 and before 2013 (round 2 extension property). Section 331(c) of the American Taxpayer Relief Act of 2012, Pub. L. No. 112–240, 126 Stat. 2313 (January 2, 2013) (ATRA), amended § 168(k)(4) by adding § 168(k)(4)(J) to the Code. Section 168(k)(4)(J) applied to property placed in service generally after 2012 and before 2014 (round 3 extension property). With the exception of revised dates, round 2 extension property or round 3 extension property is property eligible for the additional first year depreciation deduction under § 168(k)(1). Pursuant to § 168(k)(4)(I)(i) and (J)(i), § 168(k)(4) increased only the AMT credit limitation under § 53(c) for round 2 extension property and round 3 extension property. As a result, § 168(k)(4) allowed a corporation or an S corporation to elect not to claim the additional first year depreciation deduction allowable under § 168(k) for round 2 extension property and round 3 extension property and instead increase the AMT credit limitation under § 53(c). Accordingly, a corporation or S corporation was able to claim unused credits from taxable years beginning before January 1, 2006, that were allocable to AMT liabilities and accelerate such credits as refundable credits.

(3) With the extension of the additional first year depreciation deduction by § 125(a) of the TIPA, § 168(k)(4) is correspondingly extended to apply to "round 4 extension property." Section 125(c)(2) of the TIPA amended § 168(k)(4) by adding § 168(k)(4)(K) to the Code. Section 168(k)(4)(K)(iii) defines the term "round 4 extension property" as meaning property that is eligible qualified property solely by reason of the extension of § 168(k)(2) by the TIPA. Section 4.01 of this revenue procedure clarifies which eligible qualified property is round 4 extension property.

(4) Pursuant to § 168(k)(4)(K)(i)(I), § 168(k)(4) increases only the AMT credit limitation under § 53(c) for round 4 extension property. As a result, § 168(k)(4) allows a corporation or an S corporation to elect not to claim the additional first year depreciation deduction allowable under § 168(k) for round 4 extension property and instead increase the AMT credit limitation under § 53(c). Accordingly, a corporation or S corporation is able to claim unused credits from taxable years beginning before January 1, 2006, that are allocable to AMT liabilities and accelerate such credits as refundable credits.

(5) Section 168(k)(4)(K)(ii)(I) provides that if a corporation has an election in effect under § 168(k)(4) for round 3 extension property and the corporation does not make the election not to apply § 168(k)(4) to round 4 extension property, the corporation is treated as having an election in effect for round 4 extension property. Section 4.02 of this revenue procedure provides guidance regarding the time and manner for making an election not to apply § 168(k)(4) to round 4 extension property.

(6) Section 168(k)(4)(K)(ii)(II) provides that if a corporation does not have an election in effect under § 168(k)(4) for round 3 extension property, the corporation may elect to apply § 168(k)(4) to round 4 extension property. Section 4.03 of this revenue procedure provides guidance regarding the time and manner for making this election.

.03 *Extension of Application of § 179(f).*

(1) Section 179(a) allows a taxpayer to elect to treat the cost (or a portion of the cost) of any § 179 property as an expense for the taxable year in which the taxpayer places the property in service. Section 179(b)(1) and section 179(b)(2) prescribe a dollar limitation on the aggregate cost of § 179 property that can be treated as an expense under § 179(a). The dollar limitation is the amount under § 179(b)(1) (the § 179(b)(1) limitation), reduced (but not below zero) by the amount by which the cost of § 179 property placed in service during the taxable year exceeds the amount under § 179(b)(2) (the § 179(b)(2) limitation). Prior to amendment by the TIPA, the § 179(b)(1) limitation was $500,000 for taxable years beginning in 2010, 2011, 2012, or 2013, and $25,000 for taxable years beginning after 2013. The § 179(b)(2) limitation was $2,000,000 for taxable years beginning in 2010, 2011, 2012, or 2013, and $200,000 for taxable years beginning after 2013. Section 127(a) of the TIPA extended the $500,000 § 179(b)(1) limitation to taxable years beginning after 2009 and before 2015 and the $2,000,000 § 179(b)(2) limitation to taxable years beginning after 2009 and before 2015.

(2) Section 179(b)(3)(A) provides that a taxpayer's § 179 deduction for any taxable year, after application of the § 179(b)(1) and (2) limitations, is limited to the taxpayer's taxable income for that taxable year that is derived from the taxpayer's active conduct of any trade or business during that taxable year (taxable income limitation). Section 179(b)(3)(B) provides that the amount of any cost of § 179 property elected to be expensed in a taxable year that is disallowed as a § 179 deduction under the taxable income limitation may be carried forward for an unlimited number of years and may be deducted under § 179(a) in a future year subject to the same limitations.

(3) If a taxpayer elects to apply § 179(f), § 179 property includes qualified real property (as defined in § 179(f)(1) and(2)). Prior to amendment by the TIPA, § 179(f) applied to qualified real property placed in service in any taxable year beginning in 2010, 2011, 2012, or 2013. Section 127(d)(1) of the TIPA extended the application of § 179(f) to qualified real property placed in service in any taxable year beginning after 2009 and before 2015.

(4) For purposes of applying the § 179(b)(1) limitation ($500,000) for any taxable year beginning after 2009 and before 2015, § 179(f)(3) provides that not more than $250,000 of the aggregate cost (as defined in § 179(d)(3) and § 1.179–4(d)) of § 179 property that is treated as an expense under § 179(a) for the taxable year can be attributable to qualified real property. Thus, the maximum amount of qualified real property that may be expensed under § 179(a) for any taxable year beginning after 2009 and before 2015 is $250,000.

(5) Prior to amendment by the TIPA, § 179(f)(4) provided that, notwithstanding § 179(b)(3)(B), a taxpayer that elected to apply § 179(f) and elected to expense under § 179(a) the cost (or a portion of the cost) of qualified real property placed in service during any taxable year beginning in 2010, 2011, 2012, or 2013 could not carryover to any taxable year beginning after 2013 the amount of any cost of such property that was disallowed as a § 179 deduction under the taxable income limi-

tation of § 179(b)(3)(A) (2010, 2011, 2012, or 2013 disallowed § 179 deduction). To the extent that any § 179 deduction attributable to qualified real property was not allowed to be carried over to a taxable year beginning after 2013, that amount was required to be treated as an amount for which an election under § 179 was not made and as property placed in service on the first day of the taxpayer's last taxable year beginning in 2013 for purposes of computing depreciation. Section 127(d)(2) of the TIPA amended § 179(f)(4) by striking "2013" each place it appeared and inserting "2014".

(6) The Treasury Department and the Internal Revenue Service recognize that a taxpayer that treated the amount of a 2010, 2011, 2012, or 2013 disallowed § 179 deduction for qualified real property as property placed in service on the first day of the taxpayer's last taxable year beginning in 2013 may want to carryover that amount to any taxable year beginning in 2014 in accordance with § 179(f)(4), as amended by the TIPA. Section 5 of this revenue procedure provides the procedures to do this.

SECTION 3. TIPA RETROACTIVE APPLICATION OF 50-PERCENT ADDITIONAL FIRST YEAR DEPRECIATION DEDUCTION

.01 *Scope*. This section 3 applies to a taxpayer that did not claim the 50-percent additional first year depreciation for some or all qualified property placed in service by the taxpayer after December 31, 2013, on its federal tax return for its taxable year beginning in 2013 and ending in 2014 (2013 taxable year) or its taxable year of less than 12 months beginning and ending in 2014 (2014 short taxable year). For purposes of this section 3:

(1) The term "qualified property" has the same meaning as that term is defined in § 168(k)(2), as amended by the TIPA;

(2) The term "2013 qualified property" means qualified property placed in service by the taxpayer before January 1, 2014, in its 2013 taxable year; and

(3) The term "2014 qualified property" means qualified property placed in service by the taxpayer after December 31, 2013, in its 2013 taxable year or 2014 short taxable year, as applicable.

.02 *No Election Made To Not Deduct 50-Percent Additional First Year Depreciation*. If, on its timely filed federal tax return for the 2013 taxable year or the 2014 short taxable year (both as defined in section 3.01 of this revenue procedure), as applicable, a taxpayer did not deduct the 50-percent additional first year depreciation for a class of property that is qualified property or for some or all of its 2014 qualified property, and did not make an election within the time and in the manner described in either section 2.01(3) or section 3.04(2) of this revenue procedure not to deduct the 50-percent additional first year depreciation deduction for the class of property in which the qualified property or the 2014 qualified property, as applicable, is included, the taxpayer may claim the 50-percent additional first year depreciation for that class by filing either:

(1) An amended federal tax return for the 2013 taxable year or the 2014 short taxable year, as applicable, before the taxpayer files its federal tax return for the first taxable year succeeding the 2013 taxable year or the 2014 short taxable year, as applicable. If the taxpayer has both a 2013 taxable year and a 2014 short taxable year, and has timely filed federal tax returns for both such years, the amended federal tax returns for both the 2013 taxable year and the 2014 short taxable year must be filed before the taxpayer files its federal tax return for the first taxable year succeeding the 2014 short taxable year; or

(2) A Form 3115, *Application for Change in Accounting Method*, under section 6.01 of Rev. Proc. 2015–14, 2015–5 I.R.B. 450, 459, with the taxpayer's timely filed federal tax return for the first or second taxable year succeeding the 2013 taxable year or the 2014 short taxable year, as applicable, if the taxpayer owns the property as of the first day of the year of change (as defined in section 3.19 of Rev. Proc. 2015–13, 2015–5 I.R.B. 419, 429). If the taxpayer has both a 2013 taxable year and a 2014 short taxable year, and has timely filed federal tax returns for both such years, the Form 3115 must be filed with the taxpayer's timely filed federal tax return for the first or second taxable year succeeding the 2014 short taxable year if the taxpayer owns the property as of the first day of the year of change.

.03 *Consent Granted to Revoke Election to Not Deduct 50-Percent Additional First Year Depreciation*. If, on its timely filed federal tax return for the 2013 taxable year or the 2014 short taxable year, as applicable, a taxpayer made an election within the time and in the manner described in section 2.01(3) of this revenue procedure to not deduct the 50-percent additional first year depreciation for a class of property that is qualified property, the Commissioner grants the taxpayer consent to revoke that election, provided the taxpayer files an amended federal tax return for the 2013 taxable year or the 2014 short taxable year, as applicable, in a manner that is consistent with the revocation of the election and by the later of (1) December 4, 2015, or (2) before the taxpayer files its federal tax return for the first taxable year succeeding the 2013 taxable year or the 2014 short taxable year.

.04 *Election To Not Deduct 50-Percent Additional First Year Depreciation*.

(1) *In general*. A taxpayer that timely filed its federal tax return for the 2013 taxable year or the 2014 short taxable year, as applicable, has made the election to not deduct the 50-percent additional first year depreciation for a class of property that is qualified property if the taxpayer made the election within the time and in the manner provided in section 2.01(3) of this revenue procedure and did not revoke that election within the time and in the manner provided in section 3.03 of this revenue procedure.

(2) *Deemed election*. If section 3.04(1) of this revenue procedure does not apply, a taxpayer that timely filed its federal tax return for the 2013 taxable year or the 2014 short taxable year, as applicable, will be treated as making the election to not deduct the 50-percent additional first year depreciation for a class of property that is qualified property if the taxpayer:

(a) On that return, did not deduct the 50-percent additional first year depreciation for that class of property but did deduct depreciation; and

(b) Does not file an amended federal tax return or a Form 3115 within the time and in the manner provided in section 3.02 or section 3.03 of this revenue procedure, as applicable, to claim the 50-percent additional first year depreciation for the class of property.

(3) *Application*. If the taxpayer makes the election under section 3.04(1) or (2) of this revenue procedure for its 2013 taxable year, the election applies to both 2013 qualified property and 2014 qualified property in the same class of property for which the election is made. If the taxpayer makes the election under section 3.04(1) or (2) of this revenue procedure for its 2014 short taxable year, the election applies to 2014 qualified property in the same class of property for which the election is made.

SECTION 4. ROUND 4 EXTENSION PROPERTY

.01 *Definition of Round 4 Extension Property*.

(1) *In general*. Under § 168(k)(4)(K)(iii), round 4 extension property means property that is eligible qualified property solely by reason of the extension of § 168(k)(2) by the TIPA. Pursuant to § 168(k)(4)(D), as amended by the TIPA, the term "eligible qualified property" means qualified property under § 168(k)(2), except that in applying § 168(k)(2), (1) "March 31, 2008" is substituted for "December 31, 2007" each place it appears in § 168(k)(2)(A) and § 168(k)(2)(E)(i) and (ii), (2) "April 1, 2008" is substituted for "January 1, 2008" in § 168(k)(2)(A)(iii)(I), and (3) only adjusted basis attributable to manufacture, construction, or production after March 31, 2008, and before January 1, 2010, and after December 31, 2010, and before January 1, 2015, is taken into account under § 168(k)(2)(B)(ii). However, the binding contract requirement in § 168(k)(2)(A)(iii)(I) does not apply for determining whether a passenger aircraft is eligible qualified property. Section 168(k)(4)(G)(iii). See section 3 of Rev. Proc. 2008–65, 2008–2 C.B. 1082 (as modified by section 7.01 of Rev. Proc. 2009–33, 2009–29 I.R.B. 150) and section 3.02 of Rev. Proc. 2009–33 for additional guidance on the definition of eligible qualified property that is not extension property for purposes of § 168(k)(4).

(2) *Round 4 extension property defined*. Round 4 extension property is eligible qualified property (as defined in § 168(k)(4)(D), as amended by the TIPA) that:

(a) Is acquired by the taxpayer after March 31, 2008, is placed in service by the taxpayer after December 31, 2013, and before January 1, 2015, and is not described in § 168(k)(2)(B) (long-production period property or transportation property) or § 168(k)(2)(C) (certain aircraft) that is placed in service by the taxpayer after December 31, 2013, and before January 1, 2015;

(b) Meets the requirements of § 168(k)(2)(B) (long production period property or transportation property), is acquired by the taxpayer after March 31, 2008, and is placed in service by the taxpayer after December 31, 2014, and before January 1, 2016; or

(c) Meets the requirements of § 168(k)(2)(C) (certain aircraft), is acquired by the taxpayer after March 31, 2008, and is placed in service by the taxpayer after December 31, 2014, and before January 1, 2016.

.02 *Election Not to Apply § 168(k)(4) to Round 4 Extension Property*.

(1) *In general*. If a corporate taxpayer has an election in effect under § 168(k)(4) for round 3 extension property (as defined in § 168(k)(4)(J)(iv)), the taxpayer may make an election not to apply § 168(k)(4) to round 4 extension property placed in service by the taxpayer in its first taxable year ending after December 31, 2013, and in any subsequent taxable year. Even if the taxpayer does not place in service any round 4 extension property in its first taxable year ending after December 31, 2013, the taxpayer must make the election not to apply § 168(k)(4) to round 4 extension property for that taxable year if the taxpayer wishes to apply such election to round 4 extension property placed in service in a subsequent taxable year. Failure to comply with all of the applicable requirements of section 4.02(2) of this revenue procedure will nullify a taxpayer's attempted election not to apply § 168(k)(4) to round 4 extension property.

