

## § 1.367(a)-8

## 26 CFR Ch. I (4-1-20 Edition)

the fair market value of all DC stock immediately before the reorganization, but reduced by the fair market value of the inventory distributed to DP1 (\$100x, less \$20x). Accordingly, the ownership interest percentage of DP1 is 75% (\$60x/\$80x), and the ownership interest percentage of FP is 25% (\$20x/\$80x).

(h) *Applicable cross-references.* For rules relating to the character, source, and adjustments resulting from gain recognized by a U.S. transferor under section 367(a), see § 1.367(a)-1(b)(4). For rules relating to transfers of stock or securities in a section 361 exchange, see § 1.367(a)-3(e). For rules relating to the acquisition of the stock or assets of a foreign corporation by another foreign corporation, see § 1.367(b)-4. For rules relating to transfers of section 367(d) property by a U.S. transferor to a foreign corporation, see section 367(d). For rules relating to distributions of stock of a foreign corporation by a domestic corporation under section 355 or 361, see §§ 1.367(b)-5, 1.367(e)-1, and 1.1248(f)-1 through 1.1248(f)-3. For additional rules relating to certain reporting requirements of a U.S. transferor, see § 1.6038B-1. For rules regarding expatriated entities, see section 7874 and the regulations under that section.

(i) [Reserved]

(j)(1) *Effective/applicability dates.* Except for paragraph (e)(2) of this section, and as provided in paragraph (j)(2) of this section, this section applies to transfers occurring on or after April 18, 2013. Paragraph (e)(2) applies to requests for relief submitted on or after November 19, 2014. Paragraph (e)(2) of this section also applies to requests for relief submitted before November 19, 2014 if the statute of limitations on the assessment of tax has not expired for any year to which the request relates and the control group member or U.S. transferor, as applicable, resubmits the request under paragraph (e)(2) of this section and notes, on the request, that the request is being submitted pursuant to the third sentence of this paragraph (j). See paragraph (e)(2) of this section, as contained in 26 CFR part 1 revised as of April 1, 2014, for requests for relief submitted after April 17, 2013, and before November 19, 2014, that are not resubmitted under paragraph (e)(2) of this section.

(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, 2016.

[T.D. 9614, 78 FR 17032, Mar. 19, 2013, as amended by T.D. 9704, 79 FR 68767, Nov. 19, 2014; T.D. 9760, 81 FR 15169, Mar. 22, 2016; T.D. 9803, 81 FR 91028, Dec. 16, 2016]

### § 1.367(a)-8 Gain recognition agreement requirements.

(a) *Scope.* This section provides the terms and conditions for a gain recognition agreement entered into by a United States person pursuant to § 1.367(a)-3(b) through (e) in connection with a transfer of stock or securities to a foreign corporation pursuant to an exchange that would otherwise be subject to section 367(a)(1). Paragraph (b) of this section provides definitions and special rules. Paragraphs (c) through (h) of this section identify the form, content, and other conditions of a gain recognition agreement. Paragraph (i) of this section is reserved. Paragraph (j) of this section identifies certain events that may require gain to be recognized under a gain recognition agreement. Paragraph (k) of this section provides exceptions for certain events that would otherwise require gain to be recognized under a gain recognition agreement. Paragraph (l) of this section is reserved. Paragraph (m) of this section provides rules that require gain to be recognized under a gain recognition agreement in connection with certain events to which an exception under paragraph (k) of this section otherwise applies. Paragraph (n) of this section provides special rules in the case of a distribution of property with respect to stock to which section 301 applies. Paragraph (o) of this section provides rules for certain transactions that terminate or reduce the amount of gain subject to a gain recognition agreement. Paragraph (p) of this section provides relief for certain failures to file an initial gain recognition agreement (as defined in paragraph (b)(1)(vi) of this section) or to comply

with the requirements of this section with respect to a gain recognition agreement (as described in paragraph (c) of this section). Paragraph (q) of this section provides examples that illustrate the rules of the section. Paragraph (r) of this section provides effective dates for the provisions of this section.

(b) *Definitions and special rules.* The following definitions and special rules apply for purposes of this section.

(1) *Definitions*—(i) *Asset reorganization*—(A) *General rule.* Except as provided in paragraph (b)(1)(i)(B) of this section, an *asset reorganization* is a reorganization described in section 368(a)(1) that involves an exchange of property described in section 361(a) or (b) (a section 361 exchange).

(B) *Exceptions.* An asset reorganization does not include the following:

(I) A reorganization described in section 368(a)(1)(D) or (G) if the requirements of section 354(b)(1)(A) and (B) are not met.

(2) For purposes of paragraphs (j)(2)(ii)(B), (k)(6)(ii), and (k)(6)(iii) of this section, a triangular asset reorganization. For rules applicable to a triangular asset reorganization, see paragraph (k)(7) of this section.

(ii) A *consolidated group* has the meaning set forth in §1.1502-1(h).

(iii) *Disposition.* Except as provided in this paragraph (b)(1)(iii), a *disposition* includes any transfer that would constitute a disposition for any purpose of the Internal Revenue Code. A disposition includes an indirect disposition of the stock of the transferred corporation as described in §1.367(a)-3(d). Except as provided in paragraph (n)(1) of this section, a disposition does not include the receipt of a distribution of property with respect to stock to which section 301 applies (including by reason of section 302(d)). See paragraphs (n)(2) and (o)(3) of this section for rules that apply if gain is recognized under section 301(c)(3). A complete or partial disposition by installment sale (under section 453) shall be treated as a disposition in the year of the installment sale.

(iv) A *gain recognition agreement document* means any agreement, statement, schedule, or form required to be filed under this section, including an initial

gain recognition agreement (as defined in paragraph (b)(1)(vi) of this section), a new gain recognition agreement described in paragraph (c)(5) of this section, a Form 8838 extending the period of limitations on assessment of tax described in paragraph (f) of this section, and an annual certification described in paragraph (g) of this section.

(v) A *gain recognition event* is an event described in paragraphs (j) through (o) of this section that requires gain to be recognized under a gain recognition agreement.

(vi) An *initial gain recognition agreement* means the gain recognition agreement entered into under paragraph (c) of this section with respect to the initial transfer.

(vii) The *initial transfer* means a transfer of stock or securities (transferred stock or securities) to a foreign corporation pursuant to an exchange that would otherwise be subject to section 367(a)(1) but with respect to which a gain recognition agreement is entered into by a United States person pursuant to §1.367(a)-3(b) through (e).

(viii) An *intercompany item* has the meaning set forth in §1.1502-13(b)(2).

(ix) An *intercompany transaction* has the meaning set forth in §1.1502-13(b)(1).

(x) A *nonrecognition transaction* has the meaning set forth in section 7701(a)(45). In addition, a nonrecognition transaction includes an exchange described in section 351(b) or 356 even if all gain realized in the exchange is recognized.

(xi) The terms *P*, *S*, and *T* have the meanings set forth in §1.358-6(b)(1)(i), (ii), and (iii), respectively.

(xii) The determination of whether *substantially all* of the assets of the transferred corporation have been disposed of is based on all the facts and circumstances.

(xiii) A *timely filed return* means a Federal income tax return filed on or before the last date prescribed for filing (taking into account any extensions of time therefor) such return.

(xiv) *Transferee foreign corporation.* Except as provided in this paragraph (b)(1)(xiv), the *transferee foreign corporation* is the foreign corporation to

which the transferred stock or securities are transferred in an initial transfer. In the case of an indirect stock transfer, the transferee foreign corporation has the meaning set forth in § 1.367(a)-3(d)(2)(i). The transferee foreign corporation also includes a corporation designated as the transferee foreign corporation in the case of a new gain recognition agreement entered into under this section.

(xv) *Transferred corporation.* Except as provided in this paragraph (b)(1)(xv), the *transferred corporation* is the corporation the stock or securities of which are transferred in the initial transfer. In the case of an indirect stock transfer, the transferred corporation has the meaning set forth in § 1.367(a)-3(d)(2)(ii). The transferred corporation also includes a corporation designated as the transferred corporation in the case of a new gain recognition agreement entered into under this section.

(xvi) A *triangular asset reorganization* is a reorganization described in § 1.358-6(b)(2)(i), (ii), (iii), or (v).

(xvii) The *U.S. transferor* is the United States person (as defined in § 1.367(a)-1(d)(1)) that transfers the transferred stock or securities to the transferee foreign corporation in the initial transfer. For purposes of determining the U.S. transferor in the case of a transfer by a partnership, see § 1.367(a)-1(c)(3)(i). The *U.S. transferor* also includes the United States person designated as the U.S. transferor in the case of a new gain recognition agreement entered into under this section including, for example, under paragraph (k)(14) of this section.

(2) *Special rules—(i) Stock deemed received or transferred.* References to stock received include stock deemed received (for example, pursuant to section 367(c)(2)). References to a transfer of stock or securities include a deemed transfer of stock or securities.

(ii) *Stock of the transferee foreign corporation.* References to stock of the transferee foreign corporation include any stock of the transferee foreign corporation the basis of which is determined, in whole or in part, by reference to the basis of the stock of the transferee foreign corporation received by

the U.S. transferor in the initial transfer.

(iii) *Transferred stock or securities.* References to transferred stock or securities include any stock or securities of the transferred corporation the basis of which is determined, in whole or in part, by reference to the basis of the stock or securities transferred in the initial transfer.

(c) *Gain recognition agreement—(1) Terms of agreement—(i) General rule.* Except as provided in this paragraph (c)(1)(i), if a gain recognition event occurs during the period beginning on the date of the initial transfer and ending as of the close of the fifth full taxable year (not less than 60 months) following the close of the taxable year in which the initial transfer occurs (GRA term), the U.S. transferor must include in income the gain realized but not recognized on the initial transfer by reason of entering into the gain recognition agreement. In the case of a gain recognition event that occurs as a result of a partial disposition of stock, securities, or a partnership interest, as applicable, the U.S. transferor is required to recognize a proportionate amount of the gain subject to the gain recognition agreement, determined based on the fair market value of the stock, securities, or partnership interest, as applicable, disposed of (measured at the time of the partial disposition) as compared to the fair market value of all the stock, securities, or partnership interest, as applicable (measured at the time of the partial disposition). If the U.S. transferor must recognize gain under this paragraph as a result of an event described in paragraph (m) or (n) of this section, see those paragraphs to determine the amount of the gain that must be recognized. The amount of gain subject to the gain recognition agreement shall be reduced by the amount of gain recognized under this paragraph. If the amount of gain subject to the gain recognition agreement is reduced to zero, the gain recognition agreement shall terminate without further effect.

(ii) *Ordering rule for gain recognized under multiple gain recognition agreements.* If a gain recognition event occurs that requires gain to be recognized

under multiple gain recognition agreements, gain shall first be recognized under the gain recognition agreement that relates to the earliest initial transfer, then under the gain recognition agreement that relates to the immediately following initial transfer and so forth until the appropriate amount of gain has been recognized under each gain recognition agreement. The amount of gain recognized under a gain recognition agreement shall be determined after taking into account, as appropriate, any increase to basis (including the basis of the transferred stock or securities) under paragraph (c)(4) of this section resulting from gain recognized under another gain recognition agreement. For an illustration of this ordering rule, see paragraph (q)(2) of this section, *Example 6*.

(iii) *Taxable year in which gain is reported*—(A) *Year of initial transfer*. Except as provided in paragraph (c)(1)(iii)(B) of this section, the U.S. transferor must report any gain recognized under paragraph (c)(1)(i) of this section on an amended Federal income tax return for the taxable year of the initial transfer. The amended return must be filed on or before the 90th day following the date on which the gain recognition event occurs.

(B) *Year of gain recognition event*. If an election under paragraph (c)(2)(vi) of this section is made with the gain recognition agreement or if paragraph (c)(5)(ii) of this section applies to the gain recognition agreement, the U.S. transferor must report any gain recognized under paragraph (c)(1)(i) of this section on its Federal income tax return for the taxable year during which the gain recognition event occurs. If an election under paragraph (c)(2)(vi) of this section is made with the gain recognition agreement or if paragraph (c)(5)(ii) of this section applies to the gain recognition agreement but the U.S. transferor does not report the gain recognized on its Federal income tax return for the taxable year during which the gain recognition event occurs, the Commissioner may require the U.S. transferor to report the gain on an amended Federal income tax return for the taxable year during which the initial transfer occurred.

(iv) *Offsets*. No special limitations apply with respect to offsetting gain recognized under paragraph (c)(1)(i) of this section with net operating losses, capital losses, credits against tax, or similar items.

(v) *Payment and reporting of interest*. Interest must be paid on any additional tax due with respect to gain recognized by the U.S. transferor under paragraph (c)(1)(i) of this section. Any interest due shall be determined based on the rates under section 6621 for the period between the date that was prescribed for filing the Federal income tax return of the U.S. transferor for the year of the initial transfer and the date on which the additional tax due is paid. If paragraph (c)(1)(iii)(B) of this section applies, any interest due must be included with the payment of tax due with the Federal income tax return of the U.S. transferor for the taxable year during which the gain recognition event occurs (or should reduce the amount of any refund due to the U.S. transferor for such taxable year). A schedule entitled “Calculation of Section 367 Tax and Interest” that separately identifies and calculates any additional tax and interest due must be included with the Federal income tax return on which any interest due is reported.

(2) *Content of gain recognition agreement*. The gain recognition agreement must be entitled “GAIN RECOGNITION AGREEMENT UNDER § 1.367(a)-8” and include the information described in paragraphs (c)(2)(i) through (viii) of this paragraph with the corresponding paragraph numbers. The information required under this paragraph (c)(2) and paragraph (c)(3) of this section must be included in the gain recognition agreement as filed.

(i) A statement that the document constitutes an agreement by the U.S. transferor to recognize gain in accordance with the requirements of this section.

(ii) A description of the transferred stock or securities and other information as required in paragraph (c)(3) of this section.

(iii) A statement that the U.S. transferor agrees to comply with all the conditions and requirements of this section, including to recognize gain under

the gain recognition agreement in accordance with paragraph (c)(1)(i) of this section, to extend the period of limitations on assessment of tax as provided in paragraph (f) of this section, to file the certification described in paragraph (g) of this section, and, as provided in paragraph (j)(8) of this section, to treat a failure to comply (as described in paragraph (j)(8) of this section) as extending the period of limitations on assessment of tax for the taxable year in which gain is required to be reported.

(iv) A statement that arrangements have been made to ensure that the U.S. transferor is informed of any events that affect the gain recognition agreement, including triggering events or other gain recognition events.

(v) In the case of a new gain recognition agreement filed under this section—

(A) A description of the event (such as a triggering event) and the applicable exception, if any, that gave rise to the new gain recognition agreement (such as a triggering event exception), including the date of the event and the name, address, and taxpayer identification number (if any) of each person that is a party to the event;

(B) As applicable, a description of the class, amount, and characteristics of the stock, securities or partnership interest received in the transaction; and

(C) As applicable, a calculation of the amount of gain that remains subject to the new gain recognition agreement as a result of the application of paragraph (m), (n), or (o) of this section.

(vi) A statement whether the U.S. transferor elects to include in income any gain recognized under paragraph (c)(1)(i) of this section in the taxable year during which a gain recognition event occurs. See paragraph (c)(5)(ii) of this section for a rule that requires, in certain cases, for the gain recognized pursuant to a new gain recognition agreement to be included in income during the taxable year in which the gain recognition event occurs.

