Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Myrna Hanna, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Blood Pressure and Pulse Donor Eligibility Requirements: Compliance Policy.'' The document addresses certain regulatory requirements for determining donor eligibility that apply to blood establishments that collect blood components for transfusion or for further manufacturing use, including Source Plasma. In the final rule dated May 22, 2015 (80 FR 29841) entitled ''Requirements for Blood and Blood Components Intended for Transfusion or for Further Manufacturing Use,'' FDA amended the regulations applicable to blood establishments for determining donor eligibility and testing blood and blood components.[1] The revised requirements were implemented in order to assure the safety of the blood supply and to protect donor health. The final rule became effective on May 23, 2016. FDA has developed the document in response to feedback from blood establishments regarding the donor eligibility requirements for blood pressure and pulse in 21 CFR 630.10 and the corresponding requirements for medical supervision in 21 CFR 630.5. The guidance describes the circumstances in which FDA does not intend to take regulatory action for a blood establishment's failure to comply with certain regulations for determining the eligibility of blood donors with blood pressure or pulse measurements outside of the specified limits.

This guidance finalizes the draft guidance entitled ''Blood Pressure and Pulse Donor Eligibility Requirements: Compliance Policy; Draft Guidance for Industry'' issued on May 24, 2022 (87 FR 31567). Changes made from the draft to the final guidance took into consideration comments received. After considering the comments, we made a few clarifying edits to the guidance and other editorial changes.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on blood pressure and pulse donor eligibility requirements and explains our compliance policy with respect to these requirements. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338; the collections of information in 21 CFR parts 606 and 630 have been approved under OMB control number 0910–0116.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: July 5, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–15228 Filed 7–17–24; 8:45 am]

BILLING CODE 4164–01–P

[1] The Office of the Federal Register has published this document under the category ''Rules and Regulations'' pursuant to 1 CFR 5.9(b). The categorization is solely for purposes of publication in the **Federal Register** and does not change the nature of the document and is not intended to affect its validity, content, or intent. See 1 CFR 5.1(c).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 10004]

RIN 1545–BM19

Guidance Under Section 367(b) Related to Certain Triangular Reorganizations and Inbound Nonrecognition Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding the treatment of property used to acquire parent stock or securities in connection with certain triangular reorganizations involving one or more foreign corporations; the consequences to persons that receive parent stock or securities pursuant to such reorganizations; and the treatment of certain subsequent inbound nonrecognition transactions following such reorganizations and certain other transactions. The final regulations affect corporations engaged in certain triangular reorganizations involving one or more foreign corporations, certain shareholders of foreign corporations acquired in such reorganizations, and foreign corporations that participate in certain inbound nonrecognition transactions.

DATES:

Effective date: These regulations are effective on July 17, 2024.

Applicability dates: For dates of applicability, *see* §§ 1.367(a)–3(g)(1)(viii), 1.367(b)–3(g)(7)(i), 1.367(b)–4(i), 1.367(b)–6(a)(1)(v) and (vi), 1.367(b)–10(e)(2), (3), and (5), and 1.1411–10(i).

FOR FURTHER INFORMATION CONTACT: Brady Plastaras at (202) 317–6937 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On October 6, 2023, the Department of the Treasury (Treasury Department) and the IRS published proposed regulations (REG–117614–14) in the **Federal Register** (88 FR 69559) under section 367(b) of the Internal Revenue Code (the ''Proposed Regulations'') that would implement the regulations announced and described in Notice 2014–32 (2014–20 IRB 1006) and Notice 2016–73 (2016–52 IRB 908), with modifications. This document finalizes the Proposed Regulations without substantive change. Terms used but not defined in this preamble have the

meaning provided in the Proposed Regulations.

In response to a request for comments in the Proposed Regulations, one comment was received and is discussed in the Summary of Comment and Explanation of Revisions. This comment is available at *https://www.regulations.gov* or upon request. No public hearing was held on the Proposed Regulations because there were no requests to speak.

Summary of Comment and Explanation of Revisions

I. § 1.367(b)–10(d) Anti-Abuse Rule

As the preamble to the Proposed Regulations explained, the existing regulations in § 1.367(b)–10 (the ''2011 Final Regulations'') contain an anti-abuse rule under which ''appropriate adjustments'' are made if, ''in connection with a triangular reorganization, a transaction is engaged in with a view to avoid the purpose'' of the 2011 Final Regulations. *See* § 1.367(b)–10(d). The anti-abuse rule contains an example illustrating that the earnings and profits of S may, under certain circumstances, be deemed to include the earnings and profits of a corporation related to P or S for purposes of determining the consequences of the adjustments provided for in the 2011 Final Regulations.

Notice 2014–32 described certain clarifications with respect to the scope of the anti-abuse rule and illustrated certain of those clarifications with an additional example. *See* Notice 2014–32, sections 4.03 and 4.04. The Proposed Regulations proposed to implement those clarifications along with two new examples that further illustrate the broad scope of the anti-abuse rule. *See* proposed § 1.367(b)–10(d)(3) (*Example* 2) (relating to a downstream property transfer) and (d)(4) (*Example 3*) (relating to a taxable debt exchange). The Proposed Regulations did not propose to alter the anti-abuse rule's operative text, which remains unchanged from the 2011 Final Regulations. Because *Examples 2* and *3* (as well as *Example 1,* which was described in Notice 2014–32) merely illustrate applications of the same operative rule finalized in the 2011 Final Regulations, the adjustments described in those examples reflect adjustments that would be made under the 2011 Final Regulations. That is, these examples illustrate fact patterns to which the anti-abuse rule already applies, independent of the inclusion of the examples in the Proposed Regulations. The additional language that was proposed to be added to § 1.367(b)–10(d)(1) similarly clarifies potential situations to which the anti-abuse rule applies, and therefore also reflects adjustments that would be made under the 2011 Final Regulations, notwithstanding that that language was first described in Notice 2014–32.

The comment asserted that *Examples 2* and *3* are an expansion of the operative anti-abuse rule because they involve fact patterns and impose corrective adjustments that were not described in prior guidance and implicate concerns that were not present when the 2011 Final Regulations were issued. The comment claimed that the anti-abuse rule has a narrow application that is limited to scenarios described by the one example in § 1.367(b)–10(d) of the 2011 Final Regulations. In that example, S's earnings and profits are increased where S is ''created, organized, or funded to avoid the application of [the 2011 Final Regulations] with respect to the earnings and profits of [a related corporation].'' As the comment correctly observed, this adjustment increases the likelihood that the 2011 Final Regulations will apply to treat the P acquisition as a deemed distribution. The comment also argued, however, that the only type of adjustments permitted under the anti-abuse rule are adjustments that increase S's earnings and profits and, moreover, that the anti-abuse rule may impose those adjustments only if they bear on the P acquisition, because the P acquisition is the only type of transaction that can be ''in connection with'' an applicable triangular reorganization.

The comment contended that *Example 3* effectively introduces a new rule by, for the first time, applying the anti-abuse rule to ''override'' the § 1.367(b)–10(a)(2)(iii) priority rule, which in the example would otherwise prevent the P acquisition from being treated as a deemed distribution. The comment also argued that *Example 3* further expands the scope of the anti-abuse rule by applying it ''in connection with'' a transaction that occurs after the applicable triangular reorganization rather than in connection with the P acquisition itself. The comment similarly asserted that *Example 2* presents a fact pattern that is not within the purview of the anti-abuse rule because that example references a regulation that was issued after the TCJA, and as such cannot reflect an abuse that the 2011 Final Regulations contemplate. Therefore, the comment recommended that *Examples 2* and *3* should either be eliminated from the final regulations or made to apply only prospectively as of October 5, 2023, the date the Proposed Regulations were filed with the **Federal Register**.

The Treasury Department and the IRS maintain that *Examples 2* and *3* are simply illustrations of the same operative anti-abuse rule—unchanged since it was published in the 2011 Final Regulations—and therefore decline to adopt the comment's recommendation. The comment misunderstands the nature and purpose of the anti-abuse rule, which is intended to serve as a backstop to § 1.367(b)–10 in cases where taxpayers purposely attempt to structure around the application of those regulations. That structuring may take many forms and implicate other technical provisions in ways that are not foreseeable, including by taking advantage of changes in law that create novel planning opportunities. The anti-abuse rule is designed to be adaptable to such changing or unforeseen circumstances and, as such, is not limited to a particular type of avoidance transaction.