(2) *Time and Manner for Making the Election Not to Apply § 168(k)(4) to Round 4 Extension Property*.

(a) *In general*. A corporate taxpayer that timely files its federal income tax return for its first taxable year ending after December 31, 2013, makes the election not to apply § 168(k)(4) to round 4 extension property by applying the election procedures in section 4.02 or 4.03 of Rev. Proc. 2009–33, as applicable, or by meeting the deemed election requirements in section 4.02(b) or (c) of this revenue procedure, as applicable. If the taxpayer has timely filed such federal income tax return and did not make the election not to apply § 168(k)(4) to round 4 extension property but wants to do so, see section 4.04 of Rev. Proc. 2009–33 for how to make a late election. In applying section 4.02, 4.03, or 4.04 of Rev. Proc. 2009–33, as applicable, the taxpayer should make the following substitutions:

(i) "round 4 extension property" is substituted for "extension property";

(ii) "December 31, 2013" is substituted for "December 31, 2008"; and

(iii) "The TIPA" is substituted for "The Act".

(b) *Deemed election for taxpayers that are not members of a controlled group of corporations*. This section 4.02(2)(b) applies to a corporate taxpayer that is not a member of a controlled group of corporations (as defined in § 168(k)(4)(C)(iv) and in section 2.05 of Rev. Proc. 2009–16, 2009–6 I.R.B. 449). If that taxpayer timely filed its original federal income tax return for its first taxable year ending after December 31, 2013, on or before December 4, 2015, the taxpayer will be treated as making the election not to apply § 168(k)(4) to round 4 extension property if the taxpayer:

(i) Filed, with its original federal income tax return for the taxpayer's first taxable year ending after December 31, 2013, the Form 4562, *Depreciation and Amortization (Including Information on Listed Property)*, indicating that the taxpayer: (A) claimed the additional first year depreciation deduction for all round 4 extension property placed in service by the taxpayer during that taxable year (unless the taxpayer made the election under § 168(k)(2)(D)(iii) for the class of property in which the round 4 extension property is included); and (B) used the applicable depreciation method for such property under § 168(b) (unless the taxpayer elected the alternative depreciation system under § 168(g)(7) for the class of property in which the round 4 extension property is included); and

(ii) Provides written notification, if notification has not previously been provided, to any partnership in which the taxpayer is a partner that the taxpayer is making the election not to apply § 168(k)(4) to round 4 extension property. This notification must be made to the applicable partnership(s) by December 4, 2015.

(c) *Deemed election for taxpayers that are members of a controlled group of corporations*.

(i) *In general*. If any member of a controlled group of corporations (hereinafter such group is referred to as a "controlled group") is treated as making the election not to apply § 168(k)(4) to round 4 extension property under section 4.02(2)(c)(ii) or (iii) of this revenue procedure, such election is binding on all other members of the controlled group. *See* section 4.03(1) of Rev. Proc. 2009–33.

(ii) *All members of a controlled group constitute a single consolidated group*. This section 4.02(2)(c)(ii) applies when all members of a controlled group are members of a consolidated group. If the common parent (within the meaning of § 1.1502–77(a)(1)(i)) of the consolidated group timely filed the original consolidated federal income tax return for its first taxable year ending after December 31, 2013, on or before December 4, 2015, all members of the consolidated group will be treated as making an election not to apply § 168(k)(4) to all round 4 extension property if the common parent complies with the procedures in section 4.02(2)(b) of this revenue procedure for all members of the consolidated group (for example, the written notification required in section 4.02(2)(b)(ii) of this revenue procedure is provided to all partnerships in which any member is a partner).

(iii) *All members of a controlled group do not constitute a single consolidated group*. This section 4.02(2)(c)(ii) applies when separate federal income tax returns are filed by some or all members of a controlled group. If a controlled group includes, but is not limited to, members of a consolidated group, the consolidated group is treated as a single member of the controlled group. If a member of the controlled group timely filed its original federal income tax return for its first taxable year ending after December 31, 2013, on or before December 4, 2015, such member will be treated as making the election not to apply § 168(k)(4) to all round 4 extension property if the member:

(A) Complies with the procedures in section 4.02(2)(b) of this revenue procedure; and

(B) Provides written notification, if notification has not previously been provided, to all other members of the controlled group that the election not to apply § 168(k)(4) to round 4 extension property will be made. This notification must be made to the other members by December 4, 2015.

.03 *Section 168(k)(4) Round 4 Extension Property Election*.

(1) *In general*. If a corporate taxpayer does not have an election in effect under § 168(k)(4) for round 3 extension property (as defined in § 168(k)(4)(J)(iv)), the taxpayer may make an election to apply § 168(k)(4) to round 4 extension property (§ 168(k)(4) round 4 extension property election). If the § 168(k)(4) round 4 extension property election is made, the election applies to all round 4 extension property placed in service by the taxpayer in its first taxable year ending after December 31, 2013, and in any subsequent taxable year. Even if the taxpayer does not place in service any round 4 extension property in its first taxable year ending after December 31, 2013, the taxpayer must make the § 168(k)(4) round 4 extension property election for that taxable year if the taxpayer wishes to apply the election to round 4 extension property placed in service in a subsequent taxable year. Failure to comply with all of the applicable requirements of section 4.03(2) of this revenue procedure will nullify a taxpayer's attempted § 168(k)(4) round 4 extension property election.

(2) *Time and Manner for Making the § 168(k)(4) Round 4 Extension Property Election*.

(a) *In general*. A corporate taxpayer that timely files its federal income tax return for its first taxable year ending after December 31, 2013, makes the § 168(k)(4) round 4 extension property election by applying the election procedures in section 6.02, 6.03, or 6.04 of Rev. Proc. 2009–33, as applicable, or by meeting the deemed election requirements in section 4.03(b) or (c) of this revenue procedure, as applicable. If the taxpayer has timely filed such federal income tax return and did not make the § 168(k)(4) round 4 extension property election but wants to do so, see section 6.06 of Rev. Proc. 2009–33 for how to make a late election. In applying section 6.02, 6.03, 6.04, or 6.06 of Rev. Proc. 2009–33, as applicable, the taxpayer should make the following substitutions:

(i) "round 4 extension property" is substituted for "extension property";

(ii) "§ 168(k)(4) round 4 extension property election" is substituted for "§ 168(k)(4) extension property election";

(iii) "December 31, 2013" is substituted for "December 31, 2008";

(iii) "2014" is substituted for "2008";

(iv) In section 6.02(2)(a)(i), strike the language "(for example, Line 32g of the 2008 Form 1120)" and replace with the following: "(for example, Line 32 of the 2014 Form 1120)";

(v) Strike the language in section 6.02(2)(a)(ii) and replace with the following: "Filing, with the Form 1120, the Form 8827, *Credit for Prior Year Minimum Tax – Corporations*, for the taxpayer's first taxable year ending after December 31, 2013;"

(vi) Strike the word "Stimulus" in sections 6.02(2)(a)(iii) and 6.02(2)(b)(iii);

(vii) Strike the language in section 6.02(2)(b)(ii) and replace with the following: "Attaching to the Form 1120S for the taxpayer's first taxable year ending after December 31, 2013, a statement indicating that the taxpayer is making the § 168(k)(4) round 4 extension property election and a statement showing the computation of the increase to the AMT credit limitation under § 53(c) resulting from making the § 168(k)(4) round 4 extension property election;"

(viii) In section 6.03, strike the language "If a corporate taxpayer did not make the § 168(k)(4) election for its first taxable year ending March 31, 2008, and the taxpayer" and replace with the following: "If a corporate taxpayer";

(ix) In section 6.04(2)(c)(iv), strike the language "(*excluding* extensions)" and replace with the following: "(*including* extensions)"; and

(x) "December 31, 2014" is substituted for "December 31, 2009".

(b) *Deemed election for taxpayers that are not members of a controlled group*. This section 4.03(2)(b) applies to a corporate taxpayer that is not a member of a controlled group (as defined in § 168(k)(4)(C)(iv) and in section 2.05 of Rev. Proc. 2009–16). If that taxpayer timely filed its original federal income tax return for its first taxable year ending after December 31, 2013, on or before December 4, 2015, the taxpayer will be treated as making the § 168(k)(4) round 4 extension property election if:

(i) In the case of a C corporation, the taxpayer claimed the refundable credit on the appropriate line of the original Form 1120, *U.S. Corporation Income Tax Return*, for its first taxable year ending after December 31, 2013 (for example, Line 32 of the 2014 Form 1120);

(ii) In the case of a S corporation, the taxpayer made appropriate adjustments to the appropriate line of the original Form 1120S, *U.S. Income Tax Return for an S Corporation*, for the taxpayer's first taxable year ending after December 31, 2013, to reflect the results described in section 6.05(3) of Rev. Proc. 2009–33 from making the § 168(k)(4) round 4 extension property election (for example, Line 22b of the 2014 Form 1120S). In applying section 6.05(3) of Rev. Proc. 2009–33, the taxpayer should substitute "§ 168(k)(4) round 4 extension property election" for "§ 168(k)(4) extension property election";

(iii) The taxpayer filed, with the original Form 1120 or Form 1120S, as applicable, for the taxpayer's first taxable year ending after December 31, 2013, the Form 4562 indicating that the taxpayer used the straight line method of depreciation under § 168(b)(3) and did not claim the additional first year depreciation deduction for all round 4 extension property placed in service during that taxable year; and

(iv) The taxpayer provides written notification, if notification has not previously been provided, to any partnership in which the taxpayer is a partner that the taxpayer is making the § 168(k)(4) round 4 extension property election. This notification must be made to the applicable partnership(s) by December 4, 2015.

(c) *Deemed election for taxpayers that are members of a controlled group*.

(i) *In general*. If any member of a controlled group is treated as making the § 168(k)(4) round 4 extension property election under section 4.03(2)(c)(ii) or (iii) of this revenue procedure, such election is binding on all other members of the controlled group. *See* section 4.03(1) of Rev. Proc. 2009–33.

(ii) *All members of a controlled group constitute a single consolidated group*. This section 4.03(2)(c)(ii) applies when all members of a controlled group are members of a consolidated group. If the common parent (within the meaning of § 1.1502–77(a)(1)(i)) of the consolidated group timely filed the original consolidated federal income tax return for its first taxable year ending after December 31, 2013, on or before December 4, 2015, all members of the consolidated group will be treated as making the § 168(k)(4) round 4 extension property election if the common parent complies with the procedures in section 4.03(2)(b) of this revenue procedure for all members of the consolidated group (for example, the written notification required in section 4.03(2)(b)(iv) of this revenue procedure is provided to all partnerships in which any member is a partner).

(iii) *All members of a controlled group do not constitute a single consolidated group*. This section 4.03(2)(c)(iii) applies when separate federal income tax returns are filed by some or all members of a controlled group. If a controlled group includes, but is not limited to, members of a consolidated group, the consolidated group is treated as a single member of the controlled group. If a member of the controlled group timely filed its original federal income tax return for its first taxable year ending after December 31, 2013, on or before December 4, 2015, such member will be treated as making the § 168(k)(4) round 4 extension property election if the member:

(A) Complies with the procedures in section 4.03(2)(b) of this revenue procedure; and

(B) Provides written notification, if notification has not previously been provided, to all other members of the controlled group that the § 168(k)(4) round 4 extension property election will be made. This notification must be made to the other members by December 4, 2015.

SECTION 5. CARRYOVER OF 2010, 2011, 2012, OR 2013 DISALLOWED § 179 DEDUCTION FOR QUALIFIED REAL PROPERTY

.01 *In General*. A taxpayer that treated the amount of a 2010, 2011, 2012, or 2013 disallowed § 179 deduction for qualified real property as property placed in service on the first day of the taxpayer's last taxable year beginning in 2013 may either (1) continue that treatment, or (2) if the period of limitations for assessment under § 6501(a) is open, amend its federal tax return for the last taxable year beginning in 2013 to carryover the 2010, 2011, 2012, or 2013 disallowed § 179 deduction to any taxable year beginning in 2014. However, if the taxpayer's last taxable year beginning in 2013 is open under the period of limitations for assessment under § 6501(a) and an affected succeeding taxable year is closed under the period of limitations for assessment under § 6501(a), the taxpayer must continue to treat the amount of a 2010, 2011, 2012, or 2013 disallowed § 179 deduction as property placed in service on the first day of the taxpayer's last taxable year beginning in 2013.

.02 *Time and Manner of Filing Amended Federal Tax Return*. The amended federal tax return for the taxpayer's last taxable year beginning in 2013 must include any collateral adjustments to taxable income or the tax liability (for example, the amount of depreciation allowed or allowable in the last taxable year beginning in 2013 for the amount of the 2010, 2011, 2012, or 2013 disallowed § 179 deduction). Such collateral adjustments must also be made on amended federal tax returns for any affected succeeding taxable years. The amended returns for the taxpayer's last taxable year beginning in 2013 and for any affected succeeding taxable years must be filed within the time prescribed by law for filing an amended return for such taxable years.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective September 15, 2015.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Douglas H. Kim of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Mr. Kim at (202) 317-7005 (not a toll-free number).

Part IV. Items of General Interest

Notice of proposed rulemaking; notice of proposed rulemaking by cross-reference to temporary regulation.

Treatment of Certain Transfers of Property to Foreign Corporations

REG–139483–13

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; notice of proposed rulemaking by cross-reference to temporary regulation.

SUMMARY: This document contains proposed regulations relating to certain transfers of property by United States persons to foreign corporations. The proposed regulations affect United States persons that transfer certain property, including foreign goodwill and going concern value, to foreign corporations in nonrecognition transactions described in section 367 of the Internal Revenue Code (Code). The proposed regulations also combine portions of the existing regulations under section 367(a) into a single regulation. In addition, in the Rules and Regulations section of this issue of the **Bulletin**, temporary regulations are being issued under section 482 to clarify the coordination of the transfer pricing rules with other Code provisions. The text of those temporary regulations serves as the text of a portion of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by December 15, 2015.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–139483–13), Internal Revenue Service, Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–139483–13), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224; or sent electronically via the Federal eRulemaking Portal at http://www.regulations.gov (IRS REG–139483–13).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Ryan A. Bowen, (202) 317-6937; concerning submissions of comments or requests for a public hearing, Regina Johnson, (202) 317-6901 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in the regulations have been submitted for review and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)) under control number 1545-0026.

The collections of information are in § 1.6038B–1(c)(4) and (d)(1). The collections of information are mandatory. The likely respondents are domestic corporations. Burdens associated with these requirements will be reflected in the burden for Form 926. Estimates for completing the Form 926 can be located in the form instructions.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number.

Books and records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

I. *Current Law*

A. *Section 367(a)*

Section 367(a)(1) provides that if, in connection with any exchange described in section 332, 351, 354, 356, or 361, a United States person (U.S. transferor) transfers property to a foreign corporation (outbound transfer), the transferee foreign corporation will not, for purposes of determining the extent to which gain shall be recognized on such transfer, be considered to be a corporation. As a result, under section 367(a)(1), the U.S. transferor recognizes any gain (but not loss) on the outbound transfer of the property. Section 367(a)(2) provides an exception to the application of section 367(a)(1) for certain transfers of stock or securities, and section 367(a)(3) provides an exception for transfers of certain property used in a trade or business.