(vii) A statement whether a gain recognition event has occurred during the taxable year of the initial transfer.

(viii) A statement describing any disposition of assets of the transferred corporation during such taxable year

other than in the ordinary course of business.

(3) *Description of transferred stock or securities and other information.* The gain recognition agreement shall include the following:

(i) A description of the transferred stock or securities including—

(A) The type or class, amount, and characteristics of the transferred stock or securities;

(B) A calculation of the amount of the built-in gain in the transferred stock or securities that are subject to the gain recognition agreement, reflecting the basis and fair market value on the date of the initial transfer;

(C) The amount of any gain recognized by the U.S. transferor on the initial transfer; and

(D) The percentage (by voting power and value) that the transferred stock (if any) represents of the total stock outstanding of the transferred corporation on the date of the initial transfer.

(ii) The name, address, place of incorporation, and taxpayer identification number (if any) of the transferred corporation.

(iii) The date on which the U.S. transferor acquired the transferred stock or securities.

(iv) The name, address and place of incorporation of the transferee foreign corporation, and a description of the stock or securities received by the U.S. transferor in the initial transfer, including the percentage of stock (by vote and value) of the transferee foreign corporation received in such exchange.

(v) If the initial transfer is described in § 1.367(a)-3(e), a statement that the conditions of section 367(a)(5) and any regulations under that section have been satisfied, and a description of any adjustments to the basis of the stock received in the transaction or other adjustments made pursuant to section 367(a)(5) and any regulations under that section.

(vi) If the transferred corporation is domestic, a statement describing the application of section 7874 to the transaction, and indicating that the requirements of § 1.367(a)-3(c)(1) are satisfied.

(vii) If the transferred corporation is foreign, a statement indicating whether the U.S. transferor was a section

1248 shareholder (as defined in § 1.367(b)-2(b)) of the transferred corporation immediately before the initial transfer, and whether the U.S. transferor is a section 1248 shareholder with respect to the transferee foreign corporation immediately after the initial transfer, and whether any reporting requirements or other rules contained in regulations under section 367(b) are applicable, and, if so, whether they have been satisfied.

(viii) If the initial transfer involves a transfer by a partnership (see § 1.367(a)-1(c)(3)(i)) or a transfer of a partnership interest (see section 367(a)(4) and § 1.367(a)-1(c)(3)(ii)) a complete description of the transfer, including a description of the partners in the partnership.

(ix) If the transaction involved the transfer of property other than the transferred stock or securities and the transaction was subject to the indirect stock transfer rules of § 1.367(a)-3(d), a statement indicating whether—

(A) The reporting requirements under section 6038B have been satisfied with respect to the transfer of such other property;

(B) Whether gain was recognized under section 367(a)(1);

(C) Whether section 367(d) applied to the transfer of such property; and

(D) Whether the other property transferred qualified for the active foreign trade or business exception under section 367(a)(3).

(4) *Basis adjustments for gain recognized.* The following basis adjustments shall be made if gain is recognized under paragraph (c)(1)(i) of this section.

(i) *Stock or securities of transferee foreign corporation.* The basis of the stock or securities, as applicable, of the transferee foreign corporation received by the U.S. transferor in the initial transfer shall be increased as of the date of the initial transfer by the amount of gain recognized.

(ii) *Transferred stock or securities.* The basis of the transferred stock or securities shall be increased as of the date of the initial transfer by the amount of the gain recognized.

(iii) *Other appropriate adjustments.* The basis of other stock, securities, or a partnership interest shall be in-

creased, as appropriate, in accordance with the principles of this paragraph (c)(4). Under no circumstances shall the basis of stock, securities, or of a partnership interest held by a U.S. person that does not recognize gain under paragraph (c)(1)(i) of this section be increased under this paragraph (c)(4). In addition, under no circumstances shall the basis of any property be increased by the amount of any additional tax due or interest paid with respect to such tax, nor shall the basis of the assets of the transferred corporation be increased as a result of gain recognized by the U.S. transferor under paragraph (c)(1)(i) of this section.

(iv) *Cross-reference.* See paragraph (q)(2) of this section, *Examples 1, 2, 3, and 5* for illustrations of the rules of this paragraph (c)(4). See also § 1.367(a)-1(b)(4) for rules that determine the increase to basis of property resulting from the application of section 367(a).

(5) *Terms and conditions of a new gain recognition agreement—(i) General rule.*

A new gain recognition agreement entered into pursuant to this section shall replace the existing gain recognition agreement, which shall terminate without further effect. The term of the new gain recognition agreement shall be the remaining term of the existing gain recognition agreement. The amount of gain subject to the new gain recognition agreement shall equal the amount of gain subject to the existing gain recognition agreement, reduced by any gain recognized under paragraph (c)(1)(i) of this section with respect to the existing gain recognition agreement by reason of the gain recognition event that gives rise to the new gain recognition agreement. The new gain recognition agreement shall, as applicable, be subject to the conditions and requirements of this section to the same extent as the existing gain recognition agreement. For example, a triggering event with respect to the new gain recognition agreement will generally include a disposition of the transferred stock or securities or of substantially all the assets of the transferred corporation. If, however, the transferred stock is canceled or redeemed pursuant to the disposition or other event that gives rise to the new

gain recognition agreement (for example, pursuant to a liquidation where the transferee foreign corporation is the corporate distributee (within the meaning of section 334(b)(2)), or an asset reorganization where the transferee foreign corporation is the acquiring corporation) the transferred stock is not subject to the new gain recognition agreement.

(ii) *Special rule for inclusion of gain.* If the U.S. transferor with respect to the new gain recognition agreement is not the U.S. transferor with respect to the existing gain recognition agreement, or a member of the consolidated group of which the U.S. transferor with respect to the existing gain recognition agreement was a member on the date of the initial transfer, then any gain recognized under paragraph (c)(1)(i) of this section with respect to the new gain recognition agreement must be included in income in the taxable year during which the gain recognition event occurs.

(6) *Cross-reference.* For gain recognition agreements entered into pursuant to certain outbound asset reorganizations, see § 1.367(a)-3(e)(6).

(d) *Filing requirements*—(1) *General rule.* An initial gain recognition agreement must be timely filed in order for the U.S. transferor to avoid recognizing gain under section 367(a)(1) with respect to the transferred stock or securities by reason of the applicable exceptions provided under § 1.367(a)-3. Except as provided in paragraph (p) of this section, an initial gain recognition agreement is timely filed only if—

(i) The initial gain recognition agreement and any other gain recognition agreement document required to be filed with the initial gain recognition agreement are included with a timely filed return of the U.S. transferor for the taxable year during which the initial transfer occurs; and

(ii) Each gain recognition agreement document identified in paragraph (d)(1)(i) of this section is completed in all material respects.

(2) *Special requirements*—(i) *New gain recognition agreement.* A new gain recognition agreement entered into under this section must be included with the timely-filed return of the U.S. transferor (as identified in the new gain rec-

ognition agreement) for the taxable year during which the disposition or event that requires the new gain recognition agreement occurs. If the new gain recognition agreement is entered into by the U.S. transferor that entered into the existing gain recognition agreement, the new gain recognition agreement is in lieu of the annual certification otherwise required for such taxable year under paragraph (g) of this section with respect to the existing gain recognition agreement.

(ii) *Multiple events within a taxable year.* Except as otherwise provided in this paragraph (d)(2)(ii), if the initial transfer and one or more dispositions or other events (even if a triggering event exception applies) that affect the gain recognition agreement entered into by the U.S. transferor with respect to the initial transfer occur within the same taxable year of such U.S. transferor, or if multiple dispositions or other events occur in a taxable year of the U.S. transferor that does not include the initial transfer, only one gain recognition agreement is required to be entered into and included with the timely-filed return of the U.S. transferor for such taxable year. The gain recognition agreement must describe the initial transfer and/or each disposition or other event that affects the gain recognition agreement (even if a triggering event exception applies). This paragraph does not apply, however, if any such disposition or other event requires a new gain recognition agreement to be entered into by a United States person other than the U.S. transferor with respect to the initial transfer or that entered into the existing gain recognition agreement, as applicable.

(3) *Common parent as agent for U.S. transferor.* If the U.S. transferor is a member but not the common parent of a consolidated group, the common parent of the consolidated group is the agent for the U.S. transferor under § 1.1502-77(a)(1). Thus, the common parent must file the gain recognition agreement on behalf of the U.S. transferor. References in this section to the timely-filed return of the U.S. transferor include the timely-filed return of the consolidated group of which the

U.S. transferor is a member, as applicable.

(e) *Signatory*—(1) *General rule.* The gain recognition agreement must be signed under penalties of perjury by an agent of the U.S. transferor that is authorized to sign under a general or specific power of attorney, or by the appropriate party based on the category of the U.S. transferor described in this paragraph (e)(1).

(i) If the U.S. transferor is a corporation but not a member of a consolidated group, a responsible officer of the U.S. transferor. If the U.S. transferor is a member of a consolidated group, a responsible officer of the common parent of the consolidated group.

(ii) If the U.S. transferor is an individual, the individual.

(iii) If the U.S. transferor is a trust or estate, a trustee, executor, or equivalent fiduciary of the U.S. transferor.

(iv) In a bankruptcy case under title 11, United States Code, a debtor in possession or trustee.

(2) *Signature requirement.* The inclusion of an unsigned copy of the gain recognition agreement with the timely-filed return of the U.S. transferor shall satisfy the signature requirement of paragraph (e)(1) of this section if the U.S. transferor retains the original signed gain recognition agreement in the manner specified by §1.6001-1(e).

(f) *Extension of period of limitations on assessments of tax*—(1) *General rule.* In connection with the filing of a gain recognition agreement, the U.S. transferor must extend the period of limitations on assessments of tax with respect to the gain realized but not recognized on the initial transfer through the close of the eighth full taxable year following the taxable year during which the initial transfer occurs. The U.S. transferor extends the period of limitations by filing Form 8838 “Consent to Extend the Time to Assess Tax Under Section 367—Gain Recognition Agreement.” The Form 8838 must be signed by a person authorized to sign the gain recognition agreement under paragraph (e)(1) of this section.

(2) *New gain recognition agreement.* If a new gain recognition agreement is entered into under this section, the U.S. transferor must extend the period of limitations on assessments of tax on

the initial transfer through the close of the eighth full taxable year following the taxable year during which the initial transfer occurs, consistent with paragraph (f)(1) of this section, unless the U.S. transferor with respect to the new gain recognition agreement is the U.S. transferor with respect to the existing gain recognition agreement, or a member of the consolidated group of which the U.S. transferor with respect to the existing gain recognition agreement was a member on the date of the initial transfer.

(g) *Annual certification.* Except as provided in paragraph (d)(2)(i) of this section, the U.S. transferor must include with its timely-filed return for each of the five full taxable years following the taxable year of the initial transfer a certification (annual certification) that includes the information described in paragraphs (g)(1) through (3) of this section, as appropriate. The annual certification must be signed by a person authorized under paragraph (e)(1) of this section to sign the gain recognition agreement for the initial transfer. The inclusion of an unsigned copy of the annual certification with the relevant timely-filed return of the U.S. transferor shall satisfy the signature requirement of paragraph (e)(1) of this section provided the U.S. transferor retains the original signed certification in the manner specified by §1.6001-1(e).

(1) A statement of whether a gain recognition event has or has not occurred during such taxable year. If a gain recognition event has occurred during such taxable year, the annual certification must state:

(i) The amount of gain subject to the gain recognition agreement at the time of the gain recognition event;

(ii) The amount of gain recognized under the gain recognition agreement by reason of the gain recognition event; and

(iii) A calculation of the reduction to the amount of gain subject to the gain recognition agreement by reason of the gain recognition event (for example, in the case of a gain recognition event described in paragraph (n)(2) of this section).

(2) A complete description of any event occurring during such taxable year that has terminated or reduced



the amount of gain subject to the gain recognition agreement (for example, an event described in paragraph (o) of this section), including a calculation of any reduction to the amount of gain subject to the gain recognition agreement.

(3) A statement describing any disposition of assets of the transferred corporation during the taxable year not in the ordinary course of business.

(h) *Use of security.* The U.S. transferor may be required to furnish a bond or other security that satisfies the requirements of §301.7101-1 if the Area Director, Field Examination, Small Business/Self Employed or the Director of Field Operations, Large and Mid-Size Business (Director) determines that such security is necessary to ensure the payment of any tax on the gain realized, but not recognized, upon the initial transfer. Such bond or security generally will be required only if the transferred stock or securities are a principal asset of the U.S. transferor and the Director has reason to believe that a disposition of the stock or securities may be contemplated.

(i) [Reserved]

(j) *Triggering events.* Except as provided in this section, if an event described in paragraphs (j)(1) through (10) of this section (triggering event) occurs during the GRA term, the U.S. transferor must recognize gain under the gain recognition agreement in accordance with paragraph (c)(1)(i) of this section. This paragraph (j) generally requires the U.S. transferor to recognize gain (and pay applicable interest with respect to any additional tax due as provided in paragraph (c)(1)(v) of this section) under the gain recognition agreement to the extent the transferred stock or securities are disposed of, directly or indirectly. This paragraph (j) also requires the U.S. transferor to recognize gain under the gain recognition agreement in certain cases where it is not appropriate for the gain recognition agreement to continue. See paragraph (k) of this section for exceptions available for certain events that would otherwise constitute triggering events under this paragraph (j). See paragraph (o) of this section for certain events that terminate or reduce the amount of gain subject to a gain recognition agreement.

(1) *Disposition of transferred stock or securities.* A complete or partial disposition of the transferred stock or securities. See paragraph (q)(2) of this section, *Example 2* for an illustration of the rule of this paragraph (j)(1).

(2) *Disposition of substantially all of the assets of the transferred corporation—(i) General rule.* Except as provided in paragraph (j)(2)(ii) of this section, a disposition in one or more related transactions of substantially all of the assets of the transferred corporation (including stock or securities in a subsidiary corporation or a partnership interest). If the transferred corporation is domestic, see paragraph (o)(4) of this section.

(ii) *Exceptions.* For purposes of paragraph (j)(2)(i) of this section, the following dispositions shall be disregarded—

(A) Dispositions of property described in section 1221(a)(1) occurring in the ordinary course of business;

(B) An exchange of stock or securities described in section 354 that is pursuant to an asset reorganization; and

(C) An exchange of stock by a corporate distributee (as defined in section 334(b)(2)) pursuant to a complete liquidation to which section 332 applies.

(3) *Disposition of certain partnership interests.* If the initial transfer occurs by reason of the transfer of a partnership interest, a complete or partial disposition of such partnership interest. See section 367(a)(4) and §1.367(a)-1(c)(3)(ii).

(4) *Disposition of stock of the transferee foreign corporation.* A complete or partial disposition of the stock of the transferee foreign corporation received by the U.S. transferor in the initial transfer. For purposes of this section, an individual U.S. transferor that loses U.S. citizenship or ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)) shall be treated as disposing of all the stock of the transferee foreign corporation received in the initial transfer as of the date before the loss of such status.

(5) *Deconsolidation.* A U.S. transferor that is a member of a consolidated group ceases to be a member of the

consolidated group, other than by reason of an acquisition of the assets of the U.S. transferor in a transaction to which section 381(a) applies, or by reason of the U.S. transferor joining another consolidated group as part of the same transaction.

(6) *Consolidation.* A U.S. transferor becomes a member of a consolidated group, including a U.S. transferor that is a member of a consolidated group and that becomes a member of another consolidated group.