This adaptability is reflected in the wording of the anti-abuse rule, which, as described above, applies (i) ''if, in connection with a triangular reorganization,'' (ii) ''a transaction is engaged in with a view to avoid the purpose'' of § 1.367(b)–10. Neither of those two elements limit the anti-abuse rule to a specific form of avoidance transaction, as doing so would undercut the adaptability that is essential to the proper functioning of the rule. Moreover, the preamble to temporary regulations issued in 2008 (TD 9400, 73 FR 30301), the predecessor regulations to the 2011 Final Regulations in § 1.367(b)–10, explains that the phrase ''in connection with'' is ''a broad standard that includes any transaction related to the reorganization even if the transaction is not part of the plan of reorganization'' (73 FR 30302). The P acquisition is not the exclusive type of transaction that may implicate the anti-abuse rule, nor is there any requirement that such transaction precede the applicable triangular reorganization.

Once the anti-abuse rule applies, ''appropriate'' adjustments may be made. The types of corrective adjustments that may be appropriate are not circumscribed to a particular set of adjustments for the same reason that the anti-abuse rule is not limited to a particular form of avoidance transaction. That is, the anti-abuse rule naturally accommodates a range of adjustments because the nature of the corrective adjustment will depend on the form of the abusive transaction. These adjustments necessarily include adjustments that may have the effect of

modifying the application of technical rules, including the priority rule, as almost any avoidance transaction involves the exploitation of some technical provision. The Treasury Department and the IRS have long maintained that the anti-abuse rule is not defined by the one example described in the 2011 Final Regulations, which uses the phrase ''for example'' to indicate explicitly that the example is just one possible illustration of the rule and not, as the comment argues, the only possible illustration. *See* Notice 2014–32, section 3 (expressing the concern that taxpayers ''may be interpreting the anti-abuse rule too narrowly . . . .'').

These final regulations do, however, make a minor change to the facts of *Example 3.* As described in the Proposed Regulations, that example stated that USP did not satisfy the holding period requirement with respect to section 245A because ''USP has held its stock in FP for fewer than 365 days.'' The Treasury Department and the IRS did not intend for that statement to create any inference as to how the holding period requirement could be satisfied and accordingly revise the example's facts to provide that USP simply ''will not'' satisfy the holding period requirement.

The comment also questioned why the clarifications to the application of the anti-abuse rule that were described in Notice 2014–32, such as *Example 1,* were not included among the rules listed in proposed § 1.367(b)–10(e)(2) as having an April 25, 2014, applicability date. Section 1.367(b)–10(e)(2) does not explicitly reference those clarifications because, as noted above, they simply clarify potential situations to which the anti-abuse rule applies. On the other hand, the other changes described in Notice 2014–32 modify substantive rules and are therefore listed under § 1.367(b)–10(e)(2) as having an April 25, 2014, applicability date.

II. Definition of ''Foreign Subsidiary''

Under the Proposed Regulations, the excess asset basis (''EAB'') rules create a deemed distribution of specified earnings to the foreign acquired corporation from foreign subsidiaries, with specified earnings drawn from each subsidiary on a pro rata basis. *See* proposed § 1.367(b)–3(g)(1) and (3). A ''foreign subsidiary'' is defined by reference to the ownership requirements of section 1248(c)(2)(B). Section 1248(c)(2)(B) describes a 10-percent ownership threshold, taking into account the constructive ownership rules in section 958(b). Under that definition, therefore, a foreign subsidiary could include a foreign corporation that the foreign acquired corporation is treated as owning solely through constructive ownership and in which it has no direct or indirect ownership interest. These final regulations make a minor change to § 1.367(b)–3(g)(1) to clarify that possible result. *See* § 1.367(b)–3(g)(1), fourth sentence (''the distribution is treated as being made through any intermediate owners, *or directly from any constructively owned foreign subsidiaries, where applicable*'') (emphasis added).

The Treasury Department and the IRS believe this rule appropriately balances the need for a comprehensive mechanism to correct a foreign acquired corporation's basis imbalance with administrability concerns. For example, while in many cases the basis imbalance could be corrected by taking into account the earnings and profits of the particular subsidiary that participated in an applicable triangular reorganization, that subsidiary may no longer be identifiable or exist when the EAB rules are applied to the foreign acquired corporation. Thus, sourcing specified earnings on a pro rata basis from related foreign corporations provides an administrable rule while reducing the possibility that the basis imbalance goes uncorrected.

Effect on Other Documents

The following publications are obsoleted as of July 17, 2024:

Notice 2014–32 (2014–20 IRB 1006)
Notice 2016–73 (2016–52 IRB 908)

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. 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 assigned by the OMB.

The collections of information in § 1.367(b)–1(c)(4)(viii) and (ix) apply to taxpayers that engage in transactions described in § 1.367(b)–3(g) or § 1.367(b)–10. These reporting requirements are necessary for the IRS's audit and examination purposes, and in particular to identify transactions that should be subject to these final regulations.

The information collection is a statement by corporations attached to their timely filed Federal tax returns (or Form 5471, as applicable) that describes certain transactions and computations, as described in §§ 1.367(b)–3(g) and 1.367(b)–10, that are relevant to these final regulations. Any collection burden will be accounted for in OMB control number 1545–0123.

Taxpayers should keep copies of their filed returns and associated documentation as required by section 6001 of the Internal Revenue Code (the Code). These general tax records are already approved by the OMB under control number 1545–0123. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103 of the Code.

III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this rulemaking will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act. As discussed in the preamble to the Proposed Regulations, this certification is based on the expectation that the taxpayers affected by these final regulations will generally be domestic and foreign corporations that participate in certain triangular reorganizations. The triangular reorganizations at issue represent a narrow set of abusive transactions that have typically been engaged in by large, publicly traded corporations. Such transactions are highly sophisticated and are thus unlikely to involve small domestic entities.

IV. Section 7805(f)

Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations (REG–117614–14) preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact on small

business, and no comments were received.

V. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. These final regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

VI. Executive Order 13132: Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These final regulations do not have federalism implications, do not impose substantial direct compliance costs on State and local governments, and do not preempt State law within the meaning of the Executive order.

Statement of Availability of IRS Documents

Any IRS Revenue Procedure, Revenue Ruling, Notice, or other guidance cited in this document is published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of 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 for § 1.1411–10 in numerical order to read in part as follows:

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

Section 1.1411–10 also issued under 26 U.S.C. 367.

* * * * *

■ **Par. 2.** Section 1.367(a)–3 is amended by revising paragraphs (a)(2)(iv) and (g)(1)(viii) to read as follows:

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

(a) * * *

(2) * * *

(iv) *Certain triangular reorganizations described in § 1.367(b)–10.* If, in an exchange under section 354 or 356, one or more U.S. persons exchange stock or securities of T (as defined in § 1.367(b)–10(a)(3)(i)) in connection with a transaction described in § 1.367(b)–10 (applying to certain acquisitions of parent stock or securities for property in triangular reorganizations), section 367(a)(1) does not apply to such U.S. persons with respect to the exchange of the stock or securities of T if the condition in paragraph (a)(2)(iv)(A) or (B) of this section is satisfied. *See* § 1.367(b)–10(a)(2)(iii) (providing a similar rule that excludes certain transactions from the application of § 1.367(b)–10).

(A) The amount of gain in the T stock or securities that would otherwise be recognized under section 367(a)(1) (without regard to any exceptions thereto) pursuant to the indirect stock transfer rules of paragraph (d) of this section is less than the sum of the amount of the deemed distribution under § 1.367(b)–10 that would be treated and subject to U.S. tax as a dividend under section 301(c)(1) (or would give rise to an inclusion under section 951(a)(1)(A) or 951A(a) that would be subject to U.S. tax) and the amount of such deemed distribution that would be treated and subject to U.S. tax as gain from the sale or exchange of property under section 301(c)(3) (or would give rise to an inclusion under section 951(a)(1)(A) or 951A(a) that would be subject to U.S. tax) if § 1.367(b)–10 would otherwise apply to the triangular reorganization.

(B) T is a foreign corporation, but only to the extent that the stock or securities of T are exchanged for stock or securities of P that were acquired by S in exchange for property in the P acquisition (as the terms P, S, property, and P acquisition are defined in § 1.367(b)–10(a)). Such exchange of T stock or securities is subject to the rules under § 1.367(b)–4(g). Section 367(a) applies to the exchange of T stock or securities to the extent that such stock or securities are exchanged for P stock or securities that were not acquired by S in exchange for property in the P acquisition.