Specifically, section 367(a)(3)(A) provides that, except as provided in regulations prescribed by the Secretary, the general rule of section 367(a)(1) will not apply to any property transferred to a foreign corporation for use by such foreign corporation in the active conduct of a trade or business outside of the United States (ATB exception). Section 367(a)(3)(B) provides that, except as provided in regulations prescribed by the Secretary, certain property is not eligible for the ATB exception. The statute describes five categories of property that are not eligible for the ATB exception: (i) property described in paragraph (1) or (3) of section 1221(a) (relating to inventory and copyrights, etc.); (ii) installment obligations, accounts receivable, or similar property; (iii) foreign currency or other property denominated in foreign currency; (iv) intangible property within the meaning of section 936(h)(3)(B); and (v) property with respect to which the U.S. transferor is a lessor at the time of the transfer, unless the foreign corporation was the lessee.

Section 367(a)(3)(C) provides that, except as provided in regulations prescribed by the Secretary, the ATB exception will not apply to gain realized on an outbound transfer of the assets of a foreign branch to the extent that previously deducted losses of the branch exceed the taxable income earned by the branch after the losses were incurred (branch loss recapture rule). However, any realized gain in the property transferred that exceeds the branch losses that must be recaptured under this rule may qualify for the ATB exception.

Section 367(a)(6) provides that section 367(a)(1) will not apply to an outbound transfer of any property that the Secretary, in order to carry out the purposes of section 367(a), designates by regulation.

Sections 1.367(a)–2 and 1.367(a)–2T provide general rules for determining whether property is transferred for use by a transferee foreign corporation in the active conduct of a trade or business outside of the United States for purposes of the ATB exception.

Sections 1.367(a)–4 and 1.367(a)–4T provide special rules for determining whether certain property satisfies the ATB exception, including rules that apply to (i) property to be leased by the transferee foreign corporation, (ii) oil and gas working interests, (iii) compulsory transfers of property, and (iv) property to be sold by the foreign corporation. Section 1.367(a)–4T also provides special rules requiring the recapture of depreciation upon an outbound transfer of U.S. depreciated property and exempting outbound transfers of property to a FSC (within the meaning of section 922(a)) from the application of paragraphs (a) and (d) of section 367.

Sections 1.367(a)–5 and 1.367(a)–5T address the five categories of property ineligible for the ATB exception that are described in section 367(a)(3)(B) and provide narrow exceptions to certain of those categories. Section 1.367(a)–5T(d) (which addresses foreign currency and other property denominated in a foreign currency) allows certain property denominated in the foreign currency of the country in which the foreign corporation is organized to qualify under the ATB exception if that property was acquired in the ordinary course of the business of the U.S. transferor that will be carried on by the foreign corporation. Section 1.367(a)–5T(e) (which addresses intangible property) contains a deadwood reference to the application of section 367(a)(1) to a transfer of intangible property pursuant to section 332. In this regard, see § 1.367(e)–2(a)(2), providing that section 367(a) does not apply to a liquidation described in section 332 of a U.S. subsidiary into a foreign parent corporation. Section 1.367(a)–5T(e) also provides a cross reference to section 367(d) for transfers of intangible property described in section 351 or 361.

Sections 1.367(a)–6 and 1.367(a)–6T provide rules for applying the branch loss recapture rule of section 367(a)(3)(C).

B. *Section 367(d)*

Section 367(d) provides rules for certain outbound transfers of intangible property. Section 367(d)(1) provides that, except as provided in regulations, if a U.S. transferor 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, section 367(d) (and not section 367(a)) applies to such transfer.

Section 936(h)(3)(B) defines intangible property broadly to mean any:

(i) patent, invention, formula, process, design, pattern, or know-how;

(ii) copyright, literary, musical, or artistic composition;

(iii) trademark, trade name, or brand name;

(iv) franchise, license, or contract;

(v) method, program, system, procedure, campaign, survey, study, forecast, estimate, customer list, or technical data; or

(vi) any similar item,

which has substantial value independent of the services of any individual (section 936(h)(3)(B) intangible property).

Section 367(d)(2)(A) provides that a U.S. transferor that transfers intangible property subject to section 367(d) is treated as having sold the property in exchange for payments that are contingent upon the productivity, use, or disposition of the property. Specifically, the U.S. transferor is treated as receiving amounts that reasonably reflect the amounts that would have been received annually in the form of such payments over the useful life of such property (section 367(d)(2)(A)(ii)(I)), or in the case of a disposition of the intangible property following such transfer (whether direct or indirect), at the time of the disposition (section 367(d)(2)(A)(ii)(II)). The amounts taken into account under section 367(d)(2)(A)(ii) must be commensurate with the income attributable to the intangible. Section 367(d)(2)(A) (flush language).

Section 1.367(d)–1T(b) generally provides that section 367(d) and § 1.367(d)–1T apply to the transfer of any intangible property, but not to the transfer of foreign goodwill or going concern value, as defined in § 1.367(a)–1T(d)(5)(iii) (foreign goodwill exception). Section 1.367(a)–1T(d)(5)(i) generally defines "intangible property," for purposes of section 367, as knowledge, rights, documents, and any other intangible item within the meaning of section 936(h)(3)(B) that constitutes property for purposes of section 332, 351, 354, 355, 356, or 361, as applicable. The regulation further provides that a working interest in oil and gas property will not be considered to be intangible property for purposes of section 367 and the regulations thereunder.

Section 1.367(a)–1T(d)(5)(iii) defines "foreign goodwill or going concern value" as the residual value of a business operation conducted outside of the United States after all other tangible and intangible assets have been identified and valued. Section 1.367(a)–1T(d)(5)(iii) also provides that, for purposes of section 367 and the regulations thereunder, the value of a right to use a corporate name in a foreign country is treated as foreign goodwill or going concern value.

In addition to providing the foreign goodwill exception, § 1.367(d)–1T(b) also excepts from section 367(d) property that is described in § 1.367(a)–5T(b)(2), which, in general, consists of copyrights and other items described in section 1221(a)(3). Those items, however, are not eligible for the ATB exception by reason of § 1.367(a)–5T.

For purposes of § 1.367(d)–1T, the useful life of intangible property is limited to 20 years under § 1.367(d)–1T(c)(3).

C. *Legislative History of Section 367(d)*

Congress amended section 367 in 1984 to create objective statutory rules because, among other reasons, the IRS was experiencing challenges administering the prior version of the statute. The prior version provided that certain outbound transfers of property qualified for tax-free treatment only if the U.S. transferor established that the outbound transfer was "not in pursuance of a plan having as one its principal purposes the avoidance of Federal income taxes."

In amending section 367, Congress also noted that "specific and unique problems exist" with respect to outbound transfers of intangible property and enacted section 367(d) in substantially its present form to address these transfers. S. Rep. No. 169, 98th Cong., 2d Sess., at 360 (1984); H.R. Rep. No. 432, 98th Cong., 2d Sess., at 1315 (1984). Congress identified problems as arising when "transferor U.S. companies hope to reduce their U.S. taxable income by deducting substantial research and experimentation expenses associated with the development of the transferred intangible and, by transferring the intangible to a foreign corporation at the point of profitability, to ensure deferral of U.S. tax on the profits generated by the intangible." *Id.*

The favorable treatment of foreign goodwill and going concern value available under existing law is premised on statements in the legislative history of section 367(d). "The committee contemplates that, ordinarily, no gain will be recognized on the transfer of goodwill or going concern value for use in an active trade or business." S. Rep. No. 169, 98th Cong., 2d Sess., at 364; H.R. Rep. No. 432, 98th Cong., 2d Sess., at 1319. The Senate Finance Committee and the House Committee on Ways and Means each noted, without explanation, that it "does not anticipate that the transfer of goodwill or going concern value developed by a foreign branch to a newly organized foreign corporation will result in abuse of the U.S. tax system." S. Rep. No. 169, 98th Cong., 2d Sess., at 362; H.R. Rep. No. 432, 98th Cong., 2d Sess., at 1317. However, neither section 367 nor its legislative history defines goodwill or going concern value of a foreign branch or discusses how goodwill or going concern value is attributed to a foreign branch.

D. *Taxpayer Interpretations Regarding Foreign Goodwill and Going Concern Value Under Section 367*

In general, taxpayers interpret section 367 and the regulations under section 367(a) and (d) in one of two alternative ways when claiming favorable treatment for foreign goodwill and going concern value.

Under one interpretation, taxpayers take the position that goodwill and going concern value are not section 936(h)(3)(B) intangible property and therefore are not subject to section 367(d) because section 367(d) applies only to section 936(h)(3)(B) intangible property. Under this interpretation, taxpayers assert that the foreign goodwill exception has no application. Furthermore, these taxpayers assert that gain realized with respect to the outbound transfer of goodwill or going concern value is not recognized under the general rule of section 367(a)(1) because the goodwill or going concern value is eligible for, and satisfies, the ATB exception under section 367(a)(3)(A).

Under a second interpretation, taxpayers take the position that, although goodwill and going concern value are section 936(h)(3)(B) intangible property, the foreign goodwill exception applies. These taxpayers also assert that section 367(a)(1) does not apply to foreign goodwill or going concern value, either because of section 367(d)(1)(A) (providing that, except as provided in regulations, section 367(d) and not section 367(a) applies to section 936(h)(3)(B) intangible property) or because of the ATB exception.

II. *Reasons for Change*

The Treasury Department and the IRS are aware that, in the context of outbound transfers, certain taxpayers attempt to avoid recognizing gain or income attributable to high-value intangible property by asserting that an inappropriately large share (in many cases, the majority) of the value of the property transferred is foreign goodwill or going concern value that is eligible for favorable treatment under section 367.

Specifically, the Treasury Department and the IRS are aware that some taxpayers value the property transferred in a manner contrary to section 482 in order to minimize the value of the property transferred that they identify as section 936(h)(3)(B) intangible property for which a deemed income inclusion is required under section 367(d) and to maximize the value of the property transferred that they identify as exempt from current tax. For example, some taxpayers (i) use valuation methods that value items of intangible property on an item-by-item basis, when valuing the items on an aggregate basis would achieve a more reliable result under the arm's length standard of the section 482 regulations, or (ii) do not properly perform a full factual and functional analysis of the business in which the intangible property is employed.

The Treasury Department and the IRS also are aware that some taxpayers broadly interpret the meaning of foreign goodwill and going concern value for purposes of section 367. Specifically, although the existing regulations under section 367 define foreign goodwill or going concern value by reference to a business operation conducted outside of the United States, some taxpayers have asserted that they have transferred significant foreign goodwill or going concern value when a large share of that value was associated with a business operated primarily by employees in the United States, where the business simply earned income remotely from foreign customers. In addition, some taxpayers take the position that value created through customer-facing activities occurring within the United States is foreign goodwill or going concern value.

The Treasury Department and the IRS have concluded that the taxpayer positions and interpretations described in this section of the preamble raise significant policy concerns and are inconsistent with the expectation, expressed in legislative history, that the transfer of foreign goodwill or going concern value developed by a foreign branch to a foreign corporation was unlikely to result in abuse of the U.S. tax system. *See* S. Rep. No. 169, 98th Cong., 2d Sess., at 362; H.R. Rep. No. 432, 98th Cong., 2d Sess., at 1317. The Treasury Department and the IRS considered whether the favorable treatment for foreign goodwill and going concern value under current law could be preserved while protecting the U.S. tax base through regulations expressly prescribing parameters for the portion of the value of a business that qualifies for the favorable treatment. For example, regulations could require that, to be eligible for the favorable treatment, the value must have been created by activities conducted outside of the United States through an actual foreign branch that had been in operation for a minimum number of years and be attributable to unrelated foreign customers. The Treasury Department and the IRS ultimately determined, however, that such an approach would be impractical to administer.

In particular, while the temporary regulations under section 482 that are published in the Rules and Regulations section of this issue of the **Federal Register** clarify the proper application of section 482 in important respects, there will continue to be challenges in administering the transfer pricing rules whenever the transfer of different types of intangible property gives rise to significantly different tax consequences. Given the amounts at stake, as long as foreign goodwill and going concern value are afforded favorable treatment, taxpayers will continue to have strong incentives to take aggressive transfer pricing positions to inappropriately exploit the favorable treatment of foreign goodwill and going concern value, however defined, and thereby erode the U.S. tax base.

For the reasons discussed in this section of the preamble, the Treasury Department and the IRS have determined that allowing intangible property to be transferred outbound in a tax-free manner is inconsistent with the policies of section 367 and sound tax administration and therefore will amend the regulations under section 367 as described in the Explanation of Provisions section of this preamble.

III. *Coordination with Section 482*

The temporary regulations under section 482 published in the Rules and Regulations section of this issue of the **Bulletin** clarify the coordination of the application of the arm's length standard and the best method rule in the regulations under section 482 in conjunction with other Code provisions, including section 367, in determining the proper tax treatment of controlled transactions. The text of the temporary regulations under section 482 also serves as the text of a portion of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and the corresponding proposed regulations.

Explanation of Provisions

I. *Eliminating the Foreign Goodwill Exception and Limiting the Scope of the ATB Exception*

A. *In General*

The proposed regulations eliminate the foreign goodwill exception under § 1.367(d)–1T and limit the scope of property that is eligible for the ATB exception generally to certain tangible property and financial assets. Accordingly, under the proposed regulations, upon an outbound transfer of foreign goodwill or going concern value, a U.S. transferor will be subject to either current gain recognition under section 367(a)(1) or the tax treatment provided under section 367(d).

B. *Modifications to § 1.367(d)–1T*

Proposed § 1.367(d)–1(b) provides that section 367(d) and § 1.367(d)–1 apply to an outbound transfer of intangible property, as defined in proposed § 1.367(a)–1(d)(5). Proposed § 1.367(d)–1(b) does not provide an exception for any intangible property. Rather, as described in part II. of the Explanation of Provisions section of this preamble, proposed § 1.367(a)–1(d)(5) modifies the definition of intangible property that applies for purposes of section 367(a) and (d). The modified definition facilitates both the elimination of the foreign goodwill exception as well as the addition of a rule under which U.S. transferors may apply section 367(d) with respect to certain outbound transfers of property that otherwise would be subject to section 367(a) under the U.S. transferor's interpretation of section 936(h)(3)(B). The proposed regulations make certain coordinating changes to § 1.367(d)–1T to take into account the elimination of the foreign goodwill exception and the revised definition of intangible property. The proposed regulations also eliminate the definition of foreign goodwill and going concern value under existing § 1.367(a)–1T(d)(5)(iii) because it is no longer needed.