(7) *Death of an individual; trust or estate ceases to exist.* A U.S. transferor that is an individual dies, or a U.S. transferor that is a trust or estate ceases to exist.

(8) *Failure to comply.* A U.S. transferor fails to comply in any material respect with any requirement of this section, or the terms of the gain recognition agreement as described in paragraph (c)(1) of this section. A failure to comply under this paragraph (j)(8) will extend the period of limitations on assessment of tax for the taxable year in which gain is required to be reported until the close of the third full taxable year ending after the date on which the U.S. transferor furnishes to the Director of Field Operations, Cross Border Activities Practice Area of Large Business & International (or any successor to the roles and responsibilities of such person) (Director) the information that should have been provided under this section. Except as provided in paragraph (p) of this section, for purposes of this paragraph (j)(8), a failure to comply includes—

(i) If there is a gain recognition event in a taxable year, a failure to report gain or pay any additional tax or interest due under the terms of the gain recognition agreement; and

(ii) A failure to file a gain recognition agreement document, other than an initial gain recognition agreement or a document required to be filed with the initial gain recognition agreement. For this purpose, there is a failure to file a gain recognition agreement document if—

(A) The gain recognition agreement document is not timely filed as required under this section, or

(B) The gain recognition agreement document is not completed in all material respects.

(9) *Gain recognition agreement filed in connection with indirect stock transfers and certain triangular asset reorganizations.* With respect to a gain recognition agreement entered into in connection with an indirect stock transfer (as defined in §1.367(a)-3(d)), or a triangular asset reorganization described in §1.367(a)-3(e)(6)(iv), an indirect disposition of the transferred stock or securities. For example, in the case of an indirect stock transfer described in §1.367(a)-3(d)(1)(iii)(A), a complete or partial disposition of the stock of the acquiring corporation.

(10) *Gain recognition agreement filed pursuant to paragraph (k)(14) of this section.* In the case of a gain recognition agreement entered into pursuant to paragraph (k)(14) of this section, in addition to any disposition or other event described in paragraphs (j)(1) through (9) of this section,—

(i) Any disposition or other event identified as a triggering event in a new gain recognition agreement as required under paragraph (k)(14)(iii) of this section; and

(ii) Any disposition or other event that is inconsistent with the principles of paragraph (k) of this section including, for example, an indirect disposition of the transferred stock or securities.

(k) *Triggering event exceptions.* Notwithstanding paragraph (j) of this section, a disposition or other event described in paragraphs (k)(1) through (14) of this section shall not constitute a triggering event. This paragraph (k) generally provides exceptions for certain dispositions that constitute non-recognition transactions but only if, immediately after the disposition, a U.S. transferor retains, as applicable, a direct or indirect interest in the transferred stock or securities, or in the assets of the transferred corporation, and a new gain recognition agreement is entered into with respect to the initial transfer in accordance with this paragraph (k). Notwithstanding the application of this paragraph (k), if a gain recognition event described under paragraphs (m) and (n) of this section occurs during the GRA term the U.S.

transferor may be required to recognize gain under the gain recognition agreement in accordance with paragraph (c)(1)(i) of this section. See paragraph (o) of this section which provides that, notwithstanding paragraph (j) of this section, certain dispositions or other events shall instead terminate or reduce the amount of gain subject to a gain recognition agreement.

(1) *Transfers of stock of the transferee foreign corporation to a corporation or partnership.* A disposition of stock of the transferee foreign corporation received in the initial transfer pursuant to an exchange to which section 351, 354 (but only in a reorganization described in section 368(a)(1)(B) that is not a triangular reorganization), 361 (but only in a divisive reorganization to which section 355 applies), or 721 applies, shall not constitute a triggering event if a new gain recognition agreement is entered into in accordance with paragraphs (k)(1)(i) through (iv) of this section, as applicable. In the case of an exchange to which section 354 applies that is pursuant to a triangular reorganization described in section 368(a)(1)(B), see paragraph (k)(14) of this section and paragraph (q)(2) of this section, *Example 4*.

(i) In the case of an exchange to which section 351 or 354 applies in which stock of a foreign acquiring corporation is received, the U.S. transferor includes with the new gain recognition agreement a statement that a complete or partial disposition of the stock of the foreign acquiring corporation received in the exchange shall constitute a triggering event. The principles of paragraph (o)(1)(i) or (ii), as appropriate, shall be applied to determine whether a subsequent complete or partial disposition of the stock of the foreign acquiring corporation received in the exchange shall instead terminate or reduce the amount of the new gain recognition agreement.

(ii) In the case of an exchange to which section 351 or 354 applies in which stock of a domestic acquiring corporation is received, the domestic acquiring corporation enters into the new gain recognition agreement, which must designate the domestic acquiring corporation as the U.S. transferor for purposes of this section. For an illus-

tration of the rule provided by this paragraph (k)(1)(ii), see paragraph (q)(2) of this section, *Example 3*.

(iii) In the case of a section 361 exchange that is pursuant to a divisive reorganization to which section 355 applies and in which stock of a domestic corporation (domestic controlled corporation) is received, the domestic controlled corporation enters into the new gain recognition agreement, which must designate the domestic controlled corporation as the U.S. transferor for purposes of this section. For an illustration of the rule provided by this paragraph (k)(1)(iii), see paragraph (q)(2) of this section, *Example 11*.

(iv) In the case of an exchange to which section 721 applies, the U.S. transferor includes with the new gain recognition agreement a statement that a complete or partial disposition of the partnership interest received in the exchange shall constitute a triggering event for purposes of the new gain recognition agreement.

(2) *Complete liquidation of U.S. transferor under sections 332 and 337.* A distribution by the U.S. transferor of the stock of the transferee foreign corporation received in the initial transfer to which section 337 applies, that is pursuant to a complete liquidation under section 332, shall not constitute a triggering event if the corporate distributee (as defined in section 334(b)(2)) is a domestic corporation (domestic corporate distributee) and the domestic corporate distributee enters into a new gain recognition agreement. The new gain recognition agreement must designate the domestic corporate distributee as the U.S. transferor for purposes of this section.

(3) *Transfers of transferred stock or securities to a corporation or partnership.* A disposition of the transferred stock or securities pursuant to an exchange to which section 351, 354 (but only in a reorganization described in section 368(a)(1)(B)), or 721 applies, shall not constitute a triggering event if the U.S. transferor enters in to a new gain recognition agreement that provides that the dispositions described in paragraphs (k)(3)(i) and (ii) of this section shall constitute triggering events for purposes of the new gain recognition agreement.

(i) A complete or partial disposition of the stock, securities, or partnership interest (as applicable) received in exchange for the transferred stock or securities.

(ii) Any other event that is inconsistent with the principles of this paragraph (k), including the indirect disposition of the transferred stock or securities.

(4) *Transfers of substantially all of the assets of the transferred corporation.* A disposition of substantially all of the assets of the transferred corporation pursuant to an exchange to which section 351, 354 (but only in a reorganization described in section 368(a)(1)(B)), or 721 applies, shall not constitute a triggering event if the U.S. transferor enters into a new gain recognition agreement that provides that a complete or partial disposition of the stock, securities, or partnership interest (as applicable) received in exchange for the assets shall constitute a triggering event for purposes of the new gain recognition agreement.

(5) *Recapitalizations and section 1036 exchanges.* A complete or partial disposition of the transferred stock or securities, or of the stock of the transferee foreign corporation received in the initial transfer, pursuant to a reorganization described under section 368(a)(1)(E), or pursuant to a transaction to which section 1036 applies, shall not constitute a triggering event if the U.S. transferor enters into a new gain recognition agreement.

(6) *Certain asset reorganizations—(i) Stock of transferee foreign corporation.* If stock of the transferee foreign corporation received in the initial transfer is transferred to a domestic acquiring corporation in a section 361 exchange that is pursuant to an asset reorganization, the exchanges made pursuant to the asset reorganization shall not constitute triggering events if the domestic acquiring corporation enters into a new gain recognition agreement that designates the domestic acquiring corporation as the U.S. transferor for purposes of this section. For an illustration of the rule provided by this paragraph (k)(6), see paragraph (q)(2) of this section, *Example 5*. If the acquiring corporation is foreign, see paragraph

(k)(14) of this section and paragraph (q)(2) of this section, *Example 6*.

(ii) *Transferred stock or securities.* If the transferred stock or securities are transferred to a foreign acquiring corporation in a section 361 exchange that is pursuant to an asset reorganization, the exchanges made pursuant to the asset reorganization shall not constitute triggering events if the U.S. transferor enters into a new gain recognition agreement that designates the foreign acquiring corporation as the transferee foreign corporation for purposes of this section. For an illustration of the rule provided by this paragraph, see paragraph (q)(2) of this section, *Example 7*. If the transfer is to a domestic acquiring corporation, or is pursuant to a triangular asset reorganization, see paragraph (k)(14) or (o)(5) of this section.

(iii) *Assets of transferred corporation.* If substantially all of the assets of the transferred corporation are transferred to a foreign or domestic acquiring corporation in a section 361 exchange that is pursuant to an asset reorganization, the exchanges made pursuant to the asset reorganization shall not constitute triggering events if the U.S. transferor enters into a new gain recognition agreement that, unless the acquiring corporation is the transferee foreign corporation, designates the acquiring corporation as the transferred corporation for purposes of this section. Only the assets of the transferred corporation received by the acquiring corporation shall be treated as assets of the transferred corporation for purposes of this section (for example, only such assets will be taken into account for purposes of paragraph (j)(2) of this section). For an illustration of the rule provided by this paragraph, see paragraph (q)(2) of this section, *Example 8*. If the transferred corporation is domestic, see section 367(a)(1) and (a)(5), and paragraph (o)(4) of this section. If the transfer is pursuant to a triangular asset reorganization, see paragraph (k)(14) of this section.

(7) *Certain triangular reorganizations—(i) Transferee foreign corporation.* If substantially all of the assets of the transferee foreign corporation are transferred to a foreign acquiring corporation in a section 361 exchange that is

pursuant to a triangular asset reorganization, the exchanges made pursuant to the reorganization shall not constitute triggering events if a new gain recognition agreement is entered into in accordance with paragraphs (k)(7)(i)(A) through (C) of this section. If the acquiring corporation is domestic, see paragraph (k)(14) of this section. For rules that apply to gain recognition agreements entered into as a result of an indirect stock transfer, see § 1.367(a)-3(d)(2)(iv) and paragraph (j)(9) of this section.

(A) If P is foreign, the new gain recognition agreement designates P as the transferee foreign corporation and includes a statement that the U.S. transferor agrees to treat a complete or partial disposition of the S stock held by P as a triggering event.

(B) Except as provided in paragraph (k)(7)(i)(C) of this section, if P is domestic, P enters into the new gain recognition agreement that designates P as the U.S. transferor and S as the transferee foreign corporation.

(C) If the triangular asset reorganization is described in section 368(a)(1)(A) by reason of section 368(a)(2)(E) and the transferee foreign corporation is the merged corporation, the U.S. transferor enters into the new gain recognition agreement and designates the surviving corporation as the transferee foreign corporation.

(ii) *Transferred corporation.* If substantially all of the assets of the transferred corporation are transferred in a section 361 exchange pursuant to a triangular asset reorganization, the exchanges made pursuant to the reorganization shall not constitute triggering events if the U.S. transferor enters into a new gain recognition agreement in accordance with paragraph (k)(7)(ii)(A) of this section and, as applicable, paragraph (k)(7)(ii)(B) or (C) of this section.

(A) The new gain recognition agreement includes a statement that the U.S. transferor agrees to treat a complete or partial disposition of the P stock received in the reorganization as a triggering event.

(B) If the triangular asset reorganization is described in section 368(a)(1)(C), or section 368(a)(1)(A) or (G) by reason of section 368(a)(2)(D), the new gain recognition agreement includes a

statement that the U.S. transferor agrees to treat a complete or partial disposition of the S stock held by P as a triggering event.

(C) If the triangular asset reorganization is described in section 368(a)(1)(A) by reason of section 368(a)(2)(E) and the transferred corporation is the merged corporation, the new gain recognition agreement includes a statement that the U.S. transferor agrees to treat a complete or partial disposition of the stock of the surviving corporation as a triggering event.

(8) *Complete liquidation of transferred corporation.* A distribution of substantially all of the assets of the transferred corporation to which section 337 applies, and the related exchange of the transferred stock to which section 332 applies, shall not constitute triggering events, if the U.S. transferor enters into a new gain recognition agreement. If the transferred corporation is domestic, see § 1.367(e)-2 and paragraph (o)(4) of this section. See paragraph (q)(2) of this section, *Example 9* for an illustration of the rules provided in this paragraph (k)(8).

(9) *Death of U.S. transferor.* The death of a U.S. transferor shall not constitute a triggering event if the person winding up the affairs of the U.S. transferor—

(i) Retains sufficient assets of the U.S. transferor to satisfy any possible Federal tax liability of the U.S. transferor under the gain recognition agreement for the duration of the extended period of limitations on assessments of tax on the gain realized but not recognized in the initial transfer;

(ii) Provides security as required under paragraph (h) of this section for any possible Federal tax liability of the U.S. transferor under the gain recognition agreement; or

(iii) Obtains a ruling from the Internal Revenue Service providing for one or more successors to the U.S. transferor under the gain recognition agreement.

(10) *Deconsolidation.* A deconsolidation of the U.S. transferor shall not constitute a triggering event if the U.S. transferor enters into a new gain recognition agreement.

(11) *Consolidation.* A consolidation of the U.S. transferor shall not constitute

a triggering event if the U.S. transferor enters into a new gain recognition agreement. See paragraph (d)(3) of this section.

(12) *Intercompany transactions*—(i) *General rule.* If, pursuant to an intercompany transaction, the U.S. transferor disposes of stock of the transferee foreign corporation received in the initial transfer, this paragraph (k)(12) applies to such disposition to the extent the intercompany transaction creates an intercompany item that is not taken into account in the taxable year during which the intercompany transaction occurs. To the extent this paragraph (k)(12) applies, the disposition shall not constitute a triggering event, and the U.S. transferor shall remain subject to the gain recognition agreement if the conditions of paragraphs (k)(12)(i)(A) and (B) of this section are satisfied. To the extent the intercompany transaction does not create an intercompany item see, for example, paragraph (k)(1) and paragraph (q)(2) of this section, *Example 20.* See paragraph (o)(6) of this section for the effect on a gain recognition agreement when an intercompany item from an intercompany transaction to which this paragraph (k)(12)(i) applies is taken into account.

(A) At the time of the disposition, the basis of the stock of the transferee foreign corporation received in the initial transfer that is disposed of in the intercompany transaction is not greater than the sum of the amounts described in paragraphs (k)(12)(i)(A)(1) through (3) of this section. If only a portion of the stock of the transferee foreign corporation received in the initial transfer is disposed of, then the basis of such stock shall be compared with a proportionate amount (measured by value as determined at the time of the disposition) of the amounts described in paragraph (k)(12)(i)(A)(1) through (3) of this section. To satisfy the basis condition of this paragraph (k)(12)(i)(A), the U.S. transferor may reduce the basis of the stock of the transferee foreign corporation received in the initial transfer that is disposed of in the intercompany transaction in accordance with the principles of paragraph (o)(1)(iii) of this section.