* * * * *

(g) * * *

(1) * * *

(viii) Except as provided in this paragraph (g)(1)(viii), paragraph (a)(2)(iv) of this section applies to exchanges occurring on or after May 17, 2011. For exchanges that occur prior to May 17, 2011, *see* § 1.367(a)–3T(b)(2)(i)(C) as contained in 26 CFR part 1 revised as of April 1, 2011. Paragraph (a)(2)(iv)(A) of this section, to the extent it relates to amounts that would be subject to U.S. tax or give rise to an inclusion under section 951(a)(1)(A) that would be subject to U.S. tax, applies to triangular reorganizations that are completed on or after April 25, 2014, unless T was not related to P or S (within the meaning of section 267(b)) immediately before the triangular reorganization; the triangular reorganization was entered into either pursuant to a written agreement that was (subject to customary conditions) binding before April 25, 2014, and at all times afterwards, or pursuant to a tender offer announced before April 25, 2014, that is subject to section 14(d) of the Securities and Exchange Act of 1934 (15 U.S.C. 78n(d)(1)) and Regulation 14(D) (17 CFR 240.14d–1 through 240.14d–101) or that is subject to comparable foreign laws; and to the extent the P acquisition that occurs pursuant to the plan of reorganization is not completed before April 25, 2014, the P acquisition was included as part of the plan before April 25, 2014. Paragraph (a)(2)(iv)(B) of this section applies to transactions completed on or after December 2, 2016. Paragraph (a)(2)(iv)(A) of this section, to the extent it relates to amounts that would give rise to an inclusion under section 951A(a) that would be subject to U.S. tax, applies to triangular reorganizations that are completed on or after October 5, 2023.

* * * * *

■ **Par. 3.** Section 1.367(b)–1 is amended by:

■ 1. Removing the language ''and'' at the end of paragraph (c)(2)(iv)(B);

■ 2. Removing the period at the end of paragraph (c)(2)(v) and adding the language ''; and'' in its place;

■ 3. Adding paragraph (c)(2)(vi);

■ 4. In paragraph (c)(3)(ii)(A), removing the language ''paragraph (c)(2)(i) or (v)'' and adding in its place the language ''paragraph (c)(2)(i), (v), or (vi)'';

■ 5. Revising paragraph (c)(4)(v);
■ 6. Removing the language ''and'' at the end of paragraph (c)(4)(vi);
■ 7. Removing the period at the end of paragraph (c)(4)(vii)(B) and adding a semicolon in its place; and
■ 8. Adding paragraphs (c)(4)(viii) and (ix).

The additions and revision read as follows:

§ 1.367(b)–1 Other transfers.

* * * * *

(c) * * *

(2) * * *

(vi) A domestic or foreign corporation (S) that acquires stock or securities of another corporation (P) in a transaction described in § 1.367(b)–10(a)(1), without regard to the exceptions in § 1.367(b)–10(a)(2).

* * * * *

(4) * * *

(v) Any information that is or would be required to be furnished with a Federal income tax return pursuant to regulations or other guidance under section 332, 351, 354, 355, 356, 361, 368, or 381 (whether or not a Federal income tax return is required to be filed), if such information has not otherwise been provided by the person filing the section 367(b) notice;

* * * * *

(viii) In the case of a corporation (S) described in paragraph (c)(2)(vi) of this section, the rules of this paragraph (c)(4) apply by treating the acquisition of the stock or securities of P in exchange for property as the section 367(b) exchange referred to in paragraph (a) of this section. The section 367(b) notice must also include a complete description of the acquisition of the stock or securities of P in exchange for property, including a description of the property provided in exchange for the stock or securities and any related transactions involving the acquisition of the stock or securities. The section 367(b) notice must describe any adjustments made pursuant to § 1.367(b)–10 or, if no adjustments are made, explain why no such adjustments were made; and

(ix) In the case of an exchange to which § 1.367(b)–3(g) applies, a statement describing how any excess asset basis (as defined in § 1.367(b)–3(g)(2)(i)) arose, the amount of excess asset basis, and a description of the computation of the amount of excess asset basis.

* * * * *

■ **Par. 4.** Section 1.367(b)–2 is amended by:
■ 1. In paragraph (c)(1), adding a sentence after the current first sentence;
■ 2. Adding a sentence to the end of paragraph (d)(2)(ii);
■ 3. In paragraph (d)(3)(ii), removing the language ''subsidiaries of'' and adding in its place the language ''corporations owned by'';
■ 4. Adding a sentence to the end of paragraph (d)(3)(ii);
■ 5. In paragraph (e)(4) (*Example 2*), removing the language ''foreign subsidiary'' and adding in its place the language ''foreign corporation''; and
■ 6. In paragraphs (j)(2)(i) and (ii), removing the language ''is required to include in income either the all earnings and profits amount or the section 1248 amount under the provisions of § 1.367(b)–3 or 1.367(b)–4'' and adding in its place the language ''exchanges stock pursuant to a transaction described in § 1.367(b)–3 or § 1.367(b)–4(b)(1)(i), (b)(2)(i), (b)(3), (e), or (g)''.

The additions read as follows:

§ 1.367(b)–2 Definitions and special rules.

* * * * *

(c) * * *

(1) * * * But *see* § 1.1411–10(c)(3)(ii), which for certain exchanges modifies the section 1248 amount for purposes of section 1411. * * *

* * * * *

(d) * * *

(2) * * *

(ii) * * * But *see* § 1.1411–10(c)(3)(ii), which for certain exchanges modifies the all earnings and profits amount for purposes of section 1411.

* * * * *

(3) * * *

(ii) * * * But *see* § 1.367(b)–3(g)(1), which adjusts the all earnings and profits amount through a deemed distribution of certain earnings and profits of foreign subsidiaries owned by the foreign acquired corporation.

* * * * *

■ **Par. 5.** Section 1.367(b)–3 is amended by adding paragraph (g) to read as follows:

§ 1.367(b)–3 Repatriation of foreign corporate assets in certain nonrecognition transactions.

* * * * *

(g) *All earnings and profits amount adjusted for excess asset basis*—(1) *General rule.* If there is excess asset basis with respect to a foreign acquired corporation and the condition described in paragraph (g)(1)(i) or (ii) of this section is satisfied, then, except as provided in paragraph (g)(5) of this section, an exchanging shareholder to which paragraph (b)(3)(i) of this section applies must compute the all earnings and profits amount with respect to its stock in the foreign acquired corporation as if, immediately before the inbound nonrecognition transaction, the foreign acquired corporation had received a distribution of property from a foreign subsidiary under section 301 in an amount equal to the specified earnings. In addition, the deemed distribution described in the preceding sentence is treated as occurring for all purposes of the Internal Revenue Code. For purposes of this paragraph (g)(1), the amount of the distribution from a foreign subsidiary is equal to the amount of earnings and profits of that foreign subsidiary that is designated as specified earnings under paragraph (g)(3) of this section. In the case of a foreign subsidiary the stock of which is not held directly by the foreign acquired corporation, the distribution is treated as being made through any intermediate owners, or directly from any constructively owned foreign subsidiaries, where applicable. For purposes of this paragraph (g)(1), references to the foreign acquired corporation, S, and a foreign subsidiary include any predecessor corporation.

(i) S previously acquired in exchange for property stock or securities of the foreign acquired corporation in connection with a triangular reorganization described in § 1.358–6(b)(2), and the foreign acquired corporation and S did not make adjustments that have the effect of a distribution of property from S to the foreign acquired corporation under § 1.367(b)–10(b)(1).

(ii) The excess asset basis is attributable, directly or indirectly, to property previously provided by a foreign subsidiary of the foreign acquired corporation in connection with a transaction not described in paragraph (g)(1)(i) of this section and undertaken with a principal purpose to create such excess asset basis.

(2) *Definitions.* The following definitions apply for purposes of this paragraph (g).

(i) *Excess asset basis.* The term *excess asset basis* means, with respect to a foreign acquired corporation, the amount by which the inside asset basis of that corporation exceeds the sum of the following amounts:

(A) The earnings and profits of the foreign acquired corporation attributable to its outstanding stock. For purposes of this paragraph (g)(2)(i)(A), such earnings and profits are determined under the principles of § 1.367(b)–2(d) but without regard to whether the exchanging shareholder is described in paragraph (b)(1) of this section or whether the exchanging shareholder is a U.S. person or a foreign person. Such earnings and profits include amounts described in section 1248(d)(3) or (4).

(B) The aggregate basis in the outstanding stock of the foreign acquired corporation determined immediately before the nonrecognition transaction described in paragraph (a) of this section (the inbound nonrecognition transaction) and therefore without regard to any basis increase described in § 1.367(b)–2(e)(3)(ii) resulting from such inbound nonrecognition transaction.

(C) The aggregate amount of liabilities of the foreign acquired corporation that are assumed (determined under the principles of section 357(d)) by the domestic acquiring corporation in the inbound nonrecognition transaction.

(ii) *Foreign subsidiary.* The term *foreign subsidiary* means, with respect to a foreign acquired corporation, a foreign corporation with respect to which the foreign acquired corporation satisfies the ownership requirements of section 1248(c)(2)(B) but for this purpose treating the foreign acquired corporation as the United States person referred to in section 1248(c)(2)(B).