In addition, the proposed regulations eliminate the existing rule under § 1.367(d)–1T(c)(3) that limits the useful life of intangible property to 20 years. When the useful life of the intangible property transferred exceeds 20 years, the limitation might result in less than all of the income attributable to the property being taken into account by the U.S. transferor. Accordingly, proposed § 1.367(d)–1(c)(3) provides that the useful life of intangible property is the entire period during which the exploitation of the intangible property is reasonably anticipated to occur, as of the time of transfer. For this purpose, exploitation includes use of the intangible property in research and development. Consistent with the guidance for cost sharing arrangements in § 1.482–7(g)(2)(ii)(A), if the intangible property is reasonably anticipated to contribute to its own further development or to developing other intangibles, then the period includes the period, reasonably anticipated at the time of the transfer, of exploiting (including use in research and development) such further development. Consequently, depending on the facts, the cessation of exploitation activity after a specific period of time may or may not be reasonably anticipated. *See, e.g.*, § 1.482–7(g)(4)(viii), *Examples 1* (cessation anticipated after 15 years) and *7* (cessation not anticipated at any determinable date).

C. *Modifications Relating to the ATB Exception*

The rules for determining whether property is eligible for the ATB exception and whether the property satisfies the ATB exception currently are found in numerous regulations, namely §§ 1.367(a)–2, 1.367(a)–2T, 1.367(a)–4, 1.367(a)–4T, 1.367(a)–5, and 1.367(a)–5T (collectively, the ATB regulations). To make the regulations more accessible, the proposed regulations combine the ATB regulations, other than the depreciation recapture rule, into a single regulation under proposed § 1.367(a)–2. The proposed regulations retain a coordination rule pursuant to which a transfer of stock or securities in an exchange subject to § 1.367(a)–3 is not subject to § 1.367(a)–2. *See* § 1.367(a)–2(a)(1). The proposed regulations make conforming changes to the depreciation recapture rule, which is moved from § 1.367(a)–4T to § 1.367(a)–4, and the branch loss recapture rule, which remains under §§ 1.367(a)–6 and 1.367(a)–6T. Although minor wording changes have been made to certain aspects of the ATB regulations as part of consolidating them into a single regulation, the proposed regulations are not intended to be interpreted as making substantive changes to the ATB regulations except as otherwise described in this section of the preamble.

Under existing regulations, all property is eligible for the ATB exception, unless the property is specifically excluded. Under this structure, taxpayers have an incentive to take the position that certain intangible property is not described in section 936(h)(3)(B) and therefore not subject to section 367(d) and is instead subject to section 367(a) but eligible for the ATB exception because the intangible property is not specifically excluded from the ATB exception. The Treasury Department and the IRS have concluded that providing an exclusive list of property eligible for the ATB exception will reduce the incentives for taxpayers to undervalue intangible property subject to section 367(d).

Thus, the proposed regulations provide that only certain types of property (as described in the next paragraph) are eligible for the ATB exception. However, in order for eligible property to satisfy the ATB exception, that property must also be considered transferred for use in the active conduct of a trade or business outside of the United States. Specifically, proposed § 1.367(a)–2(a)(2) provides the general rule that an outbound transfer of property satisfies the ATB exception if (i) the property constitutes eligible property, (ii) the property is transferred for use by the foreign corporation in the active conduct of a trade or business outside of the United States, and (iii) certain reporting requirements under section 6038B are satisfied.

Under proposed § 1.367(a)–2(b), eligible property is tangible property, working interests in oil and gas property, and certain financial assets, unless the property is also described in one of four categories of ineligible property. Proposed § 1.367(a)–2(c) lists four categories of property not eligible for the ATB exception, which, in general, are (i) inventory or similar property; (ii) installment obligations, accounts receivable, or similar property; (iii) foreign currency or certain other property denominated in foreign currency; and (iv) certain leased tangible property. These four categories of property not eligible for the ATB exception include four of the five categories described in existing regulations under §§ 1.367(a)–5 and 1.367–5T. The category for intangible property is not retained because it is not relevant: Intangible property transferred to a foreign corporation pursuant to section 351 or 361 is not eligible property under proposed § 1.367(a)–2(b) without regard to the application of proposed § 1.367(a)–2(c).

The proposed regulations also eliminate the exception in existing § 1.367(a)–5T(d)(2) that allows certain property denominated in the foreign currency of the country in which the foreign corporation is organized to qualify under the ATB exception if that property was acquired in the ordinary course of the business of the U.S. transferor that will be carried on by the foreign corporation. The Treasury Department and the IRS have determined that removing the exception is consistent with the general policy of section 367(a)(3)(B)(iii) to require gain to be recognized on an outbound transfer of foreign currency denominated property. Removing the exception will preserve the character, source, and amount of gain attributable to section 988 transactions that otherwise could be lost or changed if such gain were not immediately recognized but instead were reflected only in the U.S. transferor's basis in the stock of the foreign corporation.

The general rules for determining whether eligible property is transferred for use in the active conduct of a trade or business outside of the United States are described in proposed § 1.367(a)–2(d). Also, paragraphs (e) through (h) of proposed § 1.367(a)–2 provide special rules for certain property to be leased after the transfer, a working interest in oil and gas property, property that is re-transferred by the transferee foreign corporation to another person, and certain compulsory transfers of property, respectively. The proposed regulations also combine existing § 1.367(a)–2T(c) (relating to property that is re-transferred by the foreign corporation) and a portion of § 1.367(a)–4T(d) (relating to property to be sold by the foreign corporation) into proposed § 1.367(a)–2(g), because both of these existing provisions relate to subsequent transfers of property by the foreign corporation. *See* proposed § 1.367(a)–2(g)(1) and (2), respectively. Proposed § 1.367(a)–2(g)(2) does not retain the portion of existing § 1.367(a)–4T(d) that applies to certain transfers of stock or securities. The Treasury Department and the IRS have determined that §§ 1.367(a)–3 and 1.367(a)–8 (generally requiring U.S. transferors that own five-percent or more of the stock of the foreign corporation to enter into a gain recognition agreement to avoid recognizing gain under section 367(a)(1) upon the outbound transfer of stock or securities) adequately carry out the policy of section 367(a) with respect to the transfer of stock or securities.

The proposed regulations modify the scope of the term U.S. depreciated property for purposes of the depreciation recapture rule to include section 126 property (as defined in section 1255(a)(2)).

The proposed regulations eliminate the special rules for outbound transfers of property to a FSC, because the FSC provisions have been repealed. Tax Increase Prevention and Reconciliation Act of 2005, Pub L. No. 109–222, § 513, 120 Stat. 366 (2006); FSC Repeal and Extraterritorial Income Exclusion Act of 2000, Pub. L. No. 106–519, § 2, 114 Stat. 2423 (2000).

Finally, the proposed regulations make conforming changes to the reporting requirements under § 1.6038B–1(c)(4) to take into account the proposed regulations under § 1.367(a)–2. The proposed regulations retain a rule providing relief for certain failures to comply with the reporting requirements of section 6038B and the regulations thereunder for qualification under the ATB exception, but that rule is moved to proposed § 1.367(a)–2(j).

II. *Treatment of Certain Property as Subject to Section 367(d)*

Taxpayers take different positions as to whether goodwill and going concern value are section 936(h)(3)(B) intangible property, as discussed in part I.D. of the Background section of this preamble. The proposed regulations do not address this issue. However, the proposed regulations under § 1.367(a)–1(b)(5) provide that a U.S. transferor may apply section 367(d) to a transfer of property, other than certain property described below, that otherwise would be subject to section 367(a) under the U.S. transferor's interpretation of section 936(h)(3)(B). Under this rule, a U.S. transferor that takes the position that goodwill and going concern value are not section 936(h)(3)(B) intangible property may nonetheless apply section 367(d) to goodwill and going concern value. This rule furthers sound tax administration by reducing the consequences of uncertainty as to whether value is attributable to property subject to section 367(a) or property subject to section 367(d). The application of section 367(d) in lieu of section 367(a) is available only for property that is not eligible property, as defined in proposed § 1.367(a)–2(b) but, for this purpose, determined without regard to § 1.367(a)–2(c) (which describes four categories of property explicitly excluded from the ATB exception). A U.S. transferor must disclose whether it is applying section 367(a) or (d) to a transfer of such property. *See* proposed §§ 1.6038B–1(c)(4)(vii) and –1(d)(1)(iv).

To implement this new rule under proposed § 1.367(a)–1(b)(5) and the removal of the foreign goodwill exception, the proposed regulations revise the definition of "intangible property" that applies for purposes of sections 367(a) and (d). As revised, the term means either property described in section 936(h)(3)(B) or property to which a U.S. transferor applies section 367(d) (in lieu of applying section 367(a)). However, for this purpose and consistent with existing regulations, intangible property does not include property described in section 1221(a)(3) (generally relating to certain copyrights) or a working interest in oil and gas property.

The regulations under § 1.367(a)–7 (concerning outbound transfers of property subject to section 367(a) in certain asset reorganizations) use the term "section 367(d) property" to describe property that is not subject to section 367(a) and is therefore not subject to § 1.367(a)–7. The proposed regulations modify the definition of section 367(d) property in § 1.367(a)–7(f)(11) (which currently defines section 367(d) property as property described in section 936(h)(3)(B)) by reference to the new definition of "intangible property" under the proposed regulations. When the Treasury Department and the IRS issue regulations to implement the guidance described in Notice 2012–39 (IRB 2012–31) (announcing regulations to be issued addressing outbound transfers of intangible property subject to section 367(d) in certain asset reorganizations), the definition of "section 367(d) property" provided in section 4.05(3) of the notice will be similarly modified.

III. *Modifications to § 1.367(a)–1T*

Section 1.482–1T(f)(2)(i) of the temporary regulations published elsewhere in the Rules and Regulations section of this issue of the **Bulletin** clarify the coordination of the application of the arm's length standard and the best method rule in the regulations under section 482 in conjunction with other Code provisions, including section 367, in determining the proper tax treatment of controlled transactions. Proposed § 1.367(a)–1(b)(3) provides that, in cases where an outbound transfer of property subject to section 367(a) constitutes a controlled transaction, as defined in § 1.482–1(i)(8), the value of the property transferred is determined in accordance with section 482 and the regulations thereunder. This rule replaces existing § 1.367(a)–1T(b)(3), which includes three rules.

First, § 1.367(a)–1T(b)(3)(i) provides that "the gain required to be recognized . . . shall in no event exceed the gain that would have been recognized on a taxable sale of those items of property *if sold individually and without offsetting individual losses against individual gains*" (emphasis added). The Treasury Department and the IRS are concerned that in controlled transactions, taxpayers might have interpreted the wording "if sold individually" as inconsistent with § 1.482–1T(f)(2)(i)(B) (as clarified in temporary regulations published elsewhere in the Rules and Regulations section in this issue of the **Bulletin**), which provides that an aggregate analysis of transactions may provide the most reliable measure of an arm's length result in certain circumstances.

Second, § 1.367(a)–1T(b)(3)(ii) provides that no loss may be recognized by reason of section 367. That rule duplicates a loss disallowance rule in § 1.367(a)–1T(b)(1), which provides that section 367(a)(1) denies nonrecognition only to transfers of items of property on which gain is realized and that losses do not affect the amount of the gain recognized because of section 367(a)(1).

Third, § 1.367(a)–1T(b)(3)(iii) provides a rule to address a scenario in which ordinary income and capital gain could exceed the amount described in § 1.367(a)–1T(b)(3)(i). Because these regulations replace § 1.367(a)–1T(b)(3)(i), § 1.367(a)–1T(b)(3)(iii) is no longer necessary.

IV. *Proposed Effective/Applicability Dates*

The proposed regulations are proposed to apply to transfers occurring on or after September 14, 2015 and to transfers occurring before September 14, 2015 resulting from entity classification elections made under § 301.7701–3 that are filed on or after September 14, 2015. However, the removal of the exception currently provided in § 1.367(a)–5T(d)(2) will apply to transfers occurring on or after the date that the rules proposed in this section are adopted as final regulations in a Treasury decision published in the **Federal Register** and to transfers occurring before that date resulting from entity classification elections made under § 301.7701–3 that are filed on or after that date. For proposed dates of applicability, see § 1.367(a)–1(g)(5), –2(k), –4(b), –6(k), –7(j)(2), 1.367(d)–1(j), and 1.6038B–1(g)(7). No inference is intended as to the application of the provisions proposed to be amended by these proposed regulations under current law. The IRS may, where appropriate, challenge transactions under applicable provisions or judicial doctrines.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It has been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information contained in this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This certification is based on the fact that the proposed regulations under section 367(a) and (d) simplify existing regulations, and the regulations under section 6038B make relatively minor changes to existing information reporting requirements. Moreover, these regulations primarily will affect large domestic corporations filing consolidated returns. In addition, the Regulatory Flexibility Act (5

U.S.C. chapter 6) does not apply to the regulations under section 482 that are proposed herein, and published as temporary regulations in the Rules and Regulations section of this issue of the **Bulletin**, because those regulations do not impose a collection of information requirement on small entities. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the "Addresses" heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. In particular, comments are requested on whether, with respect to the proposed elimination of the foreign goodwill exception and narrowing of the scope of the ATB exception, a limited exception should be provided for certain narrow cases where there is limited potential for abuse. One such case, for example, might be a financial services business that operates in true branch form and for which there is regulatory pressure or compulsion to incorporate the assets of the branch in a foreign corporation. Comments should discuss how the IRS would administer any such exception. With respect to the ATB exception, comments are requested as to whether the definition of "financial asset" under proposed § 1.367(a)–2(b)(3) should be expanded to include other items. With respect to the proposed elimination of the 20-year limitation on the useful life of intangible property under § 1.367(d)–1T(c)(3), comments are requested on ways to simplify the administration of inclusions that section 367(d) requires for property with a very long useful life. All comments will be available at www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting information

The principal author of these proposed regulations is Ryan Bowen, Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Sections 1.367(a)–1 through 1.367(a)–7 also issued under 26 U.S.C. 367(a). * * *

Section 1.367(d)–1 also issued under 26 U.S.C. 367(d). * * *

Section 1.482–1 also issued under 26 U.S.C. 482.

Section 1.6038B–1 also issued under 26 U.S.C. 6038B. * * *

Par. 2. Section 1.367(a)–0 is added to read as follows:

§ 1.367(a)–0 Table of Contents.

This section lists the paragraphs contained in §§ 1.367(a)–1 through 1.367(a)–8.

§ 1.367(a)–1 Transfers to foreign corporations subject to section 367(a): In general.

(a) Scope.

(b) General rules.

(1) Foreign corporation not considered a corporation for purposes of certain transfers.

(2) Cases in which foreign corporate status is not disregarded.

(3) Determination of value.

(b)(4)(i)(A) [Reserved].

(b)(4)(ii) [Reserved].

(5) Treatment of certain property as subject to section 367(d).

(c) [Reserved].

(d) Definitions.

(d)(1) through (d)(2) [Reserved].

(3) Transfer.

(d)(4) [Reserved].

(5) Intangible property.

(6) Operating intangibles.

(e) Close of taxable year in certain section 368(a)(1)(F) reorganizations.

(f) Exchanges under sections 354(a) and 361(a) in certain section 368(a)(1)(F) reorganizations.