(1) The aggregate basis of the transferred stock or securities at the time of the initial transfer;

(2) The amount of any increase to the basis of the transferred stock or securities by reason of gain recognized by the U.S. transferor on the initial transfer; and

(3) The amount of any increase to the basis of the stock disposed of by reason of an income inclusion by the U.S. transferor with respect to such stock (for example, pursuant to section 961(a)).

(B) The annual certification filed with respect to the existing gain recognition agreement for the taxable year during which the intercompany transaction occurs includes a complete description of the intercompany transaction and a schedule illustrating how the basis condition of paragraph (k)(12)(i)(A) of this section is satisfied.

(i) *Certain dispositions following intercompany transaction.* A subsequent disposition of stock of the transferee foreign corporation that is transferred in an intercompany transaction to which the exception provided by paragraph (k)(12)(i) of this section applies shall not constitute a triggering event if—

(A) The stock is transferred to a member of the consolidated group that includes the U.S. transferor immediately after the disposition, and

(B) The annual certification filed with respect to the existing gain recognition agreement for the taxable year during which the subsequent disposition occurs includes a complete description of the disposition.

(13) *Deemed asset sales pursuant to section 338(g) elections.* A deemed sale of the assets of the transferred corporation or the transferee foreign corporation as a result of an election under section 338(g) shall not constitute a triggering event. This paragraph does not apply to the sale of the stock of the target corporation (within the meaning of section 338(d)(2)) with respect to which such election is made.

(14) *Other dispositions or events.* A disposition or other event that would constitute a triggering event, without regard to this paragraph (k)(14), shall not constitute a triggering event if the conditions of paragraph (k)(14)(i)

through (iii) of this section, as applicable, are satisfied. See paragraph (q)(2), *Examples 4, 6, 10, 12, 17, 21, and 23* of this section for illustrations of the rules provided by this paragraph (k)(14).

(i) The disposition qualifies as a non-recognition transaction.

(ii) Immediately after the disposition or other event, a U.S. transferor retains a direct or indirect interest in the transferred stock or securities or, as applicable, in substantially all of the assets of the transferred corporation (for example, in a case where the transferred corporation has been liquidated pursuant to section 332). If, as a result of the disposition or other event, a foreign corporation acquires the transferred stock or securities or, as applicable, substantially all the assets of the transferred corporation, the condition of this paragraph (k)(14)(ii) shall be satisfied only if the U.S. transferor owns at least five percent (applying the attribution rules of section 318, as modified by section 958(b)) of the total voting power and the total value of the outstanding stock of such foreign corporation.

(iii) A new gain recognition agreement is entered into by the U.S. transferor described in paragraph (k)(14)(ii) of this section that includes—

(A) An explanation of why this paragraph (k)(14) applies to the disposition or other event; and

(B) A description of each subsequent disposition or other event that would constitute a triggering event, other than those described in paragraph (j) of this section, with respect to the new gain recognition agreement based on the principles of paragraphs (j) and (k) of this section including, for example, an indirect disposition of the transferred stock or securities.

(1) [Reserved]

(m) *Receipt of boot in nonrecognition transactions*—(1) *Dispositions of transferred stock or securities.* Notwithstanding paragraph (k) of this section, if gain is required to be recognized (not including any gain that would be treated as a dividend under section 356(a)(2)) in connection with a disposition of the transferred stock or securities to which an exception under paragraph (k) of this section otherwise applies (triggering event exception), the U.S. trans-

feror shall recognize gain under paragraph (c)(1)(i) of this section equal to the amount of gain required to be recognized in connection with the disposition, but not in excess of the amount of gain subject to the gain recognition agreement. For purposes of this paragraph (m)(1), the amount of gain required to be recognized in connection with the disposition shall be determined before taking into account any increase to the basis of the transferred stock or securities under paragraph (c)(4)(ii) of this section. See paragraph (q)(2) of this section, *Example 13*, for an illustration of the rule provided by this paragraph (m)(1).

(2) *Dispositions of assets of transferred corporation.* If gain is required to be recognized (not including any gain that would be treated as a dividend under section 356(a)(2)) in connection with a disposition of substantially all of the assets of the transferred corporation to which a triggering event exception otherwise applies, the U.S. transferor shall recognize gain under paragraph (c)(1)(i) of this section equal to the amount of gain required to be recognized in connection with the disposition, but not in excess of the amount of gain subject to the gain recognition agreement.

(n) *Special rules for distributions with respect to stock*—(1) *Certain dividend equivalent redemptions treated as dispositions.* A redemption of the transferred stock or of stock of the transferee foreign corporation received in the initial transfer that is treated by reason of section 302(d) as a distribution of property to which section 301 applies shall constitute a disposition for purposes of this section unless the U.S. transferor enters into a new gain recognition agreement that includes appropriate provisions to account for the redemption. For an illustration of the rule of this paragraph (n)(1), see paragraph (q)(2) of this section, *Example 14*.

(2) *Gain recognized under section 301(c)(3).* If gain is required to be recognized under section 301(c)(3) with respect to the transferred stock, the U.S. transferor shall recognize gain under the gain recognition agreement in accordance with paragraph (c)(1)(i) of this section in an amount equal to the gain required to be recognized under section 301(c)(3), but not in excess of

the amount of gain subject to the gain recognition agreement. For this purpose, the amount of gain required to be recognized under section 301(c)(3) shall be determined before taking into account any increase in the basis of the transferred stock under paragraph (c)(4)(ii) of this section.

(o) *Dispositions or other events that terminate or reduce the amount of gain subject to the gain recognition agreement.* Notwithstanding paragraph (j) of this section, the following dispositions or other events shall not constitute triggering events but instead shall terminate or reduce the amount of gain subject to the gain recognition agreement.

(1) *Taxable disposition of stock of the transferee foreign corporation—(i) Complete disposition.* Except as otherwise provided in this paragraph (o)(1)(i), if the U.S. transferor disposes of all the stock of the transferee foreign corporation received in the initial transfer in a transaction in which all gain realized is recognized and included in taxable income during the taxable year of the disposition, the gain recognition agreement shall terminate without further effect if, at the time of the disposition, the aggregate basis of such stock is not greater than the sum of the amounts described in paragraphs (o)(1)(i)(A) through (C) of this section. This paragraph shall not apply to a disposition of stock of the transferee foreign corporation pursuant to an intercompany transaction to which paragraph (k)(12) of this section applies. This paragraph shall also not apply to an individual U.S. transferor that loses U.S. citizenship or ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)).

(A) The aggregate basis of the transferred stock or securities at the time of the initial transfer;

(B) The amount of any increase to the basis of the transferred stock or securities by reason of gain recognized by the U.S. transferor on the initial transfer; and

(C) The amount of any increase to the basis of the stock disposed of by reason of an income inclusion by the U.S. transferor with respect to such stock (for example, pursuant to section 961(a)).

(ii) *Partial dispositions.* A partial disposition by the U.S. transferor of the stock of the transferee foreign corporation received in the initial transfer in a transaction otherwise described in paragraph (o)(1)(i) of this section shall reduce the amount of gain subject to the gain recognition agreement based on the relative fair market value of the stock disposed of (measured at the time of the disposition) compared to the fair market value of all of the stock of the transferee foreign corporation received in the initial transfer (measured at the time of the disposition). For determining whether the basis condition of paragraph (o)(1)(i) of this section is satisfied in the case of a partial disposition, the aggregate basis of the stock disposed of is compared to a proportionate amount (based on fair market value, as measured at the time of the partial disposition) of the amounts described in paragraphs (o)(1)(i)(A) through (C) of this section. For an illustration of the rules of this paragraph (o)(1)(ii), see paragraph (q)(2), *Example 15*, of this section.

(iii) *Reduction of stock basis.* For purposes of satisfying the basis condition of paragraph (o)(1)(i) or (ii) of this section, the U.S. transferor may reduce the aggregate basis of the stock of the transferee foreign corporation received in the initial transfer, effective immediately before the disposition. For an illustration of the rules of this paragraph (o)(1)(iii), see paragraph (q)(2), *Example 16*, of this section. The U.S. transferor reduces the basis of the stock of the transferee foreign corporation by including a statement with the timely-filed return of the U.S. transferor for the taxable year in which the disposition occurs, entitled “Election to Reduce Stock Basis Under § 1.367(a)-8(o)(1)(iii)” and that includes—

(A) A description, including the date, of the disposition;

(B) A description of the stock of the transferee foreign corporation disposed of and the basis adjustments made under this paragraph (o)(1)(iii); and

(C) The fair market value of all the stock of the transferee foreign corporation held by the U.S. transferor at the time of the disposition.

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



the U.S. transferor recognizes gain in connection with a complete or partial disposition of stock of the transferee foreign corporation received in the initial transfer that is described in paragraph (k) of this section, and the basis condition of paragraph (o)(1)(i) or (ii) of this section, as applicable, is satisfied with the respect to such disposition, the amount of gain subject to the new gain recognition agreement filed under paragraph (k) of this section as a result of such disposition shall equal the amount of gain subject to the existing gain recognition agreement reduced by the amount of gain recognized by the U.S. transferor on the disposition. If the U.S. transferor recognizes gain in connection with a complete or partial disposition of the stock of the transferee foreign corporation received in the initial transfer that is described in paragraph (k) of this section, and the condition of paragraph (o)(1)(i) or (ii) of this section, as applicable, is satisfied with the respect to the disposition, but a new gain recognition agreement is not filed with respect to such disposition so that a triggering event exception does not apply to the disposition, the amount of gain required to be recognized by the U.S. transferor under the existing gain recognition agreement shall be reduced by the amount of the gain recognized on the disposition.

(3) *Gain recognized under section 301(c)(3).* If the U.S. transferor recognizes gain under section 301(c)(3) with respect to the stock of the transferee foreign corporation received in the initial transfer, the amount of gain subject to the gain recognition agreement shall be reduced by the amount of such recognized gain.

(4) *Dispositions of substantially all of the assets of a domestic transferred corporation.* Except as otherwise provided in this paragraph (o)(4), the gain recognition agreement shall terminate without further effect if substantially all of the assets of the transferred corporation are disposed of in a transaction in which all gain realized is recognized and included in taxable income during the taxable year of the disposition, but only if, at the time of the initial transfer, the U.S. transferor owned stock in the transferred corporation satisfying the requirements of section

1504(a)(2) and the U.S. transferor and the transferred corporation were members of the same consolidated group. If the initial transfer was part of an indirect stock transfer, the gain recognition agreement shall terminate without further effect if substantially all of the assets of the transferred corporation (taking into account § 1.367(a)-3(d)(2)(v)) are disposed of in a transaction in which all gain realized is recognized and included in taxable income during the taxable year of the disposition, but only if at the time of the initial transfer the U.S. transferor owned stock in the transferred corporation satisfying the requirements of section 1504(a)(2) (for example, in the case of a reorganization described in section 368(a)(1)(A) by reason of section 368(a)(2)(E)) and the U.S. transferor and the transferred corporation were members of the same consolidated group.

(5) *Certain distributions or transfers of transferred stock or securities to U.S. persons.* To the extent a distribution or transfer of the transferred stock or securities satisfies the conditions of paragraphs (o)(5)(i) through (iii) of this section, the gain recognition agreement shall terminate without further effect, or the amount of gain subject to the gain recognition agreement shall be reduced, as appropriate.

(i) *Distributions or transfers described in section 337, 355, or 361.* The transferred stock or securities are distributed or transferred pursuant to a transaction described in paragraph (o)(5)(i)(A) through (D) of this section, as appropriate.

(A) A distribution described in section 337 that is pursuant to a complete liquidation described in section 332. See paragraph (q)(2) of this section, *Example 18*, for an illustration of the rule provided by this paragraph (o)(5)(i)(A).

(B) A distribution to which section 355 applies. See paragraph (q)(2) of this section, *Example 19*, for an illustration of the rule provided by this paragraph (o)(5)(i)(B).

(C) A section 361 exchange that is pursuant to an asset reorganization. See paragraph (q)(2) of this section, *Example 22*, for an illustration of the rule provided by this paragraph (o)(5)(i)(C).

(D) A distribution to which section 361(c) applies that is pursuant to an

asset reorganization. See paragraph (q)(2) of this section, *Example 22*, for an illustration of the rule provided by this paragraph (o)(5)(i)(D).

(ii) *Qualified recipient.* The recipient of the transferred stock or securities in the relevant transaction described in paragraph (o)(5)(i) of this section (qualified recipient) is—

(A) The U.S. transferor;

(B) A member of the consolidated group that includes the U.S. transferor immediately after the transaction; or

(C) An individual that is a United States person.

(iii) *Basis requirement*—(A) *General rule.* Immediately after the relevant transaction described in paragraph (o)(5)(i) of this section, the aggregate basis of the transferred stock or securities received by the qualified recipient is not greater than the aggregate basis of such stock or securities at the time of the initial transfer (as adjusted for gain recognized by the U.S. transferor on the initial transfer attributable to such stock or securities). For this purpose, the basis of the transferred stock in the hands of the qualified recipient shall be determined without regard to any basis attributable to income inclusions with respect to the stock (for example, under section 961(a)). In the case of a distribution to which section 355 applies, any adjustments to basis under §1.367(b)-5(c) shall be made before determining whether the basis condition of this paragraph is satisfied.

(B) *Election to reduce basis in transferred stock or securities.* If the basis condition of paragraph (o)(5)(iii)(A) of this section is not satisfied, each qualified recipient may reduce the basis of the transferred stock or securities received in the transaction to the extent necessary to satisfy the basis condition. A qualified recipient reduces the basis of the transferred stock or securities by including a statement with its timely-filed return for the taxable year during which the distribution or transfer occurs entitled “Election to Reduce Stock Basis Under §1.367(a)-8(o)(5)(iii)(B)” and that includes—

(1) A complete description and the date of the distribution or transfer;

(2) The fair market value of the transferred stock or securities received

by the qualified recipient in the transaction; and

(3) The basis of the transferred stock or securities received by the qualified recipient immediately before and after the basis reduction.

(6) *Dispositions or other event following certain intercompany transactions.* If, subsequent to an intercompany transaction to which paragraph (k)(12) of this section applies, a disposition or other event occurs that requires the U.S. transferor to take into account the intercompany item related to the intercompany transaction (under the provisions of §1.1502-13), the gain recognition agreement shall terminate without further effect or the amount of gain subject to the gain recognition agreement shall be reduced based on the principles of paragraph (o)(1)(i) or (ii) of this section, as appropriate. For an illustration of the rules of this paragraph (o)(6), see paragraph (q)(2) of this section, *Example 20*.

(7) *Expropriations under foreign law.* The amount of gain subject to the gain recognition agreement shall be reduced to the extent the stock or securities of the transferee foreign corporation received in the initial transfer, the transferred stock or securities, or substantially all the assets of the transferred corporation, are expropriated, seized, or subjected to a similar taking of such property by the government of a foreign country, any political subdivision thereof, or any agency or instrumentality of the foregoing. Principles similar to those of paragraph (o)(1)(i) or (o)(1)(ii) of this paragraph, as relevant, shall be applied to determine the amount of the reduction.