(iii) *Inbound nonrecognition transaction.* The term *inbound nonrecognition transaction* has the meaning set forth in paragraph (g)(2)(i)(B) of this section.

(iv) *Inside asset basis.* The term *inside asset basis* means, with respect to a foreign acquired corporation, the aggregate of the adjusted basis of all the assets of that corporation in the hands of the domestic acquiring corporation determined immediately after the inbound nonrecognition transaction.

(v) *Lower-tier earnings.* The term *lower-tier earnings* means, with respect to a foreign acquired corporation, the sum of the earnings and profits (including deficits) of each foreign subsidiary.

(vi) *Property.* The term *property* has the same meaning as in § 1.367(b)–10(a)(3)(ii).

(vii) *S.* The term *S* has the same meaning as in § 1.367(b)–10(a)(3)(i).

(viii) *Specified earnings.* The term *specified earnings* means, with respect to a foreign acquired corporation, the lesser of the following amounts:

(A) Lower-tier earnings; and

(B) The excess asset basis of the foreign acquired corporation.

(3) *Designation of specified earnings.* If lower-tier earnings exceed specified earnings, then the portion of lower-tier earnings that is designated as specified earnings is determined by reference to the earnings and profits of each foreign subsidiary on a pro rata basis in proportion to each foreign subsidiary's share of lower-tier earnings.

(4) *Anti-abuse rule.* Appropriate adjustments are made pursuant to this section if a transaction is engaged in with a view to avoid the purposes of this paragraph (g). For example, if a transaction is engaged in with a view to reduce excess asset basis, including by increasing the basis in the stock of the foreign acquired corporation without a corresponding increase in the basis of the assets of the foreign acquired corporation, that increase in the basis in the stock of the foreign acquired corporation will be disregarded for purposes of computing excess asset basis.

(5) *Prohibition against affirmative use.* This paragraph (g) does not apply to an inbound nonrecognition transaction if a transaction described in paragraph (g)(1) of this section was entered into with a principal purpose of subjecting the inbound nonrecognition transaction to this paragraph (g). For example, this paragraph (g) will not apply to an inbound nonrecognition transaction if a taxpayer engaged in a transaction described in paragraph (g)(1) of this section with a principal purpose of accessing tax attributes of lower-tier foreign subsidiaries by reason of a deemed distribution of lower-tier earnings of the foreign acquired corporation.

(6) *Examples.* The application of this paragraph (g) is illustrated by the examples in this paragraph (g)(6). In each example, all corporations have a calendar year-end and use the United States dollar as their functional currency.

(i) *Example 1: Excess asset basis from triangular reorganization*—(A) *Facts.* USP, a domestic corporation, owns all of the stock of USS, also a domestic corporation, and 80 percent of the stock of FP, a foreign corporation. USS owns the remaining 20 percent of the stock of FP. FP owns all of the stock of FS1, which in turn owns all of the stock of FS2. Both FS1 and FS2 are foreign corporations. In a reorganization described in section 368(a)(1)(F) (F reorganization), US Newco, a newly formed domestic corporation, acquires all of the assets of FP solely in exchange for stock of US Newco, which FP distributes to USP and USS in liquidation. Immediately before the F reorganization, the stock of FP owned by USP has a fair market value of $80x and an adjusted basis of $4x. The stock of FP owned by USS has a fair market value of $20x and an adjusted basis of $1x. The all earnings and profits amounts with respect to USP's stock of FP and USS's stock of FP, determined before any adjustments required by paragraph (g)(1) of this section, are $32x and $8x, respectively. FP holds assets with an adjusted basis of $95x, has no liabilities, and has $40x of earnings and profits attributable to its outstanding stock. FS1 and FS2 have $30x and $70x of earnings and profits, respectively, all of which are described in section 959(c)(3). Dividends paid by FS2 to FS1, and by FS1 to FP, would qualify for the exception to foreign personal holding company income under section 954(c)(6). Before the applicability date described in paragraph (g)(7)(i) of this section, and separate from the F reorganization, FS1 provided property to FP in exchange for stock of FP in connection with a triangular reorganization described in § 1.358–6(b)(2), and neither FP nor FS1 made adjustments that had the effect of a distribution of property from FS1 to FP under § 1.367(b)–10(b)(1).

(B) *Analysis*—(*1*) *All earnings and profits amount.* The F reorganization is an asset acquisition described in section 368(a)(1) and is thus subject to section 367(b) and this section. Under paragraph (b)(3) of this section, USP and USS each must include in income as a deemed dividend the all earnings and profits amount with respect to their stock of FP. Because there is excess asset basis with respect to FP (as determined in paragraph (g)(6)(i)(B)(*2*) of this section), USP and USS must compute the all earnings and profits amounts attributable to their stock of FP as if FP had received a distribution of specified earnings, immediately before the F reorganization. *See* paragraph (g)(1) of this section. Because the stock of FS2 is indirectly owned by FP, to the extent the specified earnings are determined by reference to the earnings and profits of FS2, FS2 is treated as making a distribution to FS1 under section 301, and FS1 is then treated as making a distribution to FP under section 301 in an amount equal to the sum of the amount of specified earnings determined by reference to the earnings and profits of FS1 (determined without regard to the deemed distribution from FS2) and the amount of the deemed distribution received from FS2. *See id.*

(*2*) *Excess asset basis.* The amount of excess asset basis is $50x, calculated as the amount by which FP's inside asset basis ($95x) exceeds the sum of FP's earnings and profits ($40x), the aggregate basis in the outstanding stock of FP ($5x), and the amount of liabilities of FP assumed by US Newco in the F reorganization ($0). *See* paragraph (g)(2)(i) of this section.

(*3*) *Deemed distribution of specified earnings.* The amount of specified earnings equals $50x, the lesser of the following amounts: the sum of the earnings and profits of FS1 and FS2 ($100x); and the amount of excess asset

basis with respect to FP ($50x). *See* paragraph (g)(2)(viii) of this section. FP is accordingly treated as receiving a distribution of $50x from FS1. *See* paragraph (g)(1) of this section. Under paragraph (g)(3) of this section, $15x ($50x × ($30x/$100x)) of FS1's earnings and profits and $35x ($50x × ($70x/$100x)) of FS2's earnings and profits are designated as specified earnings. FS2 is treated as distributing $35x to FS1. *See* paragraph (g)(1) of this section. Under sections 301(c)(1) and 954(c)(6), the $35x deemed distribution from FS2 to FS1 is treated as a dividend that does not give rise to foreign personal holding company income. FS1 must accordingly increase its earnings and profits described in section 959(c)(3) by $35x to $65x, and FS2 must decrease its earnings and profits described in section 959(c)(3) by the same amount. FS1 is then treated as making a distribution of $50x to FP. *See* paragraph (g)(1) of this section. Under sections 301(c)(1) and 954(c)(6), the $50x deemed distribution is also treated as a dividend that does not give rise to foreign personal holding company income. FP must accordingly increase its earnings and profits described in section 959(c)(3) by $50x to $90x, and FS1 must decrease its earnings and profits described in section 959(c)(3) by the same amount.

(*4*) *Adjusted all earnings and profits amount attributable to USP's FP stock.* USP must compute the all earnings and profits amount attributable to its stock of FP after taking into account the $50x increase to FP's earnings and profits that resulted from the deemed distribution of specified earnings. *See* paragraph (g)(1) of this section. Because USP owns 80% of the stock of FP, $40x (calculated as 80% of $50x) of the specified earnings are attributable to USP's stock of FP and are included in the all earnings and profits amount attributable to USP's stock of FP. The all earnings and profits amount that USP must include in income as a deemed dividend is therefore $72x ($32x + $40x).

(*5*) *Adjusted all earnings and profits amount attributable to USS's FP stock.* USS must compute the all earnings and profits amount attributable to its stock of FP after taking into account the $50x increase to FP's earnings and profits that resulted from the deemed distribution of specified earnings. *See* paragraph (g)(1) of this section. Because USS owns 20% of the stock of FP, $10x (calculated as 20% of $50x) of the specified earnings are attributable to USS's stock of FP and are included in the all earnings and profits amount attributable to USS's stock of FP. The all earnings and profits amount that USS must include in income as a deemed divided is therefore $18x ($8x + $10x).