(1) Rule

(2) Rule applies regardless of whether a continuance under applicable law.

(g) Effective date of certain sections.

(1) In general.

(g)(2) through (3) [Reserved].

(4)

(5) Effective/applicability dates.

§ 1.367(a)–2 Exceptions for transfers of property for use in the active conduct of a trade or business.

(a) Scope and general rule.

(1) Scope.

(2) General rule.

(b) Eligible property.

(c) Exception for certain property.

(1) Inventory.

(2) Installment obligations, etc.

(3) Foreign currency, etc.

(4) Certain leased tangible property.

(d) Active conduct of a trade or business outside the United States.

(1) In general.

(2) Trade or business.

(3) Active conduct.

(4) Outside of the United States.

(5) Use in the trade or business.

(6) Active leasing and licensing.

(e) Special rules for certain property to be leased.

(1) Leasing business of the foreign corporation.

(2) De minimis leasing by the foreign corporation.

(3) Aircraft and vessels leased in foreign commerce.

(f) Special rules for oil and gas working interests.

(1) In general.

(2) Active use of working interest.

(3) Start-up operations.

(4) Other applicable rules.

(g) Property retransferred by the foreign corporation.

(1) General rule.

(2) Exception.

(h) Compulsory transfers of property.

(i) [Reserved].

(j) Failure to comply with reporting requirements of section 6038B.

(1) Failure to comply.

(2) Relief for certain failures to comply that are not willful.

(k) Effective/applicability dates.

(1) In general.

(2) Foreign currency exception.

§ 1.367(a)–3 Treatment of transfers of stock or securities to foreign corporations.

(a) In general.

(1) Overview.

(2) Exceptions for certain exchanges of stock or securities.

(3) Cross-references.

(b) Transfers of stock or securities of foreign corporations.

(1) General rule.

(2) Certain transfers subject to sections 367(a) and (b).

(c) Transfers of stock or securities of domestic corporations.

(1) General rule.

(2) Ownership presumption.

(3) Active trade or business test.

(4) Special rules.

(5) Definitions.

(6) Reporting requirements of U.S. target company.

(7) Ownership statements.

(8) Certain transfers in connection with performance of services.

(9) Private letter ruling option.

(10) Examples.

(11) Effective date.

(d) Indirect stock transfers in certain nonrecognition transfers.

(1) In general.

(2) Special rules for indirect transfers.

(3) Examples.

(e) [Reserved].

(f) Failure to file statements.

(1) Failure to file.

(2) Relief for certain failures to file that are not willful.

(g) Effective/applicability dates.

(1) Rules of applicability.

(2) Election.

(h) Former 10-year gain recognition agreements.

(i) [Reserved].

(j) Transition rules regarding certain transfers of domestic or foreign stock or securities after December 16, 1987, and prior to July 20, 1998.

(1) Scope.

(2) Transfers of domestic or foreign stock or securities: additional substantive rules.

(k) [Reserved].

§ 1.367(a)–4 Special rule applicable to U.S. depreciated property.

(a) Depreciated property used in the United States.

(1) In general.

(2) U.S. depreciated property.

(3) Property used within and without the United States.

(b) Effective/applicability dates.

§ 1.367(a)–5 [Reserved].

§ 1.367(a)–6 Transfer of foreign branch with previously deducted losses.

(a) through (b)(1) [Reserved].

(2) No active conduct exception.

(c)(1) [Reserved].

(2) Gain limitation.

(3) [Reserved].

(c)(4) through (j) [Reserved].

(k) Effective/applicability dates.

§ 1.367(a)–7 Outbound transfers of property described in section 361(a) or (b).

(a) Scope and purpose.

(b) General rule.

(1) Nonrecognition exchanges enumerated in section 367(a)(1).

(2) Nonrecognition exchanges not enumerated in section 367(a)(1).

(c) Elective exception.

(1) Control.

(2) Gain recognition.

(3) Basis adjustments required for control group members.

(4) Agreement to amend or file a U.S. income tax return.

(5) Election and reporting requirements.

(d) Section 361 exchange followed by successive distributions to which section 355 applies.

(e) Other rules.

(1) Section 367(a) property with respect to which gain is recognized.

(2) Relief for certain failures to comply that are not willful.

(3) Anti-abuse rule.

(4) Certain income inclusions under § 1.367(b)–4.

(5) Certain gain under § 1.367(a)–6.

(f) Definitions.

(g) Examples.

(h) Applicable cross-references.

(i) [Reserved].

(j) Effective/applicability dates.

(1) In general.

(2) Section 367(d) property.

§ 1.367(a)–8 Gain recognition agreement requirements.

(a) Scope.

(b) Definitions and special rules.

(1) Definitions.

(2) Special rules.

(c) Gain recognition agreement.

(1) Terms of agreement.

(2) Content of gain recognition agreement.

(3) Description of transferred stock or securities and other information.

(4) Basis adjustments for gain recognized.

(5) Terms and conditions of a new gain recognition agreement.

(6) Cross-reference.

(d) Filing requirements.

(1) General rule.

(2) Special requirements.

(3) Common parent as agent for U.S. transferor.

(e) Signatory.

(1) General rule.

(2) Signature requirement.

(f) Extension of period of limitations on assessments of tax.

(1) General rule.

(2) New gain recognition agreement.

(g) Annual certification.

(h) Use of security.

(i) [Reserved].

(j) Triggering events.

(1) Disposition of transferred stock or securities.

(2) Disposition of substantially all of the assets of the transferred corporation.

(3) Disposition of certain partnership interests.

(4) Disposition of stock of the transferee foreign corporation.

(5) Deconsolidation.

(6) Consolidation.

(7) Death of an individual; trust or estate ceases to exist.

(8) Failure to comply.

(9) Gain recognition agreement filed in connection with indirect stock transfers and certain triangular asset reorganizations.

(10) Gain recognition agreement filed pursuant to paragraph (k)(14) of this section.

(k) Triggering event exceptions.

(1) Transfers of stock of the transferee foreign corporation to a corporation or partnership.

(2) Complete liquidation of U.S. transferor under sections 332 and 337.

(3) Transfers of transferred stock or securities to a corporation or partnership.

(4) Transfers of substantially all of the assets of the transferred corporation.

(5) Recapitalizations and section 1036 exchanges.

(6) Certain asset reorganizations.

(7) Certain triangular reorganizations.

(8) Complete liquidation of transferred corporation.

(9) Death of U.S. transferor.

(10) Deconsolidation.

(11) Consolidation.

(12) Intercompany transactions.

(13) Deemed asset sales pursuant to section 338(g) elections.

(14) Other dispositions or events.

(l) [Reserved].

(m) Receipt of boot in nonrecognition transactions.

(1) Dispositions of transferred stock or securities.

(2) Dispositions of assets of transferred corporation.

(n) Special rules for distributions with respect to stock.

(1) Certain dividend equivalent redemptions treated as dispositions.

(2) Gain recognized under section 301(c)(3).

(o) Dispositions or other events that terminate or reduce the amount of gain subject to the gain recognition agreement.

(1) Taxable disposition of stock of the transferee foreign corporation.

(2) Gain recognized in connection with certain nonrecognition transactions.

(3) Gain recognized under section 301(c)(3).

(4) Dispositions of substantially all of the assets of a domestic transferred corporation.

(5) Certain distributions or transfers of transferred stock or securities to U.S. persons.

(6) Dispositions or other event following certain intercompany transactions.

(7) Expropriations under foreign law.

(p) Relief for certain failures to file or failures to comply that are not willful.

(1) In general.

(2) Procedures for establishing that a failure to file or failure to comply was not willful.

(3) Examples.

(q) Examples.

(1) Presumed facts and references.

(2) Examples.

(r) Effective/applicability date.

(1) General rule.

(2) Applicability to transfers occurring before March 13, 2009.

(3) Applicability to requests for relief submitted before November 19, 2014.

Par. 3. Section 1.367(a)–1 is amended by revising paragraphs (a), (b)(1) through (3), (b)(4)(i)(B), (b)(5), (c)(3)(ii), (d) introductory text, (d)(5), (d)(6), and (g)(1) and (5) to read as follows:

§ 1.367(a)–1 Transfers to foreign corporations subject to section 367(a): In general.

(a) *Scope*. Section 367(a)(1) provides the general rule concerning certain transfers of property by a United States person (referred to at times in this section as the "U.S. person" or "U.S. transferor") to a foreign corporation. Paragraph (b) of this section provides general rules explaining the effect of section 367(a)(1). Paragraph (c) of this section describes transfers of property that are described in section 367(a)(1). Paragraph (d) of this section provides definitions that apply for purposes of sections 367(a) and (d) and the regulations thereunder. Paragraphs (e) and (f) of this section provide rules that apply to certain reorganizations described in section 368(a)(1)(F). Paragraph (g) of this section provides dates of applicability. For rules concerning the reporting requirements under section 6038B for certain transfers of property to a foreign corporation, see § 1.6038B–1.

(b) *General rules*—(1) *Foreign corporation not considered a corporation for purposes of certain transfers*. If a U.S. person transfers property to a foreign corporation in connection with an exchange described in section 351, 354, 356, or 361, then, pursuant to section 367(a)(1), the foreign corporation will not be considered to be a corporation for purposes of determining the extent to which gain is recognized on the transfer. Section 367(a)(1) denies nonrecognition treatment only to transfers of items of property on which gain is realized. Thus, the amount of gain recognized because of section 367(a)(1) is unaffected by the transfer of items of property on which loss is realized (but not recognized).

(2) *Cases in which foreign corporate status is not disregarded*. For circumstances in which section 367(a)(1) does not apply to a U.S. transferor's transfer of property to a foreign corporation, and thus the foreign corporation is considered to be a corporation, see §§ 1.367(a)–2, 1.367(a)–3, and 1.367(a)–7.

(3) *Determination of value*. In cases in which a U.S. transferor's transfer of property to a foreign corporation constitutes a controlled transaction as defined in § 1.482–1(i)(8), the value of the property transferred is determined in accordance with section 482 and the regulations thereunder.

(4)(i)(A) [Reserved]. For further guidance, see § 1.367(a)–1T(b)(4)(i)(A).

(B) Appropriate adjustments to earnings and profits, basis, and other affected items will be made according to otherwise applicable rules, taking into account the gain recognized under section 367(a)(1). For purposes of applying section 362, the foreign corporation's basis in the property received is increased by the amount of gain recognized by the U.S. transferor under section 367(a) and the regulations issued pursuant to that section. To the extent the regulations provide that the U.S. transferor recognizes gain with respect to a particular item of property, the foreign corporation increases its basis in that item of property by the amount of such gain recognized. For example, §§ 1.367(a)–2, 1.367(a)–3, and 1.367(a)–4, provide that gain is recognized with respect to particular items of property. To the extent the regulations do not provide that gain recognized by the U.S. transferor is with respect to a particular item of property, such gain is treated as recognized with respect to items of property subject to section 367(a) in proportion to the U.S. transferor's gain realized in such property, after taking into account gain recognized with respect to particular items of property transferred under any other provision of section 367(a). For example, § 1.367(a)–6 provides that branch losses must be recaptured by the recognition of gain realized on the transfer but does not associate the gain with particular items of property. See also § 1.367(a)–1(c)(3) for rules concerning transfers by partnerships or of partnership interests.

* * * * *

(b)(4)(ii) [Reserved]. For further guidance, see § 1.367(a)–1T(b)(4)(ii).

(5) *Treatment of certain property as subject to section 367(d)*. A U.S. transferor may apply section 367(d) and § 1.367(d)–1, rather than section 367(a) and the regulations thereunder, to a transfer of property to a foreign corporation that otherwise would be subject to section 367(a), provided that the property is not eligible property, as defined in § 1.367(a)–2(b) but determined without regard to § 1.367(a)–2(c). A U.S. transferor and any other U.S. transferor that is related (within the meaning of section 267(b) or 707(b)(1)) to the U.S. transferor must consistently apply this paragraph (b)(5) to all property described in this paragraph (b)(5) that is transferred to one or more foreign corporations pursuant to a plan. A U.S. transferor applies the provisions of this paragraph (b)(5) in the form and manner set forth in § 1.6038B–1(d)(1)(iv) and (v).

(c)(1) through (3)(i) [Reserved]. For further guidance, see § 1.367(a)–1T(c)(1) through (3)(i).

(c)(3)(ii) *Transfer of partnership interest treated as transfer of proportionate share of assets*—(A) *In general*. If a U.S. person transfers an interest as a partner in a partnership (whether foreign or domestic) in an exchange described in section 367(a)(1), then that person is treated as having transferred a proportionate share of the property of the partnership in an exchange described in section 367(a)(1). Accordingly, the applicability of the exception to section 367(a)(1) provided in § 1.367(a)–2 is determined with reference to the property of the partnership rather than the partnership interest itself. A U.S. person's proportionate share of partnership property is determined under the rules and principles of sections 701 through 761 and the regulations thereunder.

(c)(3)(ii)(B) through (7) [Reserved]. For further guidance, see § 1.367(a)–1T(c)(3)(ii)(B) through (7).

* * * * *

(d) *Definitions*. The following definitions apply for purposes of sections 367(a) and (d) and the regulations thereunder.

(1) and (2) [Reserved]. For further guidance, see § 1.367(a)–1T(d)(1) and (2).

* * * * *

(4) [Reserved]. For further guidance, see § 1.367(a)–1T(d)(4).

(5) *Intangible property*. The term "intangible property" means either property described in section 936(h)(3)(B) or property to which a U.S. person applies section 367(d) pursuant to paragraph (b)(5) of this section, but does not include property described in section 1221(a)(3) or a working interest in oil and gas property.

(6) *Operating intangibles*. An operating intangible is any property described in section 936(h)(3)(B) of a type not ordinarily licensed or otherwise transferred in transactions between unrelated parties for consideration contingent upon the licensee's or transferee's use of the property. Examples of operating intangibles may include long-term purchase or supply contracts, surveys, studies, and customer lists.

* * * * *

(g) *Effective date of certain sections*—(1) *In general*. Except as specifically provided to the contrary elsewhere in these sections, §§ 1.367(a)–1T and 1.367(a)–6T apply to transfers occurring after December 31, 1984.

(2) and (3) [Reserved]. For further guidance, see § 1.367(a)–1T(g)(2) and (3).

* * * * *

(5) *Effective/applicability dates*. Paragraphs (a), (b)(1), (b)(2), (b)(3), (b)(5), (d) introductory text, (d)(5), and (d)(6) of this section apply to transfers occurring on or after September 14, 2015, and to transfers occurring before September 14, 2015, resulting from entity classification elections made under § 301.7701–3 that are filed on or after September 14, 2015. For transfers occurring before this section is applicable, see §§ 1.367(a)–1 and 1.367(a)–1T as contained in 26 CFR part 1 revised as of April 1, 2015.

Par. 4. Section 1.367(a)–2 is amended by:

1. Revising paragraphs (a) through (d).

2. Redesignating paragraph (e)(1) as paragraph (d)(6) and revising, and removing paragraph (e)(2).

3. Redesignating paragraph (f) as paragraph (j), and revising newly redesignated paragraphs (j)(1), (j)(2)(i), the first sentence of paragraph (j)(2)(ii)(B), and (j)(3) and (4).