(p) *Relief for certain failures to file or failures to comply that are not willful*—(1) *In general.* This paragraph (p) provides relief if there is a failure to file an initial gain recognition agreement as required under paragraph (d)(1) of this section (failure to file), or a failure to comply that is a triggering event under paragraph (j)(8) of this section (failure to comply). A failure to file or failure to comply will be deemed not to have occurred for purposes of paragraph (d)(1) of this section or paragraph (j)(8) of this section if the U.S. transferor demonstrates that the failure was not willful using the procedure set forth in

this paragraph (p). 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 file or failure to comply was willful will be determined by the Director (as described in paragraph (j)(8) of this section) based on all the facts and circumstances. The U.S. transferor must submit a request for relief and an explanation as provided in paragraph (p)(2)(i) of this section. Although a U.S. transferor whose failure to file or failure to comply is determined not to be willful will not be subject to gain recognition under paragraph (b), (c), or (e) of § 1.367(a)-3 or paragraph (c)(1) of this section, as applicable, the U.S. transferor will be subject to a penalty under section 6038B if the U.S. transferor fails to satisfy the reporting requirements under that section and does not demonstrate that the failure was due to reasonable cause and not willful neglect. See § 1.6038B-1(b)(2) and (f). The determination of whether the failure to file or failure to comply was willful under this section has no effect on any request for relief made under § 1.6038B-1(f).

(2) *Procedures for establishing that a failure to file or failure to comply was not willful*—(i) *Time and manner of submission*. A U.S. transferor's statement that a failure to file or failure to comply was not willful will be considered only if, promptly after the U.S. transferor becomes aware of the failure, an amended return is filed for the taxable year to which the failure relates that includes the information that should have been included with the original return for such taxable year or that otherwise complies with the rules of this section, and that includes a written statement explaining the reasons for the failure to file or failure to comply. The U.S. transferor must file, with the amended return, a Form 8838 extending the period of limitations on assessment of tax with respect to the gain realized but not recognized on the initial transfer to the later of: The close of the eighth full taxable year following the taxable year during which the initial transfer occurred

(date one); or the close of the third full taxable year ending after the date on which the required information is provided to the Director (date two). However, the U.S. transferor is not required to file a Form 8838 with the amended return if both date one is later than date two and a Form 8838 was previously filed extending the period of limitations on assessment of tax with respect to the gain realized but not recognized on the initial transfer to date one. If a Form 8838 is not required to be filed with the amended return pursuant to the previous sentence, a copy of the previously filed Form 8838 must be filed with the amended return. The amended return and either a Form 8838 or a copy of the previously filed Form 8838, as the case may be, must be filed with the Internal Revenue Service at the location where the U.S. transferor filed its original return. The U.S. transferor may submit a request for relief from the penalty under section 6038B as part of the same submission. See § 1.6038B-1(f).

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

(3) *Examples*. The following examples illustrate the application of this paragraph (p). All of the examples are based solely on the following facts and any additional facts stated in the particular example. DC, a domestic corporation, wholly owns FS and FA, each a foreign corporation. In Year 1, pursuant to a transaction qualifying both as an exchange under section 351 and a reorganization under section 368(a)(1)(B), DC transferred all the FS stock to FA solely in exchange for voting stock of

FA (FS Transfer). The fair market value of the FS stock exceeded DC's tax basis in the stock at the time of the FS transfer. Absent the application of section 367 to the transaction, DC's exchange of the FS stock for the stock of FA qualified as a tax-free exchange under sections 351(a) and section 354. Immediately after the transaction, both FA and FS were controlled for foreign corporations (as defined in section 957). Furthermore, DC was a section 1248 shareholder (as defined in §1.367(b)-2(b)) with respect to FA and FS, and a 5-percent shareholder with respect to FA for purposes of §1.367(a)-3(b)(ii). Thus, DC was required to recognize gain under section 367(a)(1) by reason of the FS Transfer unless DC timely filed an initial gain recognition agreement (GRA) as required by paragraph (d)(1) of this section and complies in all material respects with the requirements of this section throughout the term of the GRA. The application of section 6038B is not addressed in these examples. DC may be subject to a penalty under section 6038B even if DC demonstrates under this section that a failure to file or failure to comply was not willful. See §1.6038B-1(b) and (f) for the application of section 6038B.

*Example 1. Taxpayer failed to file a GRA due to accidental oversight.* (i) *Facts.* DC filed its tax return for the year of the FS Transfer, reporting no gain with respect to the exchange of the FS stock. DC, through its tax department, was aware of the requirement to file a GRA in order for DC to avoid recognizing gain with respect to the FS Transfer under section 367(a)(1), and had the experience and competency to properly prepare the GRA. DC had filed many GRAs over the years and had never failed to timely file a GRA. However, although DC prepared the GRA with respect to the FS Transfer, it was not filed with DC's tax return for the year of the FS Transfer due to an accidental oversight. During the preparation of the following year's tax return, DC discovered that the GRA was not filed. DC filed an amended return to file the GRA and complied with the procedures set forth under paragraph (p)(2) of this section promptly after it became aware of the failure.

(ii) *Result.* Because DC failed to file a GRA with its timely filed tax return for the year of the FS Transfer, there is a failure to timely file the GRA as required by paragraph (d)(1) of this section. However, based on the facts of this *Example 1*, including that the failure to timely file the GRA was an iso-

lated and accidental oversight, the failure to timely file is not a willful failure to file. Accordingly, the timely filed requirement of paragraph (d)(1) of this section is considered to be satisfied, and DC is not required to recognize the gain realized on the FS Transfer under section 367(a)(1).

*Example 2. Taxpayer's course of conduct is taken into account in determination.* (i) *Facts.* DC filed its tax return for the year of the FS Transfer, reporting no gain with respect to the exchange of the FS stock, but failed to file a GRA. DC, through its tax department, was aware of the requirement to file a GRA in order for DC to avoid recognizing gain with respect to the FS Transfer under section 367(a)(1). DC had not consistently and in a timely manner filed GRAs in the past, and also had an established history of failing to timely file other tax and information returns for which it was subject to penalties. In a year subsequent to Year 1, DC transferred stock of another foreign subsidiary with respect to which DC had a built-in gain (FS2) to FA in a transaction that qualified as both a reorganization under section 368(a)(1)(B) and an exchange described under section 351 (FS2 Transfer). DC was required to recognize gain on the FS2 Transfer under section 367(a)(1) unless DC timely filed a GRA as required by paragraph (d)(1) of this section and complied with the requirements of this section during the term of the GRA. DC reported no gain on the FS2 Transfer on its tax return, but failed to file a GRA. At the time of the FS2 Transfer, DC was already aware of its failure to file the GRA required for the prior FS Transfer, but had not implemented any safeguards to ensure that it would timely file GRAs for future transactions. DC filed an amended return to file the GRA for the FS2 Transfer and complied with the procedures set forth under paragraph (p)(2) of this section promptly after it became aware of the failure. DC asserts that its failure to timely file a GRA with respect to the FS2 Transfer was due to an isolated oversight similar to the one that occurred with respect to the FS Transfer. At issue is DC's failure to timely file a GRA for the FS2 Transfer.

(ii) *Result.* Because DC failed to file a GRA with its timely filed tax return for the year of the FS2 Transfer, there is a failure to timely file the GRA as required by paragraph (d)(1) of this section. DC's course of conduct is taken into account in determining whether its failure to timely file a GRA for the FS2 Transfer was willful. Based on the facts of this *Example 2*, including DC's history of failing to file required tax and information returns in general and GRAs in particular, and its failure to implement safeguards to ensure that it would timely file GRAs, the failure to timely file a GRA with respect to the FS2 Transfer rises to the level of a willful failure to timely file. Accordingly, DC is ineligible for relief under paragraph (p) of

this section, the GRA is not considered timely filed for purposes of paragraph (d)(1) of this section, and DC must recognize the full amount of the gain realized on the FS2 Transfer.

*Example 3. GRA not completed in all material respects.* (i) *Facts.* DC timely filed its tax return for the year of the FS Transfer, reporting no gain with respect to the exchange of the FS stock. DC was aware of the requirement to file a GRA to avoid recognizing gain under section 367(a)(1), including the requirement to provide the basis and fair market value of the transferred stock. However, DC filed a purported GRA that did not contain the fair market value of the FS stock. Instead, the GRA was filed with the statement that the fair market value information was “available upon request.” Other than the omission of the fair market value of the FS stock, the GRA contained all other information required by this section.

(ii) *Result.* Because DC omitted the fair market value of the FS stock from the GRA, the GRA was not completed in all material respects. Accordingly, there is a failure to timely file the GRA. Furthermore, because DC knowingly omitted such information, DC’s omission is a willful failure to timely file a GRA. Accordingly, DC is ineligible for relief under paragraph (p) of this section, the GRA is not considered timely filed for purposes of paragraph (d)(1) of this section, and DC must recognize the full amount of the gain realized on the FS Transfer. The same result would arise if DC had included the fair market value of the FS stock, but knowingly omitted its tax basis from the GRA.

*Example 4. Taxpayer knew of GRA filing requirement, but intentionally chose not to file.* (i) *Facts.* When DC filed its tax return for the tax year of the FS Transfer, it was aware of the requirement to file a GRA to avoid recognizing gain under section 367(a)(1). However, because DC anticipated selling Business A in the following tax year, which was expected to produce a capital loss that could be carried back to fully offset the gain recognized on the FS Transfer, DC intentionally chose not to file a GRA. DC recognized the gain from the FS Transfer under section 367(a)(1) and reported the gain on its timely filed tax return. At the end of the following year, a large class action lawsuit was filed against Business A and, consequently, DC was unable to sell the business. As a result, DC did not realize the expected capital loss, and it was not able to offset the gain from the FS Transfer. DC now seeks to file a GRA for the FS Transfer.

(ii) *Result.* Because DC failed to file a GRA with its timely filed tax return for the year of the FS Transfer, there is a failure to timely file the GRA as required by paragraph (d)(1) of this section. Furthermore, because DC intentionally chose not to file a GRA for the FS Transfer, its actions constitute a

willful failure to timely file a GRA. Accordingly, DC is ineligible for relief under paragraph (p) of this section, the GRA is not considered timely filed for purposes of paragraph (d)(1) of this section, and DC must recognize the full amount of the gain realized on the FS Transfer in Year 1.

(q) *Examples—(1) Presumed facts and references.* For purposes of the examples in paragraph (q)(2) of this section, and except where otherwise indicated, the following is presumed.

(i) UST, USP, and DC are domestic corporations that each use a calendar taxable year.

(ii) USP wholly owns UST and is the common parent of the consolidated group of which UST is a member.

(iii) TFC, TFD, F1, and FA are foreign corporations.

(iv) UST wholly owns TFD.

(v) In a section 351 exchange, UST transfers all of the stock of TFD (TFD stock) to TFC in exchange solely for stock of TFC (the initial transfer).

(vi) Pursuant to §1.367(a)-3(b)(1)(ii) and this section, UST enters into a gain recognition agreement in connection with the initial transfer and makes the election described under paragraph (c)(2)(vi) of this section with respect to the gain recognition agreement.

(vii) As applicable, the section 1248 amount (within the meaning of §1.367(b)-2(c)) or all earnings and profits amount (within the meaning of §1.367(b)-2(d)) attributable to the stock of a foreign corporation is zero.

(viii) All transactions are respected under general principles of tax law, including the step transaction doctrine.

(ix) References to a U.S. transferor entering into a gain recognition agreement mean, where applicable, that the common parent of the consolidated group of which the U.S. transferor is a member has filed the gain recognition agreement on behalf of the U.S. transferor in accordance with paragraph (d)(3) of this section.

(x) Taxable years during the GRA term are referred to, for example, as year 1 and year 2.

(2) *Examples.* The following examples illustrate the application of the rules of this section.

*Example 1. Basis adjustments from gain recognized under the gain recognition agreement.* (i)

*Facts.* TFC wholly owns F1. In year 3, pursuant to a section 351 exchange, TFC transfers all of the TFD stock to F1 in exchange solely for voting stock of F1. UST enters into a new gain recognition agreement with respect to the initial transfer under paragraph (k)(3) of this section, and therefore the transfer by TFC of the TFD stock to F1 is not a triggering event. Under paragraph (c)(5)(i) of this section, the existing gain recognition agreement terminates without further effect. In year 4, in an exchange to which section 721 applies, UST contributes the TFC stock received in the initial transfer to PRS, a domestic partnership, in exchange for a partnership interest. UST enters into a new gain recognition agreement with respect to the initial transfer under paragraph (k)(1) of this section, and therefore the transfer by UST of the TFC stock to PRS is not a triggering event. Under paragraph (c)(5)(i) of this section, the new gain recognition agreement filed by UST in year 3 terminates without further effect. In year 5, TFD disposes of substantially all of its assets in a transaction that constitutes a triggering event under paragraph (j)(2)(i) of this section. Under paragraph (c)(1)(i) of this section, UST recognizes the gain realized but not recognized on the initial transfer by reason of entering into the gain recognition agreement.

(ii) *Result.* Under paragraph (c)(4) of this section, the basis of the PRS interest held by UST, the TFC stock held by PRS that was received from UST in year 4, the F1 stock held by TFC that was received in exchange for the TFD stock in year 3, and the TFD stock held by F1 that was received from TFC in year 3 is increased by the amount of gain recognized by UST (but not by the additional tax or interest paid as result of such gain) with respect to the initial transfer under the gain recognition agreement. However, the basis of the assets of TFD (including the assets disposed of in year 5) is not increased as a result of the gain recognized by UST.

*Example 2. Impact of gain recognition event on computation of income.* (i) *Facts.* At the time of the initial transfer, the TFD stock has a \$50x basis, a \$100x fair market value, and a \$30x section 1248 amount. The amount of gain subject to the gain recognition agreement is \$50x. UST did not make an election under paragraph (c)(2)(vi) of this section with respect to the gain recognition agreement. In year 3, TFC disposes of the TFD stock received in the initial transfer in exchange for \$120x cash.

(ii) *Result—(A) Gain recognition without an election.* The disposition by TFC of the TFD stock in year 3 is a triggering event under paragraph (j)(1) of this section. As a result, under paragraph (c)(1)(i) of this section, UST must recognize and include in income \$50x gain under the gain recognition agreement. Under paragraph (c)(1)(iii)(A) of this section, UST must report the \$50x gain on an amend-

ed return filed for the taxable year of the initial transfer. Under paragraph (c)(1)(v) of this section, UST must pay applicable interest on any additional tax due with respect to the \$50x gain recognized. Under section 1248(a), \$30x of the gain recognized by UST under the gain recognition agreement is recharacterized as a dividend. Under paragraph (c)(4) of this section, as of the date of the initial transfer, the basis of the TFC stock received by UST in the initial transfer and the TFD stock received by TFC in the initial transfer, respectively, is increased by \$50x. After taking into account the increase to the basis of the TFD stock, TFC recognizes \$20x gain on the disposition of the TFD stock in year 3.

(B) *Gain recognition with an election.* If UST made an election under paragraph (c)(2)(vi) of this section with the gain recognition agreement filed for the initial transfer, the result would be the same as in paragraph (ii)(A) of this *Example 2*, except that UST must include in income the \$50x gain recognized under the gain recognition agreement on its tax return filed for year 3. Any additional tax due with respect to the \$50x gain and applicable interest on the additional tax due must be included with such return. The amount, if any, of the \$50x gain recognized by UST under the gain recognition agreement that is characterized as a dividend under section 1248(a) is determined in year 3.

*Example 3. Transfer of stock of the transferee foreign corporation to a domestic corporation in a section 351 exchange.* (i) *Facts.* UST wholly owns DC. In year 3, pursuant to a section 351 exchange, UST transfers all of the TFC stock received in the initial transfer to DC in an exchange solely for voting stock of DC.