(ii) *Example 2: Principal purpose of creating excess asset basis*—(A) *Facts.* USP, a domestic corporation, owns all of the stock of FP, which in turn owns all of the stock of FS. Both FP and FS are foreign corporations. The all earnings and profits amount with respect to USP's stock of FP, determined before any adjustments required by paragraph (g)(1) of this section, is $50x. FP has no other earnings and profits other than the $50x that reflect USP's all earnings and profits amount. FS has $200x of earnings and profits, all of which are earnings and profits described in section 959(c)(2) (PTEP) because those earnings and profits gave rise to an earlier income inclusion under section 951 with respect to USP. Increases in stock basis were made under section 961 by reason of USP's section 951 inclusion. FP has excess asset basis of $100x as a result of a previous transaction that was undertaken with a principal purpose of creating excess asset basis in which FS provided $100x of property to FP. At the time of that transaction, FP did not also have a principal purpose of subjecting an inbound nonrecognition transaction to this paragraph (g) and thus paragraph (g)(5) of this section is not applicable. Subsequently, in a liquidation described in section 332, FP distributes all of its assets to USP and the stock of FP is cancelled (the FP liquidation).

(B) *Analysis*—(*1*) *All earnings and profits amount.* The FP liquidation is subject to section 367(b) and this section. Under paragraph (b)(3) of this section, USP must include in income as a deemed dividend the all earnings and profits amount with respect to its stock of FP. Because there is excess asset basis with respect to FP, USP must compute the all earnings and profits amount attributable to its stock of FP as if FP had received a distribution of specified earnings immediately before the FP liquidation. *See* paragraph (g)(1) of this section.

(*2*) *Deemed distribution of specified earnings.* The amount of specified earnings equals $100x, the lesser of the following amounts: the earnings and profits of FS ($200); and the amount of excess asset basis with respect to FP ($100x). *See* paragraph (g)(2)(viii) of this section. FS is accordingly treated as making a distribution of $100x to FP. *See* paragraph (g)(1) of this section. Under sections 301(c)(1) and 959(b), the $100x deemed distribution from FS to FP is treated as a distribution of PTEP that is not included in the gross income of FP for purposes of section 951. The distribution reduces FS's earnings and profits and PTEP with respect to USP by $100x and increases FP's earnings and profits and PTEP with respect to USP by $100x. Furthermore, appropriate adjustments are made under section 961 for the distribution of PTEP.

(*3*) *Adjusted all earnings and profits amount attributable to USP's stock of FP.* USP must compute the all earnings and profits amount attributable to its stock of FP after taking into account the $100x increase to FP's earnings and profits that resulted from the deemed distribution of specified earnings. *See* paragraph (g)(1) of this section. Because the deemed distribution consisted entirely of PTEP with respect to USP, the deemed distribution does not affect USP's all earnings and profits amount of $50x. *See* § 1.367(b)–2(d)(2)(ii). USP must therefore include $50x in income as a deemed dividend under this section. USP must also recognize any foreign currency gain or loss under section 986(c) with respect to the $100x of PTEP of FP. *See* § 1.367(b)–2(j)(2).

(*7*) *Applicability date*—(i) *In general.* This paragraph (g) (other than paragraphs (g)(2)(viii), (g)(3) and (5) of this section) applies to transactions completed on or after December 2, 2016, and to any transactions treated as completed before December 2, 2016, as a result of an entity classification election made under § 301.7701–3 of this chapter that is filed on or after December 2, 2016. Paragraphs (g)(2)(viii), (g)(3) and (5) of this section apply to transactions completed on or after October 5, 2023.

(ii) *Transactions completed (or elections made) on or after December 2, 2016, and before October 5, 2023.* Except as provided in paragraph (g)(7)(iii) of this section, the following definitions (in lieu of the corresponding definitions or in addition to the definitions in paragraph (g)(2) of this section) and rules apply with respect to transactions completed on or after December 2, 2016, and to any transactions treated as completed before December 2, 2016, as a result of an entity classification election made under § 301.7701–3 of this chapter that is filed on or after December 2, 2016, but before October 5, 2023:

(A) The term *specified earnings* means, with respect to the stock of a foreign acquired corporation that is exchanged by an exchanging shareholder, the lesser of the following amounts (but not below zero):

(*1*) The sum of the earnings and profits (including a deficit) with respect to each foreign subsidiary of the foreign acquired corporation that are attributable under section 1248(c)(2) to the stock of the foreign acquired

corporation exchanged (lower-tier earnings). For purposes of the preceding sentence, the modifications described in § 1.367(b)–2(d)(2) and (d)(3)(i) apply. Thus, for example, the amount of the earnings and profits of a foreign subsidiary that are attributable to stock of the foreign acquired corporation is determined without regard to whether the foreign subsidiary was a controlled foreign corporation at any time during the five years preceding the inbound nonrecognition transaction.

(*2*) The product of the excess asset basis of the foreign acquired corporation, multiplied by the exchanging shareholder's specified percentage.

(*3*) The amount of gain that would be realized by the exchanging shareholder if, immediately before the inbound nonrecognition transaction, the exchanging shareholder had sold the stock of the foreign acquired corporation for fair market value, reduced by the exchanging shareholder's all earnings and profits amount (for this purpose, determined without regard to the modifications described in this paragraph (g)) (specified stock gain).

(B) The term *specified percentage* means, with respect to an exchanging shareholder, a fraction (expressed as a percentage), the numerator of which is the sum of the aggregate of the specified stock gain with respect to all exchanging shareholders to which paragraph (b)(3) of this section applies and the aggregate of the gain realized (regardless of whether such gain is recognized) with respect to the stock exchanged by all other exchanging shareholders.

(C) If there is excess asset basis with respect to a foreign acquired corporation, as determined under paragraph (g)(2)(i) of this section, a taxpayer may reduce the excess asset basis to the extent that the excess asset basis is not attributable, directly or indirectly, to property provided by a foreign subsidiary of the foreign acquired corporation. For example, if there was a transfer of property to the foreign acquired corporation described in section 362(e)(2), and the election described in section 362(e)(2)(C) was made to limit the basis in the stock received in the foreign acquired corporation to its fair market value, then, for purposes of determining excess asset basis, the basis in the stock of the foreign acquiring corporation may be determined without regard to the application of section 362(e)(2).

(iii) *Early application.* A taxpayer and its related parties (within the meaning of sections 267(b) and 707(b)(1)) may choose to apply paragraphs (g)(1) through (6) of this section to all open taxable years beginning before July 17, 2024, provided that the taxpayer and its related parties consistently apply paragraphs (g)(1) through (6) of this section and § 1.367(b)–1(c)(4)(ix) for such years.

■ **Par. 6.** Section 1.367(b)–4 is amended by:

■ 1. In paragraph (a), adding a sentence after the fifth sentence;

■ 2. In paragraph (a), removing the language ''paragraph (g)'' in the current sixth sentence and adding in its place the language ''paragraph (h)'' and removing the language ''paragraph (h)'' in the current seventh sentence and adding in its place the language ''paragraph (i)'';

■ 3. In paragraph (e)(5) *Example 2* (ii)(B), removing the language ''paragraph (g)(1)'' wherever it appears and adding in its place the language ''paragraph (h)(1)'';

■ 4. In paragraph (f)(3) *Example 2* (ii), removing the language ''paragraph (g)(1)'' wherever it appears and adding in its place the language ''paragraph (h)(1)'';

■ 5. Redesignating paragraphs (g) and (h) as paragraphs (h) and (i), respectively;

■ 6. Adding a new paragraph (g);

■ 7. In newly redesignated paragraph (i), adding a sentence after the sixth sentence; and

■ 8. In newly redesignated paragraph (i), removing the language ''paragraph (h), paragraphs (a), (b) introductory text, (b)(1)(i)(C), (d)(1), (e), (f), and (g)'' and adding in its place the language ''paragraph (i), paragraphs (a), (b) introductory text, (b)(1)(i)(C), (d)(1), (e), (f), and (h)'', and removing the language ''paragraphs (f) and (g)(5)'' and adding in its place the language ''paragraphs (f) and (h)(5)''.

The additions read as follows:

§ 1.367(b)–4 Acquisition of foreign corporate stock or assets by a foreign corporation in certain nonrecognition transactions.

(a) * * * Paragraph (g) of this section provides rules regarding exchanges that occur pursuant to a transaction described in § 1.367(b)–10(a)(1), without regard to the exceptions in § 1.367(b)–10(a)(2). * * *

* * * * *

(g) *Income inclusion and gain recognition in exchanges occurring in connection with certain triangular reorganizations*—(1) *Rule.* If, in an exchange under section 354 or 356 that occurs in connection with a transaction described in § 1.367(b)–10, an exchanging shareholder exchanges stock or securities of a foreign acquired corporation, then, to the extent that the exchanging shareholder receives stock or securities of P acquired by S in exchange for property in the P acquisition, the shareholder must—

(i) Include in income as a deemed dividend the section 1248 amount attributable to the stock that the shareholder exchanges; and

(ii) After taking into account the increase in basis in the stock provided in § 1.367(b)–2(e)(3)(ii) resulting from the deemed dividend (if any), recognize all realized gain with respect to the stock or securities that would not otherwise be recognized.