4. Adding paragraphs (e) through (i) and (k).

The revisions and additions read as follows:

§ 1.367(a)–2 Exceptions for transfers of property for use in the active conduct of a trade or business.

(a) *Scope and general rule*—(1) *Scope*. Paragraph (a)(2) of this section provides the general exception to section 367(a)(1) for certain property transferred for use in the active conduct of a trade or business. Paragraph (b) of this section describes property that is eligible for the exception provided in paragraph (a)(2) of this section. Paragraph (c) of this section describes property that is not eligible for the exception provided in paragraph (a)(2) of this section. Paragraph (d) of this section provides general rules, and paragraphs (e) through (h) of this section provide special rules, for determining whether property is used in the active conduct of a trade or business outside of the United States. Paragraph (i) of this section is reserved. Paragraph (j) of this section provides relief for certain failures to comply with the reporting requirements under paragraph (a)(2)(iii) of this section that are not willful. Paragraph (k) of this section provides dates of applicability. The rules of this section do not apply to a transfer of stock or securities in an exchange subject to § 1.367(a)–3.

(2) *General rule*. Except as otherwise provided in §§ 1.367(a)–4, 1.367(a)–6, and 1.367(a)–7, section 367(a)(1) does not apply to property transferred by a United States person (U.S. transferor) to a foreign corporation if—

(i) The property constitutes eligible property;

(ii) The property is transferred for use by the foreign corporation in the active conduct of a trade or business outside of the United States, as determined under paragraph (d), (e), (f), (g), or (h) of this section, as applicable; and

(iii) The U.S. transferor complies with the reporting requirements of section 6038B and the regulations thereunder.

(b) *Eligible property*. Except as provided in paragraph (c) of this section, eligible property means—

(1) Tangible property;

(2) A working interest in oil and gas property; and

(3) A financial asset. For purposes of this section, a financial asset is—

(i) a cash equivalent;

(ii) a security within the meaning of section 475(c)(2), without regard to the last sentence of section 475(c)(2) (referencing section 1256) and without regard to section 475(c)(4), but excluding an interest in a partnership;

(iii) a commodities position described in section 475(e)(2)(B), 475(e)(2)(C), or 475(e)(2)(D); and

(iv) a notional principal contract described in § 1.446–3(c)(1).

(c) *Exception for certain property*. Notwithstanding paragraph (b) of this section, property described in paragraph (c)(1), (2), (3), or (4) of this section does not constitute eligible property.

(1) *Inventory*. Stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business (including raw materials and supplies, partially completed goods, and finished products).

(2) *Installment obligations, etc*. Installment obligations, accounts receivable, or similar property, but only to the extent that the principal amount of any such obligation has not previously been included by the taxpayer in its taxable income.

(3) *Foreign currency, etc*.—(i) *In general*. Foreign currency or other property denominated in foreign currency, including installment obligations, futures contracts, forward contracts, accounts receivable, or any other obligation entitling its payee to receive payment in a currency other than U.S. dollars.

(ii) *Limitation of gain required to be recognized*. If section 367(a)(1) applies to a transfer of property described in paragraph (c)(3)(i) of this section, then the gain required to be recognized is limited to the gain realized as part of the same transaction upon the transfer of property described in paragraph (c)(3)(i) of this section, less any loss realized as part of the same transaction upon the transfer of property described in paragraph (c)(3)(i) of this section. This limitation applies in lieu of the rule in § 1.367(a)–1(b)(1). No loss is recognized with respect to property described in this paragraph (c)(3).

(4) *Certain leased tangible property*. Tangible property with respect to which the transferor is a lessor at the time of the transfer, unless either the foreign corporation is the lessee at the time of the transfer or the foreign corporation will lease the property to third persons.

(d) *Active conduct of a trade or business outside the United States*—(1) *In general*. Except as provided in paragraphs (e), (f), (g), and (h) of this section, to determine whether property is transferred for use by the foreign corporation in the active conduct of a trade or business outside of the United States, four factual determinations must be made:

(i) What is the trade or business of the foreign corporation (see paragraph (d)(2) of this section);

(ii) Do the activities of the foreign corporation constitute the active conduct of that trade or business (see paragraph (d)(3) of this section);

(iii) Is the trade or business conducted outside of the United States (see paragraph (d)(4) of this section); and

(iv) Is the transferred property used or held for use in the trade or business (see paragraph (d)(5) of this section)?

(2) *Trade or business*. Whether the activities of the foreign corporation constitute a trade or business is determined based on all the facts and circumstances. In general, a trade or business is a specific unified group of activities that constitute (or could constitute) an independent economic enterprise carried on for profit. For example, the activities of a foreign selling subsidiary could constitute a trade or business if they could be independently carried on for profit, even though the subsidiary acts exclusively on behalf of, and has operations fully integrated with, its parent corporation. To constitute a trade or business, a group of activities must ordinarily include every operation which forms a part of, or a step in, a process by which an enterprise may earn income or profit. In this regard, one or more of such activities may be carried on by independent contractors under the direct control of the foreign corporation. (However, see paragraph (d)(3) of this section.) The group of activities must ordinarily include the collection of income and the payment of expenses. If the activities of the foreign corporation do not constitute a trade or business, then the exception provided by this section does not apply, regardless of the level of activities carried on by the corporation. The following activities are not considered to constitute by themselves a trade or business for purposes of this section:

(i) Any activity giving rise to expenses that would be deductible only under section 212 if the activities were carried on by an individual; or

(ii) The holding for one's own account of investments in stock, securities, land, or other property, including casual sales thereof.

(3) *Active conduct*. Whether a trade or business is actively conducted by the foreign corporation is determined based on all the facts and circumstances. In general, a corporation actively conducts a trade or business only if the officers and employees of the corporation carry out substantial managerial and operational activities. A corporation may be engaged in the active conduct of a trade or business even though incidental activities of the trade or business are carried out on behalf of the corporation by independent contractors. In determining whether the officers and employees of the corporation carry out substantial managerial and operational activities, however, the activities of independent contractors are disregarded. On the other hand, the officers and employees of the corporation are considered to include the officers and employees of related entities who are made available to and supervised on a day-to-day basis by, and whose salaries are paid by (or reim-

bursed to the lending related entity by), the foreign corporation. See paragraph (d)(6) of this section for the standard that applies to determine whether a trade or business that produces rents or royalties is actively conducted. The rule of this paragraph (d)(3) is illustrated by the following example.

Example. X, a domestic corporation, and Y, a foreign corporation not related to X, transfer property to Z, a newly formed foreign corporation organized for the purpose of combining the research activities of X and Y. Z contracts all of its operational and research activities to Y for an arm's-length fee. Z's activities do not constitute the active conduct of a trade or business.

(4) *Outside of the United States*. Whether the foreign corporation conducts a trade or business outside of the United States is determined based on all the facts and circumstances. Generally, the primary managerial and operational activities of the trade or business must be conducted outside the United States and immediately after the transfer the transferred assets must be located outside the United States. Thus, the exception provided by this section would not apply to the transfer of the assets of a domestic business to a foreign corporation if the domestic business continued to operate in the United States after the transfer. In such a case, the primary operational activities of the business would continue to be conducted in the United States. Moreover, the transferred assets would be located in the United States. However, it is not necessary that every item of property transferred be used outside of the United States. As long as the primary managerial and operational activities of the trade or business are conducted outside of the United States and substantially all of the transferred assets are located outside the United States, incidental items of transferred property located in the United States may be considered to have been transferred for use in the active conduct of a trade or business outside of the United States.

(5) *Use in the trade or business*. Whether property is used or held for use by the foreign corporation in a trade or business is determined based on all the facts and circumstances. In general, property is used or held for use in the foreign corporation's trade or business if it is—

(i) Held for the principal purpose of promoting the present conduct of the trade or business;

(ii) Acquired and held in the ordinary course of the trade or business; or

(iii) Otherwise held in a direct relationship to the trade or business. Property is considered held in a direct relationship to a trade or business if it is held to meet the present needs of that trade or business and not its anticipated future needs. Thus, property will not be considered to be held in a direct relationship to a trade or business if it is held for the purpose of providing for future diversification into a new trade or business, future expansion of trade or business activities, future plant replacement, or future business contingencies.

(6) *Active leasing and licensing*. For purposes of paragraph (d)(3) of this section, whether a trade or business that produces rents or royalties is actively conducted is determined under the principles of section 954(c)(2)(A) and the regulations thereunder, but without regard to whether the rents or royalties are received from an unrelated party. See §§ 1.954–2(c) and (d).

(e) *Special rules for certain property to be leased*—(1) *Leasing business of the foreign corporation*. Except as otherwise provided in this paragraph (e), tangible property that will be leased to another person by the foreign corporation will be considered to be transferred for use by the foreign corporation in an active trade or business outside the United States only if—

(i) The foreign corporation's leasing of the property constitutes the active conduct of a leasing business, as determined under paragraph (d)(6) of this section;

(ii) The lessee of the property is not expected to, and does not, use the property in the United States; and

(iii) The foreign corporation has a need for substantial investment in assets of the type transferred.

(2) *De minimis leasing by the foreign corporation*. Tangible property that will be leased to another person by the foreign corporation but that does not satisfy the conditions of paragraph (e)(1) of this section will, nevertheless, be considered to be transferred for use in the active conduct of a trade or business if either—

(i) The property transferred will be used by the foreign corporation in the active conduct of a trade or business but will be leased during occasional brief periods when the property would otherwise be idle, such as an airplane leased during periods of excess capacity; or

(ii) The property transferred is real property located outside the United States and—

(A) The property will be used primarily in the active conduct of a trade or business of the foreign corporation; and

(B) Not more than ten percent of the square footage of the property will be leased to others.

(3) *Aircraft and vessels leased in foreign commerce*. For purposes of satisfying paragraph (e)(1) of this section, an aircraft or vessel, including component parts such as an engine leased separately from the aircraft or vessel, that will be leased to another person by the foreign corporation will be considered to be transferred for use in the active conduct of a trade or business if—

(i) The employees of the foreign corporation perform substantial managerial and operational activities of leasing aircraft or vessels outside the United States; and

(ii) The leased property is predominantly used outside the United States, as determined under § 1.954–2(c)(2)(v).

(f) *Special rules for oil and gas working interests*—(1) *In general*. A working interest in oil and gas property will be considered to be transferred for use in the active conduct of a trade or business if—

(i) The transfer satisfies the conditions of paragraph (f)(2) or (f)(3) of this section;

(ii) At the time of the transfer, the foreign corporation has no intention to farm out or otherwise transfer any part of the transferred working interest; and

(iii) During the first three years after the transfer there are no farmouts or other transfers of any part of the transferred working interest as a result of which the foreign corporation retains less than a 50-percent share of the transferred working interest.

(2) *Active use of working interest*. A working interest in oil and gas property that satisfies the conditions in paragraphs (f)(1)(ii) and (iii) of this section will be

considered to be transferred for use in the active conduct of a trade or business if—

(i) The U.S. transferor is regularly and substantially engaged in exploration for and extraction of minerals, either directly or through working interests in joint ventures, other than by reason of the property that is transferred;

(ii) The terms of the working interest transferred were actively negotiated among the joint venturers;

(iii) The working interest transferred constitutes at least a five percent working interest;

(iv) Before and at the time of the transfer, through its own employees or officers, the U.S. transferor was regularly and actively engaged in—

(A) Operating the working interest, or

(B) Analyzing technical data relating to the activities of the venture;

(v) Before and at the time of the transfer, through its own employees or officers, the U.S. transferor was regularly and actively involved in decision making with respect to the operations of the venture, including decisions relating to exploration, development, production, and marketing; and

(vi) After the transfer, the foreign corporation will for the foreseeable future satisfy the requirements of subparagraphs (iv) and (v) of this paragraph (f)(2).

(3) *Start-up operations*. A working interest in oil and gas property that satisfies the conditions in paragraphs (f)(1)(ii) and (iii) of this section but that does not satisfy all the requirements of paragraph (f)(2) of this section will, nevertheless, be considered to be transferred for use in the active conduct of a trade or business if—

(i) The working interest was acquired by the U.S. transferor immediately before the transfer and for the specific purpose of transferring it to the foreign corporation;

(ii) The requirements of paragraphs (f)(2)(ii) and (iii) of this section are satisfied; and

(iii) The foreign corporation will for the foreseeable future satisfy the requirements of paragraph (f)(2)(iv) and (v) of this section.

(4) *Other applicable rules*. A working interest in oil and gas property that is not described in paragraph (f)(1) of this section may nonetheless qualify for the exception to section 367(a)(1) contained in this section depending upon the facts and circumstances.

(g) *Property retransferred by the foreign corporation*—(1) *General rule*. Property will not be considered to be transferred for use in the active conduct of a trade or business outside of the United States if—

(i) At the time of the transfer, it is reasonable to believe that, in the reasonably foreseeable future, the foreign corporation will sell or otherwise dispose of any material portion of the property other than in the ordinary course of business; or

(ii) Except as provided in paragraph (g)(2) of this section, the foreign corporation receives the property in an exchange described in section 367(a)(1), and, as part of the same transaction, transfers the property to another person. For purposes of the preceding sentence, a subsequent transfer within six months of the initial transfer will be considered to be part of the same transaction, and a subsequent transfer more than six months after the initial transfer may be considered to be part of the same transaction under step-transaction principles.

(2) *Exception*. Notwithstanding paragraph (g)(1)(ii) of this section, property will be considered to be transferred for use in the active conduct of a trade or business outside of the United States if—

(i) The initial transfer to the foreign corporation is followed by one or more subsequent transfers described in section 351 or 721; and

(ii) Each subsequent transferee is either a partnership in which the preceding transferor is a general partner or a corporation in which the preceding transferor owns common stock; and

(iii) The ultimate transferee is considered to use the property in the active conduct of a trade or business outside of the United States, as determined by applying paragraph (d), (e), or (f) of this section, as applicable, with respect to the ultimate transferee rather than the foreign corporation.

(h) *Compulsory transfers of property*. Property is presumed to be transferred for use in the active conduct of a trade or business outside of the United States, if—

(1) The property was previously in use in the country in which the foreign corporation is organized; and

(2) The transfer is either:

(i) Legally required by the foreign government as a necessary condition of doing business; or

(ii) Compelled by a genuine threat of immediate expropriation by the foreign government.

(i) [Reserved].

(j) *Failure to comply with reporting requirements of section 6038B*—(1) *Failure to comply*. For purposes of the exception to the application of section 367(a)(1) provided in paragraph (a)(2) of this section, a failure to comply with the reporting requirements of section 6038B and the regulations thereunder (failure to comply) has the meaning set forth in § 1.6038B–1(f)(2).