(ii) *Result.* The year 3 transfer of the TFC stock by UST to DC constitutes a triggering event under paragraph (j)(4) of this section. However, the transfer shall not constitute a triggering event pursuant to paragraph (k)(1)(ii) of this section if DC enters into a new gain recognition agreement with respect to the initial transfer that designates DC as the U.S. transferor for purposes of this section. Pursuant to paragraphs (c)(4)(i) and (ii) of this section, if DC is required to recognize gain under the new gain recognition agreement, the basis of the stock of TFC and TFD would be increased by the amount of gain recognized. However, pursuant to paragraph (c)(4)(iii) of this section, no adjustment would be made to the basis of the DC voting stock received by UST in year 3 as a result of such gain recognition. Alternatively, if the conditions for the application of paragraph (k)(14) of this section are satisfied UST could instead enter into the new gain recognition agreement with respect to the initial transfer.

*Example 4. Transfer of stock of the transferee foreign corporation in a triangular section 368(a)(1)(B) reorganization.* (i) *Facts.* DC wholly owns FA. In year 3, pursuant to a triangular reorganization described in section 368(a)(1)(B), UST transfers all of the TFC stock received in the initial transfer to FA in exchange solely for 20% of the outstanding voting stock of DC. At the time of the reorganization, the TFC stock has a basis in excess of fair market value.

(ii) *Result.* (A) The transfer by UST of the TFC stock to FA is an indirect stock transfer under § 1.367(a)-3(d)(1)(iii)(B). Accordingly, to preserve nonrecognition treatment, UST must enter into a separate gain recognition agreement under this section with respect to such transfer.

(B) With respect to the gain recognition agreement filed for the initial transfer of the TFD stock, the transfer by UST of the TFC stock to FA is a triggering event under paragraph (j)(4) of this section. However, the transfer shall not constitute a triggering event if the conditions of the exception provided by paragraph (k)(14) of this section are satisfied.

(1) The condition of paragraph (k)(14)(i) of this section is satisfied because the transfer qualifies as a nonrecognition transaction (assuming UST enters into a gain recognition agreement as described in paragraph (ii)(A) of this *Example 4*).

(2) The condition of paragraph (k)(14)(ii) of this section is satisfied because immediately after the transfer DC, a domestic corporation that is eligible to be a U.S. transferor, owns at least 5% (applying the attribution rules of section 318, as modified by section 958(b)) of the total voting power and total fair market value of the outstanding stock of FA. As a result, DC is treated as retaining an indirect interest in the TFD stock immediately following the transfer.

(3) The condition of paragraph (k)(14)(iii) of this section is satisfied if DC enters into a new gain recognition agreement with respect to the initial transfer of the TFD stock that, based on the principles of paragraph (j) of this section, describes the subsequent dispositions or other events that would constitute triggering events for purposes of the new gain recognition agreement (other than the dispositions and other events described in paragraph (j) of this section). For example, a complete or partial disposition of the stock of FA would constitute a triggering event for purposes of the new gain recognition agreement.

*Example 5. Transfer of stock of the transferee foreign corporation to a domestic corporation pursuant to an asset reorganization.* (i) *Facts.* At the time of the initial transfer the TFD stock has a \$50x basis and a \$100x fair market value. Therefore, the amount of gain subject to the gain recognition agreement is \$50x. In year 3, pursuant to an asset reorganization described in section 368(a)(1)(A), UST trans-

fers its assets to DC in exchange solely for 20% of the outstanding stock of DC. UST distributes the stock of DC to USP pursuant to the plan of reorganization.

(ii) *Result.* The transfer by UST of the TFC stock to DC constitutes a triggering event under paragraph (j)(4) of this section. However, pursuant to paragraph (k)(6)(i) of this section, if DC enters into a new gain recognition agreement with respect to the initial transfer that designates DC as the U.S. transferor, the transfer shall not constitute a triggering event.

*Example 6. Transfer of stock of the transferee foreign corporation to a foreign corporation pursuant to an asset reorganization.* (i) *Facts.* The facts are the same as in *Example 5*, except the acquiring corporation in the asset reorganization is FA, and, at the time of the asset reorganization, the TFC stock transferred by UST to FA has a \$50x basis and a \$150x fair market value. All of the conditions under section 367(a)(5) and the regulations under that section are satisfied, and no adjustment is required to the basis of the FA stock received by USP in the transaction.

(ii) *Result.* (A) The transfer by UST of the TFC stock to FA is described in section 361(a) and is therefore subject to section 367(a)(5). In general, UST cannot file a gain recognition agreement with respect to such transfer, and the transfer therefore is subject to the general rule of section 367(a)(1). However, if the conditions of § 1.367(a)-3(e)(1)(i) through (iv) are satisfied, USP can enter into a gain recognition agreement with respect to the transfer to avoid the recognition of gain by UST on the transfer under section 367(a)(1). If the exception provided by paragraph (k)(14) of this section applies so that the transfer by UST of the TFC stock to FA is not a triggering event with respect to the gain recognition agreement filed for the initial transfer (discussed in paragraph (ii)(B) of this *Example 6*), the amount of gain subject to the gain recognition agreement (if entered into) with respect to the transfer by UST of the TFC stock to FA in the asset reorganization is \$100x.

(B) Under paragraph (j)(4) of this section, the transfer of the TFC stock by UST to FA is a triggering event with respect to the gain recognition agreement for the initial transfer. The exception provided by paragraph (k)(6)(i) of this section does not apply to such transfer because FA, the acquiring corporation in the asset reorganization, is foreign. However, the transfer shall not constitute a triggering event if the conditions of the exception provided by paragraph (k)(14) of this section are satisfied.

(1) The condition of paragraph (k)(14)(i) of this section is satisfied because the transfer of the TFC stock to FA qualifies as a nonrecognition transaction (assuming USP enters into a gain recognition agreement with respect to such transfer).

(2) The condition of paragraph (k)(14)(ii) of this section is satisfied because immediately after the transfer USP, a domestic corporation that is eligible to be a U.S. transferor, owns at least 5% (applying the attribution rules of section 318, as modified by section 958(b)) of the total voting power and total fair market value of the outstanding stock of FA. As a result, USP is treated as retaining an indirect interest in the TFD stock immediately following the transfer.

(3) The condition of paragraph (k)(14)(iii) of this section is satisfied if USP enters into a new gain recognition agreement with respect to the initial transfer of the TFD stock that, based on the principles of paragraph (j) of this section, describes the subsequent dispositions or other events that would constitute triggering events for purposes of the new gain recognition agreement, other than those already provided in paragraph (j) of this section. For example, a disposition of the stock of FA would constitute such a triggering event for purposes of the new gain recognition agreement.

(iii) *Alternate facts.* Assume the same facts as in paragraph (i) of this *Example 6*, including that paragraph (k)(14) of this section applies to the year 3 reorganization so that USP enters into a new gain recognition agreement with respect to the initial transfer of the TFD stock that occurred in year 1 (GRA 1), and that under § 1.367(a)-3(e) USP enters into a separate gain recognition agreement with respect to the initial transfer of the TFC stock by UST to FA pursuant to the year 3 asset reorganization (GRA 2). Assume further that in year 4 TFC disposes of 10% of the TFD stock pursuant to a transaction that constitutes a triggering event with respect to GRA 1. The disposition of the TFD stock is not a triggering event with respect to GRA 2 because the TFD stock disposed of does not constitute substantially all the assets of TFC. Under paragraphs (j)(1) and (c)(1)(i) of this section, USP must recognize \$5x gain (10% of \$50x) under GRA 1. Under paragraph (c)(4)(i) and (ii) of this section, as of the date of the initial transfer (with respect to which GRA 1 was filed), the basis of the TFC stock and TFD stock, respectively, is increased by \$5x. Under paragraph (c)(1)(i) of this section, the amount of gain subject to GRA 1 is reduced from \$50x to \$45x. Similarly, because the transferred stock for purposes of GRA 2 is the TFC stock, the amount of gain subject to GRA 2 is reduced from \$100x to \$95x to reflect the increase to the basis of the TFC stock.

*Example 7. Transfer of transferred stock to a foreign corporation pursuant to an asset reorganization.* (i) *Facts.* UST wholly owns FA. In year 4, pursuant to a reorganization described in section 368(a)(1)(D), TFC transfers all of the TFD stock to FA in exchange solely for stock of FA. TFC distributes the FA

stock to UST pursuant to the plan of reorganization.

(ii) *Analysis.* In general, the year 4 transfer by TFC of the TFD stock to FA and the exchange by UST of the TFC stock for FA stock constitute triggering events under paragraphs (j)(1) and (4) of this section, respectively. However, under paragraph (k)(6)(ii) of this section, the transfers shall not constitute triggering events if UST enters into a new gain recognition agreement with respect to the initial transfer that designates FA as the transferee foreign corporation.

*Example 8. Transfer of substantially all the assets of the transferred corporation pursuant to an asset reorganization.* (i) *Facts.* In year 4, pursuant to an asset reorganization described in section 368(a)(1)(C), TFD transfers all of its assets to FA in exchange solely for voting stock of FA. TFD distributes the FA voting stock to TFC pursuant to the plan of reorganization.

(ii) *Analysis.* The year 4 transfer by TFD of all its assets to FA and the exchange by TFC of its TFD stock for FA voting stock pursuant to the reorganization constitute triggering events under paragraphs (j)(2) and (j)(1) of this section, respectively. However, under paragraph (k)(6)(iii) of this section, the transfers shall not constitute triggering events if UST enters into a new gain recognition agreement with respect to the initial transfer that designates FA as the transferred corporation. In addition, under paragraph (k)(6)(iii) of this section only the assets of TFD acquired by FA in the asset reorganization shall be treated as assets of the transferred corporation for purposes of the new gain recognition agreement.

*Example 9. Complete liquidation of transferred corporation into transferee foreign corporation.*

(i) *Facts.* UST does not make an election under paragraph (c)(2)(vi) of this section in connection with the gain recognition agreement entered into with respect to the initial transfer. In year 3, TFD distributes all of its assets to TFC pursuant to a complete liquidation to which sections 332 and 337 apply. Under paragraph (k)(8) of this section, UST enters into a new gain recognition agreement with respect to the initial transfer such that the liquidation is not a triggering event. Under paragraph (c)(5)(i) of this section, the new gain recognition agreement is subject to the conditions and requirements of this section to the same extent as the existing gain recognition agreement, except that the transferred stock is no longer subject to the gain recognition agreement because the transferred stock is cancelled by reason of the liquidation. In year 5 TFC disposes of substantially all of the assets received from TFD in the year 3 liquidation.

(ii) *Result.* The year 5 disposition by TFC of substantially all of the assets received from TFD in the year 3 liquidation is a triggering



event under paragraph (j)(2) of this section, and therefore UST must recognize the gain subject to the gain recognition agreement. UST must report the gain recognized on an amended return for the taxable year during which the initial transfer occurred. UST must also pay applicable interest on any additional tax due with respect to the gain recognized. Under paragraph (c)(4)(i) of this section, the basis of the TFC stock received by UST in the initial transfer is increased as of the date of the initial transfer by the amount of gain recognized under the gain recognition agreement. The basis of the assets of TFD, however, is not increased.

*Example 10. Transfer of transferred stock to foreign corporation in section 351 exchange, followed by a section 332 liquidation of the foreign corporation.* (i) *Facts.* In year 3, pursuant to a section 351 exchange, TFC transfers the TFD stock to F1, a newly formed corporation, in exchange solely for voting stock of F1. The transfer by TFC of the TFD stock to F1 is not a triggering event because UST complies with the conditions of paragraph (k)(3) of this section. In year 5, F1 distributes all of its assets to TFC in a complete liquidation to which sections 332 and 337 apply.

(ii) *Result.* The distribution of the TFD stock by F1, and the exchange of F1 stock by TFC pursuant to the year 5 liquidation of F1 constitute triggering events under paragraphs (j)(1) and (k)(3)(i) of this section, respectively. However, if paragraph (k)(14) of this section applies, neither the distribution of the TFD stock by F1, nor the exchange by TFC of the F1 stock, shall constitute a triggering event.

(A) The condition of paragraph (k)(14)(i) of this section is satisfied because the distribution of the TFD stock, and the exchange of F1 stock, both qualify as nonrecognition transactions.

(B) The condition of paragraph (k)(14)(ii) of this section is satisfied because immediately after the distribution UST, a domestic corporation that is eligible to be a U.S. transferor, owns at least 5% (applying the attribution rules of section 318, as modified by section 958(b)) of the stock of TFC. As a result, UST is treated as retaining an indirect interest in the TFD stock following the complete liquidation of F1.

(C) The condition of paragraph (k)(14)(iii) of this section is satisfied if UST enters into a new gain recognition agreement. Because after the complete liquidation of F1, UST wholly owns TFC, which wholly owns TFD, as was the case immediately after the initial transfer, UST is not required to describe, with the new gain recognition agreement, other dispositions or events that would constitute triggering events based on the principles of paragraph (j) of this section, other than the dispositions or events described in paragraph (j) of this section.

*Example 11. Disposition of stock of transferee foreign corporation pursuant to a divisive reorganization.* (i) *Facts.* In year 3, pursuant to a divisive reorganization described in section 368(a)(1)(D), UST transfers all of the TFC stock to DC, a newly-formed corporation, in exchange solely for stock of DC. UST then distributes all of the DC stock to USP in a transaction to which section 355 applies.

(ii) *Result.* The transfer of the TFC stock by UST to DC constitutes a triggering event under paragraph (j)(4) of this section. However, under paragraph (k)(1)(iii) of this section, the transfer of the TFC stock shall not constitute a triggering event if DC enters into a new gain recognition agreement that designates DC as the U.S. transferor for purposes of this section.

(iii) *Alternate facts.* The facts are the same as in paragraph (i) of this *Example 11*, except that UST transfers only 90% of the TFC stock to DC. Paragraph (k)(1)(iii) of this section applies only with respect to the TFC stock transferred to DC. Thus, the conditions of paragraph (k)(1)(iii) of this section are satisfied if DC enters into a new gain recognition agreement with respect to the TFC stock received from UST. The amount of gain subject to the new gain recognition agreement entered into by DC equals 90% of the amount of gain subject to the gain recognition agreement entered into by UST with respect to the initial transfer. The amount of gain subject to the gain recognition agreement entered into by UST with respect to the initial transfer is reduced by the amount of gain subject to the new gain recognition agreement entered into by DC. The gain recognition agreement entered into by UST with respect to the initial transfer continues to apply to the remaining TFC stock held by UST.

*Example 12. Disposition of transferred stock pursuant to a divisive reorganization.* (i) *Facts.* In year 3, pursuant to a divisive reorganization described in section 368(a)(1)(D), TFC transfers all of the TFD stock to F1, a newly formed corporation, in exchange solely for all of the outstanding stock of F1. TFC then distributes all of the F1 stock to UST in a transaction to which section 355 applies.

(ii) *Result.* The transfer by TFC of the TFD stock to F1 constitutes a triggering event under paragraph (j)(1) of this section. However, if paragraph (k)(14) of this section applies, neither the transfer of the TFD stock by TFC to F1, nor the distribution of the F1 stock by TFC to UST, shall constitute triggering events.

(A) The condition of paragraph (k)(14)(i) of this section is satisfied because the dispositions of the TFD stock and F1 stock qualify as nonrecognition transactions.

(B) The condition of paragraph (k)(14)(ii) of this section is satisfied because immediately after the transfer UST, an eligible U.S. transferor, owns at least 5% (applying the

attribution rules of section 318, as modified by section 958(b)) of the total voting power and the total fair market value of the outstanding stock of F1. As a result, UST is treated as retaining an indirect interest in the TFD stock following the dispositions.