(2) *Special rules and definitions.* For the purposes of this paragraph (g), an *exchanging shareholder* means a United States person or foreign person that exchanges stock of a foreign acquired corporation in a prescribed exchange, regardless of whether such United States person is a section 1248 shareholder or such foreign person is a foreign corporation in which a United States person is a section 1248 shareholder. As used in this paragraph (g), the terms P, S, property, and P acquisition have the meanings provided in § 1.367(b)–10(a), and the term *foreign person* means a person that is not a United States person.

(3) *Example.* The following example illustrates the rules of this paragraph (g):

(i) *Facts.* USP, a domestic corporation, owns all of the stock of FP and USS. FP is a foreign corporation that owns all of the stock of FS, a foreign corporation. USS is a domestic corporation that owns all of the stock of FT, a foreign corporation. USS owns 100 shares of stock of FT, which constitutes a single block of stock with a fair market value of $100x, an adjusted basis of $20x, and a section 1248 amount of $50x. FS has earnings and profits of $60x. A dividend from FS to FP would qualify for the exception to foreign personal holding company income under section 954(c)(6). FP issues 100 shares of voting stock with a fair market value of $100x to FS, $40x of which (the 40-percent FP block) is issued in exchange for $40x of newly issued common stock of FS and $60x of which (the 60-percent FP block) is issued in exchange for $60x of cash. FS acquires all of the stock of FT held by USS solely in exchange for the $100x of voting stock of FP (that is, FS exchanges both the 40-percent FP block and the 60-percent FP block) in a triangular reorganization described in section 368(a)(1)(B) (triangular B reorganization).

(ii) *Analysis*—(A) *Application of § 1.367(b)–10.* The triangular B reorganization is described in § 1.367(b)–10, and the $60x of cash constitutes property under § 1.367(b)–

10(a)(3)(ii). Pursuant to § 1.367(b)–10(b)(1), adjustments must be made that have the effect of a distribution of property in the amount of $60x from FS to FP under section 301. The $60x deemed distribution is treated as separate from, and occurring immediately before, FS's acquisition of the 60-percent FP block used in the triangular B reorganization. The $60x deemed distribution from FS to FP results in $60x of dividend income to FP under section 301(c)(1) that is not foreign personal holding company income under section 954(c)(6).

(B) *Application of paragraph (g) of this section.* Pursuant to § 1.367(a)–3(a)(2)(iv)(B), this paragraph (g) applies to $60x of the stock of FT (the 60-percent FT block) exchanged for the 60-percent FP block. Thus, under paragraph (g)(1)(i) of this section, USS must include in income a $30x deemed dividend (representing 60 percent of USS's $50x section 1248 amount) with respect to the 60-percent FT block exchanged for the 60-percent FP block. In addition, under paragraph (g)(1)(ii) of this section, USS must recognize its realized gain that would not otherwise be recognized with respect to the 60-percent FT block. USS's fair market value and adjusted basis in the 60-percent FT block are $60x (60 percent of the $100x fair market value of the stock of FT) and $12x (60 percent of the $20x adjusted basis of the stock of FT), respectively. USS's initial built-in gain with respect to the 60-percent FT block is accordingly $48x ($60x fair market value less $12x adjusted basis). The $30x deemed dividend increases USS's basis in the 60-percent FT block to $42 ($12x + $30x), leaving $18x ($60x − $42x) of built-in gain. USS must therefore recognize the remaining $18x of gain with respect to the 60-percent FT block.

(C) *Application of paragraph (b) of this section and regulations under section 367(a).* USS has $32x of built-in gain in the remaining $40x of stock of FT (the 40-percent FT block) that USS exchanged for the 40-percent FP block, calculated as USS's initial $80 of built-in gain in all of its stock of FT less the $48x of initial built-in gain attributable to the 60-percent FT block. USS's section 1248 amount in the 40-percent FT block is $20x, calculated as 40 percent of USS's $50x section 1248 amount. USS does not recognize a deemed dividend of the $20x section 1248 amount under paragraph (b) of this section because FT remains a controlled foreign corporation with respect to which USS is a section 1248 shareholder immediately after the triangular B reorganization. Unless USS properly files a gain recognition agreement pursuant to §§ 1.367(a)–3(b) and 1.367(a)–8, USS recognizes the $32x of built-in gain under section 367(a)(1) with respect to the 40-percent FT block.

* * * * *

(i) * * * Paragraph (g) of this section applies to transactions completed on or after December 2, 2016. * * *

■ **Par. 7.** Section 1.367(b)–6 is amended by adding paragraphs (a)(1)(v) and (vi) to read as follows:

§ 1.367(b)–6 Effective/applicability dates and coordination rules.

(a) * * *

(1) * * *

(v) Section 1.367(b)–2(j)(2) applies to transactions completed on or after October 5, 2023, and to any transactions treated as completed before October 5, 2023, as a result of an entity classification election made under § 301.7701–3 of this chapter that is filed on or after October 5, 2023.

(vi) Section 1.367(b)–1(c)(2)(vi), (c)(4)(viii), and (c)(4)(ix) apply to taxable years ending on or after October 5, 2023. However, a taxpayer and its related parties (within the meaning of sections 267(b) and 707(b)(1)) may choose to apply the rules referred to in the preceding sentence to all open taxable years ending before October 5, 2023, provided that the taxpayer and its related parties consistently apply such rules and § 1.367(b)–3(g) for such years.

* * * * *

■ **Par. 8.** Section 1.367(b)–10 is amended by:

■ 1. Adding two sentences to the end of paragraph (a)(1);

■ 2. Revising paragraphs (a)(2)(ii) and (iii);

■ 3. Removing the language ''and'' at the end of paragraph (a)(3)(ii)(A);

■ 4. Removing the period at the end of paragraph (a)(3)(ii)(B) and adding the language ''; and'' in its place;

■ 5. Adding paragraph (a)(3)(ii)(C);

■ 6. Removing paragraph (b)(2);

■ 7. Redesignating paragraphs (b)(3), (4), and (5) as paragraphs (b)(2), (3), and (4), respectively;

■ 8. Revising newly redesignated paragraph (b)(2);

■ 9. Adding two sentences to the end of newly redesignated paragraph (b)(3);

■ 10. In newly redesignated paragraph (b)(4)(ii), removing the sixth sentence, revising the current seventh sentence, and adding two sentences at the end of the paragraph; and

■ 11. Revising paragraphs (c), (d), and (e).

The revisions and additions read as follows:

§ 1.367(b)–10 Acquisition of parent stock or securities for property in triangular reorganizations.

(a) * * *

(1) * * * *See* § 1.367(b)–3(g) for the treatment of certain inbound nonrecognition transactions following transactions described in this section. *See* § 1.367(b)–4(g) for rules applicable to certain exchanging shareholders that exchange stock of T in connection with a transaction described in this section.

(2) * * *

(ii) S is a domestic corporation, P is not a controlled foreign corporation (within the meaning of § 1.367(b)–2(a)), P's stock in S is not a United States real property interest (within the meaning of section 897(c)), and the deemed distribution that would result from the application of this section would not be treated as a dividend under section 301(c)(1) that would be subject to U.S. tax under either section 881 (for example, by reason of an applicable treaty or by reason of an absence of earnings and profits) or section 882; or

(iii) In an exchange under section 354 or 356, one or more U.S. persons exchange stock or securities of T and the amount of gain in the T stock or securities that would otherwise be recognized under section 367(a)(1) is equal to or greater than the sum of the amount of the deemed distribution under this section that would be treated and subject to U.S. tax as a dividend under section 301(c)(1) (or would give rise to an inclusion under section 951(a)(1)(A) or 951A(a) that would be subject to U.S. tax) and the amount of such deemed distribution that would be treated and subject to U.S. tax as gain from the sale or exchange of property under section 301(c)(3) (or would give rise to an inclusion under section 951(a)(1)(A) or 951A(a) that would be subject to U.S. tax) if this section would otherwise apply to the triangular reorganization. The exception provided in this paragraph (a)(2)(iii) does not apply if T is a foreign corporation. *See* § 1.367(a)–3(a)(2)(iv) (providing a similar rule that excludes certain transactions from the application of section 367(a)(1)).

(3) * * *

(ii) * * *

(C) Stock of S that is nonqualified preferred stock (as defined in section 351(g)(2)).