(2) *Relief for certain failures to comply that are not willful*—(i) *In general*. A failure to comply described in paragraph (j)(1) of this section will be deemed not to have occurred for purposes of satisfying the requirements of this section if the taxpayer demonstrates that the failure was not willful using the procedure set forth in this paragraph (j)(2). For this purpose, willful is to be interpreted consistent with the meaning of that term in the context of other civil penalties, which would include a failure due to gross negligence, reckless disregard, or willful neglect. Whether a failure to comply was a willful failure will be determined by the Director of Field Operations International, Large Business & International (or any successor to the roles and responsibilities of such position, as appropriate) (Director) based on all the facts and circumstances. The taxpayer must submit a request for relief and an explanation as provided in paragraph (j)(2)(ii)(A) of this section. Although a taxpayer whose failure to comply is determined not to be willful will not be subject to gain recognition under this section, the taxpayer will be subject to a penalty under section 6038B if the taxpayer fails to demonstrate that the failure was due to reasonable cause and not willful neglect. See § 1.6038B–1(b)(1) and (f). The determination of whether the failure to comply was willful under this section has no effect on any request for relief made under § 1.6038B–1(f).

(ii) * * *

(B) *Notice requirement*. In addition to the requirements of paragraph (j)(2)(ii)(A) of this section, the taxpayer must comply with the notice requirements of this paragraph (j)(2)(ii)(B). * * *

(3) For illustrations of the application of the willfulness standard of this paragraph (j), see the examples in § 1.367(a)–8(p)(3).

(4) Paragraph (j) applies to requests for relief submitted on or after November 19, 2014.

(k) *Effective/applicability dates*—(1) *In general*. Except as provided in paragraph (k)(2) of this section, the rules of this section apply to transfers occurring on or after September 14, 2015, and to transfers occurring before September 14, 2015, resulting from entity classification elections made under § 301.7701–3 that are filed on or after September 14, 2015. For transfers occurring before this section is applicable, see § §1.367(a)–2, –2T, –4, –4T, –5, and –5T as contained in 26 CFR part 1 revised as of April 1, 2015.

(2) *Foreign currency exception*. Notwithstanding paragraph (c)(3)(i) of this section, § 1.367(a)–5T(d)(2) as contained in 26 CFR part 1 revised as of April 1, 2015, applies to transfers of property denominated in a foreign currency occurring before the date that the rules proposed in this section are adopted as final regulations in a Treasury decision published in the **Federal Register**, other than transfers occurring before that date resulting from entity classification elections made under § 301.7701–3 that are filed on or after that date.

§ 1.367(a)–3 [Amended]

Par. 5. For each section listed in following the table, remove the language in the "Remove" column and add in its place the language in the "Add" column.

Section	*Remove*	*Add*
§ 1.367(a)–3(a)(3), first sentence	§ 1.367(a)–1T(c)	§ 1.367(a)–1(c)
§ 1.367(a)–3(c)(4)(i), last sentence	§ 1.367(a)–1T(c)(3)	§ 1.367(a)–1(c)(3)
§ 1.367(a)–3(c)(4)(iv), first sentence	§ 1.367(a)–1T(d)(1)	§ 1.367(a)–1(d)(1)
§ 1.367(a)–3(c)(3)(i)(A)	§ 1.367(a)–2T(b)(2) and (3)	§ 1.367(a)–2(d)(2), (3), and (4)
§ 1.367(a)–3(c)(3)(ii)(B), last sentence	§ 1.367(a)–2T(b)(2) and (3)	§ 1.367(a)–2(d)(2) and (3)
§ 1.367(a)–3(d)(3) Example 7A(ii), penultimate sentence	§ 1.367(a)–2T(a)(2)	§ 1.367(a)–2(a)(2)(iii)
§ 1.367(a)–3(d)(3) Example 13(i), penultimate sentence	§ 1.367(a)–2T(c)(2)	§ 1.367(a)–2(g)(2)

Par. 6. Section 1.367(a)–4 is revised to read as follows:

§ 1.367(a)–4 Special rule applicable to U.S. depreciated property.

(a) *Depreciated property used in the United States*—(1) *In general*. A U.S. person that transfers U.S. depreciated property (as defined in paragraph (a)(2) of this section) to a foreign corporation in an exchange described in section 367(a)(1), must include in its gross income for the taxable year in which the transfer occurs ordinary income equal to the gain realized that would have been includible in the transferor's gross income as ordinary income under section 617(d)(1), 1245(a), 1250(a), 1252(a), 1254(a), or 1255(a), whichever is applicable, if at the time of the transfer the U.S. person had sold the property at its fair market value. Recapture of depreciation under this paragraph (a) is required regardless of whether the exception to section 367(a)(1) provided by § 1.367(a)–2(a)(2) applies to the transfer of the U.S. depreciated property. However, the transfer of the U.S. depreciated property may qualify for the exception with respect to realized gain that is not included in ordinary income pursuant to this paragraph (a).

(2) *U.S. depreciated property*. U.S. depreciated property subject to the rules of this paragraph (a) is any property that—

(i) Is either mining property (as defined in section 617(f)(2)), section 1245 property (as defined in section 1245(a)(3)), section 1250 property (as defined in section 1250(c)), farm land (as defined in section 1252(a)(2)), section 1254 property (as defined in section 1254(a)(3)), or section 126 property (as defined in section 1255(a)(2)); and

(ii) Has been used in the United States or has been described in section 168(g)(4) before its transfer.

(3) *Property used within and without the United States*. (i) If U.S. depreciated property has been used partly within and partly without the United States, then the amount required to be included in ordinary income pursuant to this paragraph (a) is reduced to an amount determined in accordance with the following formula:

$$\text{Full recapture amount} \times \frac{\text{U.S use}}{\text{Total use}}$$

(ii) For purposes of the fraction in paragraph (a)(3)(i) of this section, the "full recapture amount" is the amount that would otherwise be included in the transferor's income under paragraph (a)(1) of this section. "U.S. use" is the number of months that the property either was used within the United States or qualified as section 38 property by virtue of section 48(a)(2)(B), and was subject to depreciation by the transferor or a related person. "Total use" is the total number of months that the property was used (or available for use), and subject to depreciation, by the transferor or a related person. For purposes of this paragraph (a)(3), property is not considered to have been in use outside of the United States during any period in which such property was, for purposes of section 48 or 168, treated as property not used predominantly outside the United States pursuant to the provisions of section 48(a)(2)(B). For purposes of this paragraph (a)(3) the term "related person" has the meaning set forth in § 1.367(d)–1(h).

(b) *Effective/applicability dates*. The rules of this section apply to transfers occurring on or after September 14, 2015,] and to transfers occurring before September 14, 2015, resulting from entity classification elections made under § 301.7701–3 that are filed on or after September 14, 2015. For transfers occurring before this section is applicable, see §§ 1.367(a)–4 and 1.367(a)–4T as contained in 26 CFR part 1 revised as of April 1, 2015.

§ 1.367(a)–5 [Removed and Reserved]

Par. 7. Section 1.367(a)–5 is removed and reserved.

Par. 8. Section 1.367(a)–6 is added to read as follows:

§ 1.367(a)–6 Transfer of foreign branch with previously deducted losses.

(a) through (b)(1) [Reserved]. For further guidance, see § 1.367(a)–6T(a) through (b)(1).

(b)(2) *No active conduct exception*. The rules of this paragraph (b) apply regardless of whether any of the assets of the foreign branch satisfy the active trade or business exception of § 1.367(a)–2(a)(2).

(c)(1) [Reserved]. For further guidance, see § 1.367(a)–6T(c)(1).

(2) *Gain limitation*. The gain required to be recognized under paragraph (b)(1) of this section will not exceed the aggregate amount of gain realized on the transfer of all branch assets (without regard to the transfer of any assets on which loss is realized but not recognized).

(3) [Reserved].

(c)(4) *Transfers of certain intangible property*. Gain realized on the transfer of intangible property (computed with reference to the fair market value of the intangible property as of the date of the transfer) that is an asset of a foreign branch is taken into account in computing the limitation on loss recapture under paragraph (c)(2) of this section. For rules relating to the crediting of gain recognized under this section against income deemed to arise by operation of section 367(d), see § 1.367(d)–1(g)(3).

(d) through (j) [Reserved]. For further guidance, see § 1.367(a)–6T(d) through (j).

(k) *Effective/applicability dates*. The rules of this section apply to transfers occurring on or after September 14, 2015, and to transfers occurring before September 14, 2015, resulting from entity classification elections made under § 301.7701–3 that are filed on or after September 14, 2015. For transfers occurring before this section is applicable, see §§ 1.367(a)–6T as contained in 26 CFR part 1 revised as of April 1, 2015.

Par. 9. Section 1.367(a)–7 is amended by:

1. Revising paragraph (f)(11).

2. Redesignating paragraph (j) as (j)(1) and revising the first sentence, and adding paragraph (j)(2).

The revision and addition read as follows:

§ 1.367(a)–7 Outbound transfers of property described in section 361(a) or (b).

* * * * *

(f) * * *

(11) Section 367(d) property is intangible property as defined in § 1.367(a)–1(d)(5).

* * * * *

(j) *Effective/applicability dates*—(1) *In general*. Except as provided in paragraphs (e)(2) and (j)(2) of this section, this section applies to transfers occurring on or after April 18, 2013. * * *

(2) *Section 367(d) property*. The definition provided in paragraph (f)(11) of this section applies to transfers occurring on or after September 14, 2015, and to transfers occurring before September 14, 2015, resulting from entity classification elections made under § 301.7701–3 that are filed on or after September 14, 2015. For transfers occurring before this section is applicable, see § 1.367(a)–7 as contained in 26 CFR part 1 revised as of April 1, 2015.

§ 1.367(a)–7 [Amended]

Par. 10. For each section listed in the following table, remove the language in the "Remove" column and add in its place the language in the "Add" column.

Section	*Remove*	*Add*
§ 1.367(a)–7(a), sixth sentence	§ 1.367(a)–6T	§ 1.367(a)–6
§ 1.367(a)–7(c), second sentence	§ 1.367(a)–2T	§ 1.367(a)–2
§ 1.367(a)–7(c), second sentence	§ 1.367(a)–4T, 1.367(a)–5T	§ 1.367(a)–4
§ 1.367(a)–7(c), second sentence	§ 1.367(a)–6T	§ 1.367(a)–6
§ 1.367(a)–7(c)(2)(i)(B)	§ 1.367(a)–6T	§ 1.367(a)–6
§ 1.367(a)–7(c)(2)(ii)(A)(*2*)	§ 1.367(a)–6T	§ 1.367(a)–6
§ 1.367(a)–7(e)(1), third sentence	§ 1.367(a)–2T	§ 1.367(a)–2
§ 1.367(a)–7(e)(1), third sentence	§ 1.367(a)–4T, 1.367(a)–5T	§ 1.367(a)–4
§ 1.367(a)–7(e)(1), third sentence	§ 1.367(a)–6T	§ 1.367(a)–6
§ 1.367(a)–7(e)(1), last sentence	§ 1.367(a)–1T(b)(4) and § 1.367(a)–1(b)(4)(i)(B)	§ 1.367(a)–1(b)(4)
§ 1.367(a)–7(e)(4)(ii), first and second sentences	§ 1.367(a)–6T	§ 1.367(a)–6
§ 1.367(a)–7(e)(5), heading	§ 1.367(a)–6T	§ 1.367(a)–6
§ 1.367(a)–7(e)(5)(i), first sentence	§ 1.367(a)–6T	§ 1.367(a)–6
§ 1.367(a)–7(e)(5)(ii), first sentence	§ 1.367(a)–6T	§ 1.367(a)–6
§ 1.367(a)–7(f)(4)(ii)	§ 1.367(a)–6T	§ 1.367(a)–6
§ 1.367(a)–7(g), last sentence	§ 1.367(a)–2T	§ 1.367(a)–2
§ 1.367(a)–7(g), Example 1 (ii)(A), last sentence	§ 1.367(a)–2T	§ 1.367(a)–2
§ 1.367(a)–7(g), Example 2 (ii)(A), last sentence	§ 1.367(a)–2T	§ 1.367(a)–2

§ 1.367(a)–8 [Amended]

Par. 11. For each section listed in the following table, remove the language in the "Remove" column and add in its place the language in the "Add" column.

Section	*Remove*	*Add*
§ 1.367(a)–8(b)(1)(xv), first sentence	§ 1.367(a)–1T(d)(1)	§ 1.367(a)–1(d)(1)
§ 1.367(a)–8(b)(1)(xv), second sentence	§ 1.367(a)–1T(c)(3)(i)	§ 1.367(a)–1(c)(3)(i)
§ 1.367(a)–8(c)(3)(viii)	§ 1.367(a)–1T(c)(3)(i) and § 1.367(a)–1T(c)(3)(ii)	§ 1.367(a)–1(c)(3)(i) and § 1.367(a)–1(c)(3)(ii)
§ 1.367(a)–8(c)(4)(iv)	§ 1.367(a)–1T(b)(4)	§ 1.367(a)–1(b)(4)
§ 1.367(a)–8(j)(3)	§ 1.367(a)–1T(c)(3)(ii)	§ 1.367(a)–1(c)(3)(ii)

Par. 12. Section 1.367(d)–1 is added to read as follows:

§ 1.367(d)–1 Transfers of intangible property to foreign corporations.

(a) [Reserved]. For further guidance, see § 1.367(d)–1T(a).

(b) *Property subject to section 367(d).* Section 367(d) and the rules of this section apply to the transfer of intangible property, as defined in § 1.367(a)–1(d)(5), by a U.S. person to a foreign corporation in an exchange described in section 351 or 361. See section 367(a) and the regulations thereunder for the rules that apply to the transfer of any property other than intangible property.

(c)(1) through (2) [Reserved]. For further guidance, see § 1.367(d)–1T(c)(1) and (2).

(3) *Useful life.* For purposes of this section, the useful life of intangible property is the entire period during which exploitation of the intangible property is reasonably anticipated to occur, as of the time of transfer. Exploitation of intangible property includes any direct or indirect use or transfer of the intangible property, including use without further development, use in the further development of the intangible property itself (and any exploitation of the further developed intangible property), and use in the development of other intangible property (and any exploitation of the developed other intangible property).

(c)(4) through (g)(2) [Reserved]. For further guidance, see § 1.367(d)–1T(c)(4) through (g)(2).

(g)(2)(i) The intangible property transferred constitutes an operating intangible, as defined in § 1.367(a)–1(d)(6).

(g)(2)(ii) through (iii)(D) [Reserved]. For further guidance, see § 1.367(d)–1T(g)(2)(ii) through (iii)(D).

(E) The transferred intangible property will be used in the active conduct of a trade or business outside of the United States within the meaning of § 1.367(a)–2 and will not be used in connection with the manufacture or sale of products in or for use or consumption in the United States.