(C) The condition of paragraph (k)(14)(iii) of this section is satisfied if UST enters into a new gain recognition agreement with respect to the initial transfer that describes the subsequent dispositions or other events that would constitute triggering events based on the principles of paragraph (j) of this section, other than those described in paragraph (j) of this section. For example, a complete or partial disposition of the F1 stock would constitute a triggering event for purposes of the new gain recognition agreement (subject to the exceptions provided by paragraph (k) of this section).

*Example 13. Receipt of boot by the transferee foreign corporation in a subsequent section 351 exchange.* (i) *Facts.* At the time of the initial transfer, the TFD stock has a \$50x basis and \$100x fair market value. The amount of gain subject to the gain recognition agreement is \$50x. In year 3, TFC and X, an unrelated foreign corporation, form F1. TFC transfers the TFD stock to F1 in exchange for \$35x cash and \$65x stock of F1. At the time of the transfer, the TFD stock has a \$50x basis and \$100x fair market value. The F1 stock received by TFC represents 25% of the outstanding stock of F1. Without regard to the gain recognized under the gain recognition agreement and any adjustments to basis under paragraph (c)(4)(ii) of this section, under section 351(b) TFC would recognize \$35x gain in connection with the transfer of the TFD stock to F1. UST complies with the conditions of paragraph (k)(3) of this section, and therefore the disposition by TFC of the TFD stock does not constitute a triggering event.

(ii) *Result.* Under paragraph (m)(1) of this section, UST must recognize \$35x gain under the gain recognition agreement as a result of the year 3 disposition by TFC of the TFD stock. Thus, the amount of gain subject to the new gain recognition agreement entered into by UST pursuant to paragraph (k)(3) of this section is \$15x. Under paragraph (c)(4)(ii) of this section, as of the date of the initial transfer, the basis of the TFD stock held by TFC is increased by \$35x, the amount of the gain recognized by UST under the gain recognition agreement. Under paragraph (c)(4)(i) of this section, the basis of the TFC stock received by UST in the initial transfer is also increased by \$35x. After taking into account the increase to the basis of the TFD stock under paragraph (c)(4)(ii) of this section, TFC recognizes \$15x gain under section 351(b) in connection with the year 3 transfer of the TFD stock to F1. Under section 362(a), the basis of the TFD stock in the hands of F1 is \$100x.

*Example 14. Complete disposition of transferred stock pursuant to a section 304(a)(1) transaction.* (i) *Facts.* UST wholly owns FA. In year 3, in a transaction to which section 304(a)(1) applies, TFC transfers all of the TFD stock to FA in exchange for cash. Under section 304(a)(1), TFC and FA are treated as if TFC transferred the TFD stock to FA in a section 351 exchange in exchange solely for FA stock, and then FA redeemed the FA stock deemed issued in exchange for the cash. Under section 302(d), the redemption of the FA stock deemed issued by FA to TFC under section 304(a)(1) is treated as a distribution to which section 301 applies.

(ii) *Result.* (A) In general, the deemed contribution by TFC of the TFD stock to FA in the section 351 exchange is a triggering event under paragraph (j)(1) of this section. However, under paragraph (k)(3) of this section the deemed contribution shall not be a triggering event if UST enters into a new gain recognition agreement with respect to the initial transfer in which it agrees to treat as a triggering event a complete or partial disposition of the FA stock deemed received by TFC.

(B) Under paragraph (n)(1) of this section, the redemption of the FA stock deemed received by TFC in exchange for the TFD stock shall not constitute a disposition if UST enters into a new gain recognition agreement with respect to the initial transfer that includes appropriate provisions to take into account such redemption. Therefore, under the new gain recognition agreement UST must agree to treat as a triggering event a complete or partial disposition of the stock of FA. Pursuant to paragraph (d)(2)(ii) of this section, UST is permitted to enter into a single new gain recognition agreement in year 3, but the gain recognition agreement must provide a complete description of the section 304(a)(1) transaction including the deemed section 351 exchange and redemption of the FA stock.

*Example 15. Reduction in amount of gain subject to gain recognition agreement, followed by triggering event.* (i) *Facts.* In year 3, UST disposes of 60% of the TFC stock received in the initial transfer in a transaction in which the conditions of paragraph (o)(1)(ii) of this section are satisfied. Thus, the amount of gain subject to the gain recognition agreement is reduced by 60%. In year 5, TFC disposes of 50% of the TFD stock in a transaction that constitutes a triggering event.

(ii) *Result.* As a result of the year 5 disposition by TFC of 50% of the TFD stock, under paragraphs (j)(1) and (c)(1)(i) of this section, UST must recognize and include in income 50% of the gain subject to the gain recognition agreement (because of the year 3 disposition of TFC stock, the amount of gain subject to the gain recognition agreement equals 40% of the gain realized, but not recognized, on the initial transfer). UST must

pay applicable interest on any additional tax due with respect to the gain recognized. The amount of gain subject to the gain recognition agreement is reduced by the amount of gain recognized by UST (the remaining gain equals 20% of the gain realized, but not recognized, by UST on the initial transfer).

*Example 16. Taxable sale of stock of transferee foreign corporation and election to reduce stock basis.* (i) *Facts.* UST wholly owns F1 and TFD. The F1 stock has a \$100x basis and \$90x fair market value, and the TFD stock has a \$0x basis and \$100x fair market value. UST also owns real property with a \$10x basis and \$10x fair market value. In year 1, pursuant to a section 351 exchange, UST transfers the real property, the TFD stock, and the F1 stock to TFC in exchange solely for 20 shares of TFC stock. UST enters into a gain recognition agreement with respect to the transfer of the TFD stock. The amount of the gain recognition agreement is \$100x. UST takes the position that the basis of each share of TFC stock received in the exchange is \$5.5x (a proportionate amount of the \$110x aggregate basis of the transferred property). In year 3, UST disposes of all its TFC stock in a transaction in which all gain realized is recognized and included in taxable income.

(ii) *Result.* The year 3 disposition of the TFC stock is a triggering event under paragraph (j)(4) of this section. The disposition does not terminate the gain recognition agreement pursuant to paragraph (o)(1)(i) of this section because the basis of each share of TFC stock received in exchange for the TFD stock in the initial transfer is \$5.5x, which exceeds the \$0x basis of the TFD stock at time of the initial transfer. However, under paragraph (o)(1)(iii) of this section, to satisfy the basis condition of paragraph (o)(1)(i) of this section, UST can reduce the basis of the 10 shares of the TFC stock received in exchange for the TFD stock to \$0x. If UST reduces the basis of the 10 shares of TFC stock to \$0x, under paragraph (o)(1)(i) of this section the disposition of the TFC stock shall not constitute a triggering event but instead shall terminate the gain recognition agreement without further effect.

*Example 17. Successive section 351 exchanges, section 301 distributions, and transactions involving partnerships.* (i) *Facts.* UST owns a 40 percent capital and profits interest in a foreign partnership (PRS). PRS wholly owns TFD and other assets with basis equal to fair market value. The TFD stock has a \$50x basis and \$200x fair market value. TFC wholly owns F1. On day 1 of year 1, in a section 351 exchange, UST transfers its PRS interest to TFC in exchange solely for stock of TFC (initial transfer). On that same day, in a section 351 exchange, TFC transfers the PRS interest received from UST to F1 in exchange solely for stock of F1. In year 3, PRS receives a \$150x distribution from TFD to which section 301 applies. Under section

301(c), \$25x of the distribution constitutes a dividend, \$50x is applied against and reduces the basis of the TFD stock held by PRS, and the remaining \$75x is treated as gain from the sale or exchange of property. With respect to the TFD stock deemed transferred by UST in the initial transfer, under section 301(c), \$10x (40% of \$25x) of the distribution constitutes a dividend, \$20x (40% of \$50x) is applied against and reduces the basis of TFD stock, and \$30x (40% of \$75x) is treated as gain from the sale or exchange of property. In year 5, pursuant to a distribution to which section 731 applies, PRS distributes all of the TFD stock to F1.

(ii) *Result.* (A) *Successive section 351 transfers.* Under section 367(a)(4) and § 1.367(a)-1T(c)(3)(ii), the transfer of the PRS interest by UST to TFC is treated, for purposes of section 367(a), as a transfer by UST to TFC of its proportionate share of the TFD stock held by PRS (the initial transfer). The initial transfer by UST of the TFD stock to TFC is subject to the general rule of section 367(a)(1), unless UST enters into a gain recognition agreement with respect to such transfer pursuant to § 1.367(a)-3(b)(1)(ii) and this section. Under paragraph (c)(3)(viii) of this section, the gain recognition agreement must include a complete description of the transfer, including a description of the partners of PRS. Even if UST enters into a gain recognition agreement with respect to the initial transfer, under paragraph (j)(3) of this section, the subsequent transfer by TFC of the PRS interest to F1 is a triggering event unless UST enters into a new gain recognition agreement with respect to the initial transfer under paragraph (k)(14) that provides that, in addition to the triggering events provided in paragraph (j) of this section, a complete or partial disposition of the F1 stock received by TFC in exchange for the PRS interest shall constitute a triggering event for purposes of the gain recognition agreement. The new gain recognition agreement must also provide that any other disposition that is inconsistent with the principles of paragraph (k), including an indirect disposition of the TFD stock or of substantially all of the assets of TFD, shall constitute a triggering event for purposes of the new gain recognition agreement. Under paragraph (d)(2)(i) of this section, UST is permitted to enter into a single gain recognition agreement with respect to the initial transfer and the subsequent transfer by TFC of the PRS interest, but the agreement must include a complete description of the initial transfer and the subsequent transfer of the PRS interest.

(B) *Section 301 distribution from TFD to PRS.* Under paragraph (b)(1)(iii) of this section, the section 301 distribution received by PRS from TFD is not a disposition (and therefore does not affect the gain recognition agreement) to the extent it is described in section

301(c)(1) or (2). However, under paragraph (n)(2) of this section, to the extent the distribution is described in section 301(c)(3), UST must recognize gain (\$30x) under the gain recognition agreement. For this purpose, the amount of the distribution that is described in section 301(c)(3) is determined before taking into account the increase to the basis of the TFD stock under paragraph (c)(4)(ii) of this section.

(C) *Distribution of TFD stock by PRS to F1.* The year 5 distribution of the TFD stock by PRS to F1 is a triggering event under paragraph (j)(1) of this section, unless paragraph (k)(14) of this section applies.

(1) The condition of paragraph (k)(14)(i) of this section is satisfied because the distribution qualifies as a nonrecognition transaction.

(2) The condition of paragraph (k)(14)(ii) of this section is satisfied because immediately after the distribution UST, a domestic corporation that is eligible to be a U.S. transferor, owns at least 5% (applying the attribution rules of section 318, as modified by section 958(b)) of the total voting power and total value of the outstanding stock of F1. As a result, UST is treated as retaining an indirect interest in the TFD stock following the distribution.

(3) The condition of paragraph (k)(14)(iii) of this section is satisfied if UST enters into a new gain recognition agreement with respect to the initial transfer. The new gain recognition agreement need not describe additional dispositions or other events that would constitute triggering events because, pursuant to paragraph (c)(5) of this section, the dispositions or other events described in paragraph (j) of this section or in the existing gain recognition agreement apply to the new gain recognition agreement.

*Example 18. Complete liquidation of transferee foreign corporation.* (i) *Facts.* TFD has 10 shares of stock outstanding immediately before the initial transfer. On the date of the initial transfer, the TFD stock has a \$0x basis and \$90x fair market value. In year 2, in exchange for 1 share of TFD stock TFC transfers real estate to TFD with a \$10x basis and \$10x fair market value. In year 4, TFC distributes the 11 shares of TFD stock to UST in a complete liquidation to which sections 332 and 337 apply.

(ii) *Result.* In determining whether the gain recognition agreement entered into by UST with respect to the initial transfer is terminated under paragraph (o)(5) of this section, or triggered under paragraphs (j)(1) and (j)(4) of this section, only the 10 shares of TFD stock transferred by UST in the initial transfer are considered. Thus, the 1 share of TFD stock received by TFC in exchange for the real estate in year 2 is not taken into account.

*Example 19. Spin-off of transferred corporation.* (i) *Facts.* Before the initial transfer, the

TFD stock has an \$80x basis and a \$100x fair market value, and the TFC stock has a \$100x basis and a \$100x fair market value. In year 4, TFC distributes all of the TFD stock to UST in a transaction to which section 355 applies. At the time of the distribution, the TFD stock has a \$200x fair market value, and the TFC stock (without regard to the value of the TFD stock held by TFC) has a \$100x fair market value. At such time, the TFC stock has a \$180x basis. As determined under section 358, immediately after the distribution, the TFC stock has a \$60x basis, and the TFD stock has a \$120x basis.

(ii) *Result.* The distribution of the TFD stock by TFC in year 4 is a triggering event under paragraph (j)(1) of this section. The distribution does not terminate the gain recognition agreement under paragraph (o)(5) of this section because after the distribution, the basis of the TFD stock in the hands of UST (\$120x) is greater than the basis of the TFD stock at the time of the initial transfer (\$80x). However, if UST reduces the basis of the TFD stock to \$80x (as provided under paragraph (o)(5)(iii) of this section) the gain recognition agreement will terminate without further effect. If UST does not elect to reduce the basis of the TFD stock, see paragraph (k)(14) of this section.

*Example 20. Intercompany transaction followed by disposition to nonmember.* (i) *Facts.* At the time of the initial transfer, the TFD stock has a \$50x basis and \$100x fair market value. The amount of the gain recognition agreement is \$50x. In year 3, UST distributes all of the TFC stock to USP in a transaction to which section 301 applies. At the time of the distribution, the TFC stock has a \$50x basis and \$90x fair market value. Under section 311(b), UST must recognize \$40x gain (the intercompany item) on the distribution, but because the distribution is an intercompany transaction, under the provisions of §1.1502-13, the \$40x gain is not taken into account in year 3. In year 4, USP sells all of the TFC stock to X, an unrelated corporation. Under the provisions of §1.1502-13, in year 4 UST takes into account the \$40x intercompany item as a result of the sale of the TFC stock to X.

(ii) *Result.* (A) The year 3 distribution of the TFC stock by UST to USP does not terminate the gain recognition agreement under paragraph (o)(1) of this section because UST does not include the \$40x gain in taxable income during year 3. Under paragraph (j)(4) of this section, the year 3 distribution of the TFC stock by UST to USP is generally a triggering event; however, because the distribution is an intercompany transaction that creates an intercompany item, the distribution shall not constitute a triggering event if the conditions of paragraph (k)(12)(i) of this section are satisfied.

(1) The condition of paragraph (k)(12)(i)(A) of this section is satisfied because the aggregate basis of the TFC stock distributed (\$50x) is not greater than the sum of the aggregate basis of the TFD stock at the time of the initial transfer (\$50x).

(2) The condition of paragraph (k)(12)(i)(B) of this section is satisfied if the next annual certification for the existing gain recognition agreement includes a complete description of the intercompany transaction and an explanation of how the basis condition of paragraph (k)(12)(i)(A) of this section is satisfied.