* * * * *

(b) * * *

(2) *Timing of deemed distribution.* If P controls (within the meaning of section 368(c)) S at the time of the P acquisition, the adjustments described in paragraph (b)(1) of this section are made as if the deemed distribution is a

separate transaction occurring immediately before the P acquisition. If P does not control (within the meaning of section 368(c)) S at the time of the P acquisition, the adjustments described in paragraph (b)(1) of this section are made as if the deemed distribution is a separate transaction occurring immediately after P acquires control of S, but before the reorganization.

(3) * * * Thus, P's adjustment to the basis in its S stock under § 1.358–6 is determined as if P provided the P stock or securities pursuant to the plan of reorganization, notwithstanding that S acquired the P stock or securities in exchange for property in the P acquisition. *See also* § 1.367(b)–13.

(4) * * *

(ii) * * * Pursuant to paragraph (b)(2) of this section, the adjustments described in paragraph (b)(1) of this section are made as if the deemed distribution is a separate transaction occurring immediately before FS's purchase of the P stock on the open market. * * * US1's transfer of its FT stock in exchange for P stock is subject to § 1.367(b)–4(g). If, contrary to the facts in this paragraph (b)(4), US1 had built-in gain with respect to its FT stock, then such gain would be recognized in accordance with § 1.367(b)–4(g).

(c) *Collateral adjustments.* This paragraph (c) provides additional rules that apply by reason of the deemed distribution described in paragraph (b)(1) of this section. A deemed distribution described in paragraph (b)(1) of this section is treated as occurring for all purposes of the Internal Revenue Code. Thus, for example, the ordering rules of section 301(c) apply to characterize the deemed distribution to P as a dividend from the earnings and profits of S, return of stock basis, or gain from the sale or exchange of property, as the case may be. Furthermore, section 959 may apply to the deemed distribution if S is a foreign corporation, and section 881, 882, 897, 1442, or 1445 may apply to the deemed distribution if S is a domestic corporation. Appropriate corresponding adjustments must be made to S's earnings and profits consistent with the principles of section 312.

(d) *Anti-abuse rule*—(1) *Rule.* Appropriate adjustments must be made pursuant to this section if, in connection with a triangular reorganization, a transaction is engaged in with a view to avoid the purpose of this section. For example, if S is created, organized, or funded to avoid the application of this section with respect to the earnings and profits of another corporation, the earnings and profits of S (or any successor corporation) may be deemed to include the earnings and profits of such other corporation (or any successor corporation) for purposes of determining the consequences of the adjustments provided in this section, and appropriate corresponding adjustments may be made to account for the application of this section to the earnings and profits of such other corporation (or any successor corporation). Adjustments may be made under this paragraph (d) whether S is funded before or after a triangular reorganization, and such funding may include capital contributions, loans, and distributions. The following examples illustrate the application of this paragraph (d), the application of which is not limited to the particular situations described in the examples.

(2) *Example 1: Deemed increase to S's earnings and profits*—(i) *Facts.* FP is a foreign corporation that owns all of the stock of USS, a domestic corporation. USS has no assets, liabilities, or earnings and profits. FP issues $10x of voting stock to USS in exchange for $10x of newly issued stock of USS, and FP also issues $90x of voting stock to USS in exchange for a note newly issued by USS with a fair market value of $90x (USS note). FP would be subject to U.S. tax under section 881 on a distribution from USS if, contrary to the facts, USS had earnings and profits for purposes of applying section 301(c) to the distribution. USS acquires all the stock of UST, a domestic corporation that is unrelated to FP and USS, from a foreign person in exchange for the $100x of voting stock of FP in a triangular reorganization described in section 368(a)(1)(B) (triangular B reorganization). UST has $100x of earnings and profits. USS's purchase of the $90x of stock of FP in exchange for the USS note in connection with the triangular B reorganization is engaged in with a view to avoid the purpose of this section.

(ii) *Analysis.* Because USS's purchase of the $90x of stock of FP in exchange for the USS note is engaged in with a view to avoid the purpose of this section, the anti-abuse rule applies and appropriate adjustments are made. In particular, for purposes of determining the consequences of the deemed distribution provided for in paragraph (b)(1) of this section, the earnings and profits of USS are deemed to include the earnings and profits of UST. USS is therefore treated as having made a deemed distribution equal to $90x, which reflects the portion of the stock of FP that USS acquired in exchange for property (the USS note). Because USS is deemed to have $100x of earnings and profits, the entire $90x deemed distribution is treated as a dividend under section 301(c)(1). The deemed distribution is treated as separate from, and occurring immediately before, USS's acquisition of the stock of FP used in the triangular B reorganization. No adjustments are made by FP to the basis in its stock of USS except as provided in § 1.358–6. Under paragraph (b)(3) of this section, FP's adjustment to the basis in its stock of USS under § 1.358–6 is determined as if FP provided all $100x of the stock of FP pursuant to the plan of reorganization.

(3) *Example 2: Downstream property transfer*—(i) *Facts.* USP is a domestic corporation that owns all of the stock of FS1, a foreign corporation, FS1 holds a note receivable issued by USP with a fair market value of $100x (USP note), and FS1 has more than $100x of earnings and profits. USP has no income inclusion under section 951(a)(1)(B) with respect to the USP note after the application of § 1.956–1(a)(2). FS1 forms USS Newco, a domestic corporation, to which it transfers the USP note in exchange for voting stock of USS Newco. USS Newco then forms FS2 Newco, a foreign corporation, and FS1 transfers all of its remaining assets (except for its stock in USS Newco) to FS2 Newco in exchange for additional voting stock of USS Newco in a transaction intended to qualify as a triangular reorganization described in section 368(a)(1)(C) (triangular C reorganization). FS1 liquidates into USP pursuant to the triangular C reorganization, and USP receives the stock of USS Newco held by FS1. FS1's transfer of the USP note to USS Newco in connection with the intended triangular C reorganization is engaged in with a view to avoid the purpose of this section.

(ii) *Analysis.* Because FS1's transfer of the USP note to USS Newco is in connection with a triangular reorganization and is engaged in with a view to avoid the purpose of this section, the anti-abuse rule applies and appropriate adjustments are made. FS1's formation of USS Newco and transfer of the USP note to USS Newco, together with the distribution of the shares of USS Newco pursuant to the liquidation of FS1, is treated under the anti-abuse rule as a distribution of $100x, consistent with its substance. Accordingly, adjustments are made consistent with there having been such a distribution. Because FS1 has more than $100x of earnings and profits, the adjustments made are consistent with USS Newco having received a $100x dividend from FS1 separate from, and immediately before, the triangular C reorganization. USS Newco must

therefore include $100x in gross income as if it had received that amount as a dividend and increase its earnings and profits by the same amount. FS1 must decrease its earnings and profits by $100x. For purposes of determining USS Newco's basis in its stock of FS2 Newco, § 1.367(b)–13 applies by treating USS Newco as P (within the meaning of § 1.367(b)–13(a)(2)(ii)). Under paragraph (b)(3) of this section, USS Newco's adjustment to the basis in its FS2 Newco stock under § 1.367(b)–13 is determined as if USS Newco provided the stock of USS Newco stock pursuant to the plan of reorganization.

(4) *Example 3: Taxable debt exchange*—(i) *Facts.* USP is a domestic corporation that owns all of the stock of FP, a foreign corporation, and USS, a domestic corporation. Furthermore, FP owns all of the stock of FS, a foreign corporation, and USS owns all of the stock of UST, a domestic corporation. FP has no earnings and profits, and FS has more than $100x of earnings and profits. USP will not satisfy the requirements of sections 245A and 246(c) with respect to dividends received from FP. FS transfers a note issued by FS with a fair market value of $100x (FS note) to FP in exchange for $100x of voting stock of FP, and FS then uses the stock of FP to acquire all of the stock of UST held by USS in a triangular reorganization described in section 368(a)(1)(B) (triangular B reorganization). Because a dividend from FS to FP would not constitute foreign personal holding company income under section 954(c)(6), the taxpayer asserts that the exception in paragraph (a)(2)(iii) of this section applies and therefore does not make any adjustments pursuant to this section. FP then transfers the FS note to USP in exchange for a note issued by USP with a fair market value of $100x (USP note). The USP note constitutes United States property within the meaning of section 956(c), and USP would otherwise have an inclusion under section 951(a)(1)(B) and § 1.956–1(a)(2) if FP had earnings and profits. FS's transfer of the FS note to FP, and FP's subsequent transfer of the FS note to USP in connection with the triangular B reorganization, are engaged in with a view to avoid the purpose of this section.