* * * * *

(3) *Intangible property transferred from branch with previously deducted losses.* (i) If income is required to be recognized under section 904(f)(3) and the regulations thereunder or under § 1.367(a)–6 upon the transfer of intangible property of a foreign branch that had previously deducted losses, then the income recognized under those sections with respect to that property is credited against amounts that would otherwise be required to be recognized with respect to that same property under paragraphs (c) through (f) of this section in either the current or future taxable years. The amount recognized under section 904(f)(3) or § 1.367(a)–6 with respect to the transferred intangible property is determined in accordance with the following formula:

$$\text{Loss recapture income} \times \frac{\text{gain from intangible property}}{\text{gain from all branch assets}}$$

(ii) For purposes of the formula in paragraph (g)(3)(i) of this section, the "loss recapture income" is the total amount required to be recognized by the U.S. transferor pursuant to section 904(f)(3) or § 1.367(a)–6. The "gain from intangible property" is the total amount of gain realized by the U.S. transferor pursuant to section 904(f)(3) and § 1.367(a)–6 upon the transfer of items of property that are subject to section 367(d). "Gain from intangible property" does not include gain realized with respect to intangible property by reason of an election under paragraph (g)(2) of this section. The "gain from all branch assets" is the total amount of gain realized by the transferor upon the transfer of items of property of the branch for which gain is realized.

(g)(4) through (i) [Reserved]. For further guidance, see § 1.367(d)–1T(g)(4) through (i).

(j) *Effective/applicability dates.* This section applies to transfers occurring on or after September 14, 2015, and to transfers occurring before September 14, 2015, resulting from entity classification elections made under § 301.7701–3 that are filed on or after September 14, 2015. For transfers occurring before this section is applicable, see § 1.367(d)–1T as contained in 26 CFR part 1 revised as of April 1, 2015.

Par. 13. Section 1.367(e)–2 is amended by revising paragraph (b)(3)(iii) to read as follows:

§ 1.367(e)–2 Distributions described in section 367(e)(2).

* * * * *

(b) * * *

(3) * * *

(iii) *Other rules.* For other rules that may apply, see sections 381, 897, 1248, and § 1.482–1(f)(2)(i)(C).

* * * * *

Par. 14. Section 1.482–1 is amended by revising paragraphs (f)(2)(i) and (f)(2)(ii)(B) and adding paragraph (j)(7) to read as follows:

§ 1.482–1 Allocation of income and deductions among taxpayers.

[The text of the proposed amendments to § 1.482–1 is the same as the text of § 1.482–1T(f)(2)(i), (f)(2)(ii)(B), and (j)(7) published elsewhere in this issue of the **Federal Register**].

§ 1.884–5 [Amended]

Par. 15. Section 1.884–5 is amended in paragraph (e)(3)(ii)(A) by removing the citation "1.367(a)–2T(b)(5)," and adding the citation "1.367(a)–2(d)(5)" in its place.

§ 1.1248–8 [Amended]

Par. 16. Section 1.1248–8 is amended in paragraph (b)(2)(iv)(B)(*1*)(*ii*) by removing the citation "1.367(a)–6T," and adding the citation "1.367(a)–6" in its place.

§ 1.1248(f)–2 [Amended]

Par. 17. Section 1.1248(f)–2 is amended in the last sentence of paragraph (e) by removing the citation "1.367(a)–2T," and adding the citation "1.367(a)–2" in its place.

Par. 18. Section 1.6038B–1 is amended by:

1. Removing the citation "1.367(a)–1T(c)," in the fourth sentence of paragraph (b)(1)(i) and adding the citation "1.367(a)–1(c)" in its place.

2. Adding paragraphs (c)(4)(i) through (vii), (c)(5), and (d)(1)(iv) and (vii)

3. Revising the first sentence of paragraph (g)(1).

4. Adding paragraph (g)(7).

The additions and revision read as follows:

§ 1.6038B–1 Reporting of certain transfers to foreign corporations.

* * * * *

(c) * * *

(1) through (4) [Reserved]. For further guidance, see § 1.6038B–1T(c)(1) through (4).

(i) *Active business property*. Describe any transferred property that qualifies under § 1.367(a)–2(a)(2). Provide here a general description of the business conducted (or to be conducted) by the transferee, including the location of the business, the number of its employees, the nature of the business, and copies of the most recently prepared balance sheet and profit and loss statement. Property listed within this category may be identified by general type. For example, upon the transfer of the assets of a manufacturing operation, a reasonable description of the property to be used in the business might include the categories of office equipment and supplies, computers and related equipment, motor vehicles, and several major categories of manufacturing equipment. However, any property that is includible in both paragraphs (c)(4)(i) and (iii) of this section (property subject to depreciation recapture under § 1.367(a)–4(a)) must be identified in the manner required in paragraph (c)(4)(iii) of this section. If property is considered to be transferred for use in the active conduct of a trade or business under a special rule in paragraph (e), (f), or (g) of § 1.367(a)–2, specify the applicable rule and provide information supporting the application of the rule.

(ii) *Stock or securities*. Describe any transferred stock or securities, including the class or type, amount, and characteristics of the transferred stock or securities, as well as the name, address, place of incorporation, and general description of the corporation issuing the stock or securities.

(iii) *Depreciated property*. Describe any property that is subject to depreciation recapture under § 1.367(a)–4(a). Property within this category must be separately identified to the same extent as was required for purposes of the previously claimed depreciation deduction. Specify with respect to each such asset the relevant recapture provision, the number of months that such property was in use within the United States, the total number of months the property was in use, the fair market value of the property, a schedule of the depreciation deduction taken with respect to the property, and a calculation of the amount of depreciation required to be recaptured.

(iv) *Property not transferred for use in the active conduct of a trade or business*. Describe any property that is eligible property, as defined in § 1.367(a)–2(b) taking into account the application of § 1.367(a)–2(c), that was transferred to the foreign corporation but not for use in the active conduct of a trade or business outside the United States (and was therefore not listed under paragraph (c)(4)(i) of this section).

(v) *Property transferred under compulsion*. If property qualifies for the exception of § 1.367(a)–2(a)(2) under the rules of paragraph (h) of that section, provide information supporting the claimed application of such exception.

(vi) *Certain ineligible property*. Describe any property that is described in § 1.367(a)–2(c) and that therefore cannot qualify under § 1.367(a)–2(a)(2) regardless of its use in the active conduct of a trade or business outside of the United States. The description must be divided into the relevant categories, as follows:

(A) *Inventory, etc*. Property described in § 1.367(a)–2(c)(1);

(B) *Installment obligations, etc*. Property described in § 1.367(a)–2(c)(2);

(C) *Foreign currency, etc*. Property described in § 1.367(a)–2(c)(3); and

(D) *Leased property*. Property described in § 1.367(a)–2(c)(4).

(vii) *Other property that is ineligible property*. Describe any property, other than property described in § 1.367(a)–2(c), that cannot qualify under § 1.367(a)–2(a)(2) regardless of its use in the active conduct of a trade or business outside of the United States and that is not subject to the rules of section 367(d) under § 1.367(a)–1(b)(5). Each item of property must be separately identified.

(c)(4)(viii) [Reserved]. For further guidance, see § 1.6038B–1T(c)(4)(viii).

(5) *Transfer of foreign branch with previously deducted losses*. If the property transferred is property of a foreign branch with previously deducted losses subject to §§ 1.367(a)–6 and –6T, provide the following information:

(i) through (iv) [Reserved]. For further information, see § 1.6038B–1T(c)(5)(i) through (iv).

* * * * *

(d)(1) through (1)(iii) [Reserved]. For further guidance, see § 1.6038B–1T(d)(1) through (1)(iii).

(iv) *Intangible property transferred*. Provide a description of the intangible property transferred, including its adjusted basis. Generally, each item of intangible property must be separately identified, including intangible property described in § 1.367(d)–1(g)(2)(i) or that is subject to the rules of section 367(d) under § 1.367(a)–1(b)(5).

(d)(1)(v) through (d)(1)(vi) [Reserved]. For further guidance, see § 1.6038B–1T(d)(1)(v) through (1)(vi).

(d)(1)(vii) *Coordination with loss rules*. List any intangible property subject to section 367(d) the transfer of which also gives rise to the recognition of gain under section 904(f)(3) or §§ 1.367(a)–6 or –6T. Provide a calculation of the gain required to be recognized with respect to such property, in accordance with the provisions of § 1.367(d)–1(g)(4).

(d)(1)(viii) through (d)(2) [Reserved]. For further guidance, see § 1.6038B–1T(d)(1)(viii) through (2).

* * * * *

(g) *Effective/applicability dates*. (1) Except as provided in paragraphs (g)(2) through (g)(7) of this section, this section applies to transfers occurring on or after July 20, 1998, except for transfers of cash made in tax years beginning on or before February 5, 1999 (which are not required to be reported under section 6038B), and except for transfers described in paragraph (e) of this section, which applies to transfers that are subject to §§ 1.367(e)–1(f) and 1.367(e)–2(e). * * *

* * * * *

(7) Paragraphs (c)(4)(i) through (vii), (c)(5), and (d)(1)(iv) and (vii) of this section apply to transfers occurring on or after September 14, 2015, and to transfers occurring before September 14, 2015, resulting from entity classification elections made under § 301.7701–3 that are filed on or after September 14, 2015. For guidance with respect to paragraphs (c)(4), (c)(5), and (d)(1) of this section before this section is applicable, see §§ 1.6038B–1 and 1.6038B–1T as contained in 26 CFR part 1 revised as of April 1, 2015.

John M. Dalrymple,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on September 14, 2015, 11:15 a.m., and published in the issue of the Federal Register for September 16, 2015, 80 F.R. 23279)

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with modified, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with amplified and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, modified and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

Numerical Finding List[1]

Bulletins 2015–27 through 2015–40

Announcements:

2015-17, 2015-28 I.R.B. *67*
2015-18, 2015-33 I.R.B. *198*
2015-19, 2015-32 I.R.B. *157*
2015-20, 2015-38 I.R.B. *375*
2015-21, 2015-34 I.R.B. *220*
2015-22, 2015-35 I.R.B. *288*
2015-23, 2015-36 I.R.B. *311*
2015-24, 2015-36 I.R.B. *313*
2015-25, 2015-39 I.R.B. *412*

Notices:

2015-43, 2015-29 I.R.B. *73*
2015-46, 2015-28 I.R.B. *64*
2015-47, 2015-30 I.R.B. *76*
2015-48, 2015-30 I.R.B. *77*
2015-49, 2015-30 I.R.B. *79*
2015-50, 2015-30 I.R.B. *81*
2015-51, 2015-31 I.R.B. *133*
2015-52, 2015-35 I.R.B. *227*
2015-53, 2015-33 I.R.B. *190*
2015-54, 2015-34 I.R.B. *210*
2015-55, 2015-34 I.R.B. *217*
2015-56, 2015-35 I.R.B. *235*
2015-57, 2015-36 I.R.B. *294*
2015-58, 2015-37 I.R.B. *322*
2015-59, 2015-40 I.R.B. *459*
2015-61, 2015-39 I.R.B. *408*
2015-62, 2015-39 I.R.B. *411*
2015-63, 2015-40 I.R.B. *461*
2015-64, 2015-40 I.R.B. *464*
2015-65, 2015-40 I.R.B. *466*

Proposed Regulations:

REG-136459-09, 2015-37 I.R.B. *332*
REG-109370-10, 2015-33 I.R.B. *198*
REG-112997-10, 2015-39 I.R.B. *422*
REG-103033-11, 2015-37 I.R.B. *325*
REG-109813-11, 2015-37 I.R.B. *330*
REG-139483-13, 2015-40 I.R.B. *475*
REG-115452-14, 2015-32 I.R.B. *158*
REG-132075-14, 2015-35 I.R.B. *288*
REG-138526-14, 2015-28 I.R.B. *67*
REG-143800-14, 2015-37 I.R.B. *347*
REG-102648-15, 2015-31 I.R.B. *134*
REG-102837-15, 2015-27 I.R.B. *43*
REG-123640-15, 2015-37 I.R.B. *350*

Revenue Procedures:

2015-34, 2015-27 I.R.B. *4*
2015-36, 2015-27 I.R.B. *20*
2015-38, 2015-36 I.R.B. *295*
2015-39, 2015-33 I.R.B. *195*

Revenue Procedures:—Continued

2015-40, 2015-35 I.R.B. *236*
2015-41, 2015-35 I.R.B. *263*
2015-42, 2015-36 I.R.B. *310*
2015-43, 2015-40 I.R.B. *467*
2015-44, 2015-38 I.R.B. *374*
2015-45, 2015-39 I.R.B. *412*
2015-46, 2015-39 I.R.B. *414*
2015-47, 2015-39 I.R.B. *419*
2015-48, 2015-40 I.R.B. *469*

Revenue Rulings:

2015-15, 2015-27 I.R.B. *1*
2015-16, 2015-31 I.R.B. *130*
2015-17, 2015-39 I.R.B. *358*
2015-18, 2015-34 I.R.B. *209*
2015-19, 2015-36 I.R.B. *291*
2015-20, 2015-38 I.R.B. *373*
2015-21, 2015-40 I.R.B. *447*

Treasury Decisions:

9723, 2015-31 I.R.B. *84*
9726, 2015-31 I.R.B. *98*
9727, 2015-32 I.R.B. *154*
9728, 2015-33 I.R.B. *169*
9729, 2015-35 I.R.B. *221*
9730, 2015-35 I.R.B. *223*
9731, 2015-37 I.R.B. *314*
9732, 2015-39 I.R.B. *371*
9735, 2015-37 I.R.B. *316*
9736, 2015-39 I.R.B. *402*
9737, 2015-40 I.R.B. *449*
9738, 2015-40 I.R.B. *453*

[1]A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2015–01 through 2015–26 is in Internal Revenue Bulletin 2015–26, dated June 29, 2015.

Finding List of Current Actions on Previously Published Items[1]

Bulletins 2015–27 through 2015–40

Notices:

2014-4
Modified by
Notice 2015-51, 2015-31 I.R.B. *133*

Proposed Regulations:

2009-57
Obsoleted by
REG-112997-10 2015-39 I.R.B. *422*

Revenue Procedures:

1992-75
Clarified by
Rev. Proc. 2015-40, 2015-35 I.R.B. *236*

2003-40
Modified by
Rev. Proc. 2015-40, 2015-35 I.R.B. *236*

2003-78
Modified by
Rev. Proc. 2015-46, 2015-39 I.R.B. *414*

2006-9
Modified by
Rev. Proc. 2015-41, 2015-35 I.R.B. *263*

2006-9
Superseded by
Rev. Proc. 2015-41, 2015-35 I.R.B. *263*

2006-54
Modified by
Rev. Proc. 2015-40, 2015-35 I.R.B. *236*

2006-54
Superseded by
Rev. Proc. 2015-40, 2015-35 I.R.B. *236*

2008-31
Modified by
Rev. Proc. 2015-41, 2015-35 I.R.B. *263*

2008-31
Superseded by
Rev. Proc. 2015-41, 2015-35 I.R.B. *263*

2011-49
Modified by
Rev. Proc. 2015-36, 2015-27 I.R.B. *20*

2011-49
Superseded by
Rev. Proc. 2015-36, 2015-27 I.R.B. *20*

Revenue Procedures:—Continued

2015-14
Modified by
Rev. Proc. 2015-39, 2015-33 I.R.B. *195*

2015-40
Amplified by
Rev. Proc. 2015-41, 2015-35 I.R.B. *263*

2015-41
Amplified by
Rev. Proc. 2015-40, 2015-35 I.R.B. *236*

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