(ii) *Analysis.* Because the transfers of the FS note are in connection with a triangular reorganization and are engaged in with a view to avoid the purpose of this section, the anti-abuse rule applies and appropriate adjustments are made. FS is therefore treated as having made a distribution to FP of $100x, reflecting the value of the stock of FP that FS acquired in exchange for property (the FS note). The deemed distribution is treated as separate from, and occurring immediately before, FS's acquisition of the stock of FP stock used in the triangular B reorganization. Because FS has more than $100x of earnings and profits, the entire deemed distribution is treated as a dividend under section 301(c)(1). The deemed dividend causes FP to increase its earnings and profits by $100x but does not constitute foreign personal holding company income to FP under section 954(c)(6). FP thus has $100x of earnings and profits available to support inclusions under section 951(a)(1)(B) in connection with FP's subsequent acquisition of the USP note. No adjustments are made by FP to the basis in its stock of FS except as provided in § 1.358–6. Under paragraph (b)(3) of this section, FP's adjustment to the basis in its stock of FS under § 1.358–6 is determined as if FP provided the stock of FP pursuant to the plan of reorganization.

(e) *Applicability dates*—(1) *General rule.* This section applies to triangular reorganizations occurring on or after May 17, 2011. For triangular reorganizations that occur before May 17, 2011, *see* § 1.367(b)–14T as contained in 26 CFR part 1 revised as of April 1, 2011.

(2) *Triangular reorganizations completed on or after April 25, 2014.* The following paragraphs apply to triangular reorganizations that are completed on or after April 25, 2014, unless T was not related to P or S (within the meaning of section 267(b)) immediately before the triangular reorganization; the triangular reorganization was entered into either pursuant to a written agreement that was (subject to customary conditions) binding before April 25, 2014, and at all times afterwards, or pursuant to a tender offer announced before April 25, 2014, that is subject to section 14(d) of the Securities and Exchange Act of 1934 (15 U.S.C. 78n(d)(1)) and Regulation 14(D) (17 CFR 240.14d–1 through 240.14d–101) or that is subject to comparable foreign laws; and to the extent the P acquisition that occurs pursuant to the plan of reorganization is not completed before April 25, 2014, the P acquisition was included as part of the plan before April 25, 2014:

(i) Paragraph (a)(2)(ii) of this section, to the extent it does not apply where P is a controlled foreign corporation, and to the extent it relates to dividends that would be subject to U.S. tax;

(ii) Paragraph (a)(2)(iii) of this section, to the extent it relates to amounts that would be subject to U.S. tax or give rise to an inclusion under section 951(a)(1)(A) that would be subject to U.S. tax;

(iii) Paragraph (b)(3) of this section, to the extent it relates to P's provision of its stock or securities pursuant to the plan of reorganization; and

(iv) Paragraphs (b) and (c) of this section, to the extent they do not reference the rule described in former paragraph (b)(2) of this section (relating to the deemed contribution), as contained in 26 CFR part 1 revised as of April 1, 2021.

(3) *Transactions completed on or after December 2, 2016.* The following paragraphs apply to transactions completed on or after December 2, 2016:

(i) Paragraph (a)(2)(iii) of this section, to the extent it does not apply where T is a foreign corporation; and

(ii) Paragraph (a)(3)(ii)(C) of this section.

(4) *Deemed distributions that occurred in taxable years ending before November 2, 2020.* Former paragraph (c)(1) of this section, as contained in 26 CFR part 1 revised as of April 1, 2021, to the extent it references section 902, applies to deemed distributions that occur in taxable years ending before November 2, 2020.

(5) *Triangular reorganizations completed on or after October 5, 2023.* Paragraph (a)(2)(iii) of this section, to the extent it relates to amounts that would give rise to an inclusion under section 951A(a) that would be subject to U.S. tax, applies to triangular reorganizations that are completed on or after October 5, 2023.

■ **Par. 9.** Section 1.1248–1 is amended by adding a sentence to the end of paragraph (a)(1) to read as follows:

§ 1.1248–1 Treatment of gain from certain sales or exchanges of stock in certain foreign corporations.

(a) * * *

(1) * * * *See* § 1.1411–10(c)(3) for additional rules concerning the application of section 1248 for purposes of section 1411.

* * * * *

■ **Par. 10.** Section 1.1411–10 is amended by:

■ 1. In paragraph (c)(3), revising the paragraph heading and removing the language ''With respect to stock of a CFC'' and adding in its place ''With respect to stock of a foreign corporation that is a CFC (or that was a CFC at any time during the 5-year period ending on the date of sale or exchange)'';

■ 2. Revising paragraph (c)(3)(i) and the introductory text of paragraph (c)(3)(ii); and

■ 3. Adding paragraph (d)(5) and adding a sentence to the end of paragraph (i).

The revisions and additions read as follows:

§ 1.1411–10 Controlled foreign corporations and passive foreign investment companies.

* * * * *

(c) * * *

(3) *Application of sections 1248 and 367(b).* * * *

(i) In determining the amount of gain recognized on the sale or exchange of stock of a foreign corporation under section 1248(a) or the amount of gain realized on the exchange of stock of a foreign corporation under § 1.367(b)–4 or 1.367(b)–5, basis is determined in accordance with the provisions of paragraph (d) of this section; and

(ii) Section 1248(a), and § 1.367(b)–2(c)(1) and (d)(2)(ii) apply without regard to the exclusions for certain earnings and profits under section 1248(d)(1) and (6), except that those exclusions will apply with respect to the earnings and profits of a foreign corporation that are attributable to:

* * * * *

(d) * * *

(5) *Basis adjustments under section 367(b).* With respect to stock of a foreign corporation that is exchanged in a transaction subject to section 367(b), the portion of the basis increase provided by § 1.367(b)–2(e)(3)(ii) by reason of paragraph (c)(3)(ii) of this section is made solely for purposes of section 1411.

* * * * *

(i) * * * Paragraph (c)(3) of this section, to the extent it references regulations issued under section 367(b), and paragraph (d)(5) of this section, apply to transactions completed on or after October 5, 2023, and to any transactions treated as completed before October 5, 2023, as a result of an entity classification election made under § 301.7701–3 of this chapter that is filed on or after October 5, 2023.

Douglas W. O'Donnell,

Deputy Commissioner.

Approved: June 26, 2024.

Aviva R. Aron-Dine,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2024–15232 Filed 7–17–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Determination

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of a determination.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing a services determination issued pursuant to an April 6, 2022 Executive Order. The determination was previously issued on OFAC's website.

DATES: The determination was issued on June 12, 2024. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Compliance, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: *https://ofac.treasury.gov.*

Background

On April 6, 2022, the President, invoking the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), issued Executive Order (E.O.) 14071 of April 6, 2022, ''Prohibiting New Investment in and Certain Services to the Russian Federation in Response to Continued Russian Federation Aggression'' (87 FR 20999, April 8, 2022). Among other prohibitions, section 1(a)(ii) of E.O. 14071 prohibits the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any category of services as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, to any person located in the Russian Federation.

On June 12, 2024, pursuant to delegated authority, the Director of OFAC, in consultation with the Department of State, issued ''Determination Pursuant to Section 1(a)(ii) of Executive Order 14071,'' which determined that the prohibitions in section 1(a)(ii) of E.O. 14071 shall apply to the following categories of services: information technology (IT) consultancy and design services; and IT support services and cloud-based services for the following categories of software: enterprise management software and design and manufacturing software.

The determination was made available on OFAC's website (*https://ofac.treasury.gov*) when it was issued. The text of the determination is below.

OFFICE OF FOREIGN ASSETS CONTROL

DETERMINATION PURSUANT TO SECTION 1(a)(ii) OF EXECUTIVE ORDER 14071

Prohibition on Certain Information Technology and Software Services

Pursuant to sections 1(a)(ii), 1(b), and 5 of Executive Order (E.O.) 14071 of April 6, 2022 (''Prohibiting New Investment in and Certain Services to the Russian Federation in Response to Continued Russian Federation Aggression'') and 31 CFR 587.802, and in consultation with the Department of State, I hereby determine that the prohibitions in section 1(a)(ii) of E.O. 14071 shall apply to the following categories of services:

(1) Information technology (IT) consultancy and design services; and

(2) IT support services and cloud-based services for the following categories of software: enterprise management software and design and manufacturing software (collectively, ''Covered Software'').

As a result, the following activities are prohibited, except to the extent provided by law, or unless licensed or otherwise authorized by the Office of Foreign Assets Control:

The exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of IT consultancy and design services or of IT support services or cloud-based services for Covered Software to any person located in the Russian Federation.

This determination excludes the following:

(1) Any service to an entity located in the Russian Federation that is owned or controlled, directly or indirectly, by a United States person;

(2) Any service in connection with the wind down or divestiture of an entity located in the Russian Federation that is not owned or controlled, directly or indirectly, by a Russian person;

(3) Any service for software that is:

(i) Subject to the Export Administration Regulations, 15 CFR part 730 *et seq.,* (EAR) and for which the