(B) Under paragraph (o)(6) of this section and the principles of paragraph (o)(1)(i) of this section, because the year 4 sale of the TFC stock to X requires UST to take into account the \$40x gain (the intercompany item) from the year 3 distribution, the year 4 sale terminates the gain recognition agreement. If, alternatively, in year 4 USP had sold only 30% of the TFC stock, then under paragraph (o)(6) of this section and the principles of paragraph (o)(1)(ii) of this section the amount of gain subject to the gain recognition agreement would be reduced by 30%.

(iii) *Alternate facts. Intercompany transaction followed by sale of transferee foreign corporation to member.* Assume the same facts as in paragraph (i) of this Example 20, except that, instead of USP selling the TFC stock to X, in year 4 USP sells the TFC stock to USS in exchange for \$90x cash. UST and USS are members of the USP consolidated group immediately after the sale. The results of the year 3 distribution of the TFC stock by UST to USP are the same as in paragraph (ii) of this Example 20. In addition, under paragraph (k)(12)(ii) of this section, the year 4 sale by USP of the TFC stock to USS is not a triggering event, provided UST includes a complete description of the sale with the annual certification filed for the gain recognition agreement in year 4.

(iv) *Alternate facts. Intercompany transaction followed by complete liquidation of transferee foreign corporation.* Assume the same facts as in paragraph (i) of this Example 20, except that, instead of USP selling the TFC stock to X, in year 4 TFC distributes all of its assets to USP in a complete liquidation to which sections 332 and 337 apply. The result is the same as in paragraph (ii) of this Example 20 because, under the provisions of § 1.1502-13, in year 4 UST takes into account the \$40x gain (the intercompany item) from the year 3 distribution.

(v) *Alternate facts. Intercompany transaction followed by triggering event.* Assume the same facts as in paragraph (i) of this Example 20, except that instead of USP selling the TFC stock to X, in year 4 TFC disposes of all of the TFD stock in a transaction that constitutes a triggering event under paragraph (j)(1) of this section. Under paragraph

(c)(1)(i) of this section UST must recognize \$50x gain under the gain recognition agreement. Under paragraphs (c)(4)(i) and (ii) of this section, as of the date of the initial transfer the basis of the TFC stock and TFD stock, respectively, is increased by \$50x.

(vi) *Alternate facts. Intercompany transaction followed by section 351 transfer to member.* The facts are the same as in paragraph (i) of this Example 20, except that, in year 3, in a section 351 exchange UST transfers all of the TFC stock to USS in exchange for \$10x cash and \$80x of stock of USS. USS is a member of the USP consolidated group immediately after the exchange. The transfer of the TFC stock by UST to USS is an intercompany transaction. Under section 351(b), UST must generally recognize \$10x gain (intercompany item) in connection with the transfer; however, under the provisions of § 1.1502-13, UST does not take the \$10x gain into account in year 3. Under paragraph (k)(12) of this section, as result of the intercompany transaction creating an intercompany item (\$10x gain), the existing gain recognition agreement (\$50x gain) must be divided between UST and USS. UST shall remain subject to a gain recognition agreement of \$10x (equal to the amount of the intercompany item). The amount of the gain recognition agreement entered into by USS under paragraph (k)(1) of this section is \$40x (equal to the amount of the existing gain recognition agreement, reduced by the amount of the of the gain recognition agreement to which UST remains subject).

*Example 21. Transfer of transferred stock to United States person other than U.S. transferor.*  
(i) *Facts.* An individual (A) that is a United States citizen wholly owns TFD, TFC, and DC. A transfers the TFD stock to TFC in a section 351 exchange and enters into a gain recognition agreement with respect to such transfer. In year 5, pursuant to an asset reorganization, TFC transfers all of its assets to DC in exchange solely for DC stock. TFC distributes the DC stock to A pursuant to the plan of reorganization.

(ii) *Result.* The transfer by TFC of the TFD stock to DC and the exchange by A of the TFC stock for DC stock pursuant to the asset reorganization are triggering events under paragraphs (j)(1) and (j)(4) of this section, respectively. The gain recognition agreement does not terminate under paragraph (o)(5) of this section because DC is neither the U.S. transferor, nor an individual that is a United States person, nor a member of the same consolidated group of which the U.S. transferor is a member. However, if paragraph (k)(14) of this section applies the exchanges shall not constitute triggering events.

(A) The condition of paragraph (k)(14)(i) of this section is satisfied because the transfer of the TFD stock to DC qualifies as a non-recognition transaction.

(B) The condition of paragraph (k)(14)(ii) of this section is satisfied because immediately after the transfer DC, a domestic corporation that is eligible to be a U.S. transferor, retains a direct interest in the TFD stock following the transfer.

(C) The condition of paragraph (k)(14)(iii) of this section is satisfied if DC enters into a new gain recognition agreement with respect to the initial transfer. Under paragraph (k)(14)(iii)(B) of this section, DC is not required to describe any subsequent dispositions or other events that (based on the principles of paragraph (j) of this section) would constitute triggering events for purposes of the new gain recognition agreement, other than the dispositions or other events described in paragraph (j) of this section, because DC holds a direct interest in TFD after the asset reorganization.

*Example 22. Transfer of transferred stock to consolidated group member.* (i) *Facts.* UST wholly owns DC, a member of the USP consolidated group that includes UST. In year 5, pursuant to an asset reorganization described in section 368(a)(1)(A) TFC merges with and into DC. Immediately after the asset reorganization, DC wholly owns TFD, and the basis of the TFD stock is not greater than the aggregate basis of such stock at the time of the initial transfer.

(ii) *Result.* The gain recognition agreement filed by UST with respect to the initial transfer terminates without further effect if the conditions of paragraph (o)(5) of this section are satisfied.

(A) The condition of paragraph (o)(5)(i) of this section is satisfied because the transfer of the TFD stock is a section 361 exchange.

(B) The condition of paragraph (o)(5)(ii) of this section is satisfied because DC is a member of the consolidated group that includes UST immediately after the section 361 exchange.

(C) The condition of paragraph (o)(5)(iii) of this section is satisfied because the aggregate basis of the TFD stock immediately after the section 361 exchange is not greater than the aggregate basis of the TFD stock at the time of the initial transfer (as adjusted for any gain recognized by UST on such transfer). If the basis condition of paragraph (o)(5)(iii) were not satisfied, under paragraph (o)(5)(iii) of this section, DC could reduce the basis of the TFD stock received in the reorganization. Alternatively, a new gain recognition agreement could be entered into if paragraph (k)(14) of this section applied to the disposition of the TFD stock pursuant to the section 361 exchange.

(iii) *Alternate facts.* The facts are the same as in paragraph (i) of this *Example 22*, except that instead of TFC merging into DC, TFC merges into TFD in a reorganization described in section 368(a)(1)(A). The gain recognition agreement terminates without fur-

ther effect if the conditions of paragraph (o)(5) of this section are satisfied.

(A) The condition of paragraph (o)(5)(i) of this section is satisfied because the TFD stock issued by TFD to TFC in the reorganization, which is treated as transferred stock under paragraph (b)(2)(iii) of this section, is distributed by TFC to UST pursuant to section 361(c).

(B) The condition of paragraph (o)(5)(ii) of this section is satisfied because UST is the U.S. transferor.

(C) The condition of paragraph (o)(5)(iii) of this section is satisfied if the aggregate basis of the TFD stock received by UST from TFC is not greater than the aggregate basis of the TFD stock at the time of the initial transfer (as adjusted for any gain recognized by UST on such transfer). If the basis condition of paragraph (o)(5)(iii) were not satisfied, under paragraph (o)(5)(iii) of this section, UST could reduce the basis of the TFD stock received in the reorganization.

*Example 23. Split-off of transferred stock.* (i) *Facts.* X, a domestic corporation that is unrelated to USP and UST, wholly owns TFC. Pursuant to a reorganization described in section 368(a)(1)(B), UST transfers all of the TFD stock to TFC in exchange for 50% of the outstanding voting stock of TFC. UST enters into a gain recognition agreement with respect to such transfer. In year 4, in a split-off transaction to which section 355 applies, TFC distributes all of the TFD stock to X in exchange for all the TFC stock held by X.

(ii) *Result.* Under paragraph (j)(1) of this section, the year 4 distribution of the TFD stock to X constitutes a triggering event. However, the distribution shall not constitute a triggering event if paragraph (k)(14) of this section applies. The gain recognition agreement does not terminate under paragraph (o)(5) of this section because X is not a recipient described in paragraph (o)(5)(ii) of this section.

(A) The condition of paragraph (k)(14)(i) of this section is satisfied because the distribution of the TFD stock qualifies as a non-recognition transaction.

(B) The condition of paragraph (k)(14)(ii) of this section is satisfied because immediately after the distribution X, a domestic corporation that is eligible to be a U.S. transferor, retains a direct interest in the TFD stock.

(C) The condition of paragraph (k)(14)(iii) of this section is satisfied if X enters into a new gain recognition agreement with respect to the initial transfer. Under paragraph (k)(14)(iii)(B) of this section, X is not required to describe, with the new gain recognition agreement, any subsequent dispositions or other events that (based on the principles of paragraph (j) of this section) would constitute triggering events, other than the dispositions described in paragraph (j) of this section, because X directly owns TFD after the distribution.

(D) If X were a United States citizen, the gain recognition agreement would terminate if the condition of paragraph (o)(5)(iii) of this section were satisfied. Alternatively, the gain recognition agreement would continue for its remaining term if the conditions for the application of paragraph (k)(14) of this section were satisfied.

(iii) *Alternate facts. Distribution to unrelated foreign corporation.* The facts are the same as in paragraph (i) of this *Example 23*, except that X is a foreign corporation wholly owned by DC. DC is unrelated to UST. The results are the same as in paragraph (ii) of this *Example 23*, except as follows.

(A) The condition of paragraph (k)(14)(ii) of this section is satisfied because immediately after the distribution DC, a domestic corporation that is eligible to be a U.S. transferor, owns at least 5% (applying the attribution rules of section 318, as modified by section 958(b)) of the total voting power and total value of the outstanding stock of X. As a result, DC is treated as retaining an indirect interest in the TFD stock immediately following the distribution.

(B) The condition of paragraph (k)(14)(iii) of this section is satisfied if DC enters into a new gain recognition agreement with respect to the initial transfer. Under paragraph (k)(14)(iii)(B) of this section, DC must, in addition to the dispositions described in paragraph (j) of this section, include as a triggering event a complete or partial disposition of the stock of X.

(iv) *Alternate facts. Distribution to non-resident alien individual.* The facts are the same as in paragraph (i) of this *Example 23*, except that X is a nonresident alien individual. Paragraph (k)(14) of this section does not apply to the distribution because the conditions of paragraph (k)(14)(ii) and (iii) of this section cannot be satisfied. Therefore, the distribution is a triggering event, and UST will recognize gain under the gain recognition agreement as required under paragraphs (c)(1)(i) and (v) of this section. The result would be the same if X were a foreign corporation and, immediately after the distribution, no United States person owned at least 5% (applying the attribution rules of section 318, as modified by section 958(b)) of the total voting power and value of the outstanding stock of X.

*Example 24. Applicability of this section to gain recognition agreements filed before March 13, 2009.* (i) *Facts.* The facts are the same as in paragraph (i) of *Example 6*, except that the initial transfer occurred on March 7, 2007, and the asset reorganization occurred on July 1, 2008.

(ii) *Result.* Under paragraph (r)(1)(ii) of this section, the rules of § 1.367(a)-8T (see 26 CFR part 1, revised April 1, 2007) apply to the transfers pursuant to the asset reorganization because the initial transfer occurred on March 7, 2007. As a result of the disposition

of the TFC stock pursuant to the asset reorganization, under § 1.367(a)-8T(d), USP is required to recognize the gain subject to the gain recognition agreement and pay applicable interest on any additional tax due with respect to such gain. Because the acquiring corporation in the asset reorganization is foreign, an exception under § 1.367(a)-8T(e) is not available for the exchange of TFC stock by USP. However, pursuant to paragraph (r)(2)(i) of this section, because the exception provided by paragraph (k)(14) of this section is not included in § 1.367(a)-8T, USP may apply paragraph (k)(14) of this section to such exchange (provided the conditions of paragraph (k)(14) of this section are satisfied), if the statute of limitations on assessments of tax for the 2007 tax year has not closed. If USP applies paragraph (k)(14) of this section to its exchange of the TFC stock pursuant to the asset reorganization, under paragraph (r)(2)(ii) of this section USP must include the new gain recognition agreement required under paragraph (k)(14)(iii) of this section with an amended Federal income tax return for its 2008 tax year that is filed August 10, 2009.

*Example 25. Applicability of this section to gain recognition agreements filed before March 13, 2009.* (i) *Facts.* The initial transfer occurs in 2004. In 2005, pursuant to a section 351 exchange, TFC transfers the TFD stock to F1 in exchange solely for F1 voting stock. UST does not file a new gain recognition agreement under § 1.367(a)-8(g)(2) with respect to the exchange.

(ii) *Result.* Under paragraph (r)(1)(ii) of this section, the rules of § 1.367(a)-8 (see 26 CFR part 1, revised April 1, 2006) apply to the year 2005 disposition of the TFD stock because UST filed the gain recognition agreement after July 20, 1998, but before March 7, 2007. Under § 1.367(a)-8(e) (see 26 CFR part 1, revised April 1, 2006), as a result of the disposition of the TFD stock by TFC, UST must recognize the amount of gain subject to the gain recognition agreement. Paragraph (r)(2)(i) of this section does not apply because the rule provided by paragraph (k)(3) of this section was included in § 1.367(a)-8(g)(2) (see 26 CFR part 1, revised April 1, 2006). However, UST may request relief for reasonable cause under § 1.367(a)-8(c)(2) (see 26 CFR part 1, revised April 1, 2006) to file a new gain recognition agreement with respect to the disposition of the TFD stock by TFC in 2005.

(r) *Effective/applicability date—(1) General rule—(i) Transfers occurring on or after March 13, 2009; relief for certain failures that are not willful.* The rules of this section apply to gain recognition agreements filed with respect to transfers of stock or securities occurring on or after March 13, 2009. However, the

rules of this section do not apply to gain recognition agreements filed with respect to any such transfer occurring on or after March 13, 2009, if such transfer was entered into pursuant to a written agreement that was (subject to customary conditions) binding before February 11, 2009, and at all times thereafter. Solely for purposes of this paragraph (r), a transfer described in the preceding sentence shall be deemed to be a transfer occurring before March 13, 2009 to which the rules of §1.367(a)-8 (see 26 CFR part 1, revised April 1, 2006) apply. See paragraph (r)(2)(iii) of this section for the ability to apply the rules of this section with respect to gain recognition agreements filed for taxable years ending before March 13, 2009. The eleventh sentence of paragraph (a) and paragraphs (b)(1)(iv), (b)(1)(vi), (b)(1)(xiii), (d)(1), (j)(8), and (p) of this section will apply to gain recognition agreement documents that are required to be filed on or after November 19, 2014, as well as to requests for relief submitted on or after November 19, 2014.

(ii) *Transfers occurring before March 13, 2009.* For matters covered in this section for periods before March 13, 2009 but on or after March 7, 2007, the corresponding rules of §1.367(a)-8T (see 26 CFR part 1, revised April 1, 2007) apply. For matters covered in this section for periods before March 7, 2007 but on or after July 20, 1998, the corresponding rules of §1.367(a)-8 (see 26 CFR part 1, revised April 1, 2006) apply. For matters covered in this section for periods before July 20, 1998, the corresponding rules of §1.367(a)-3T(g) (see 26 CFR part 1, revised April 1, 1998) and Notice 87-85 (1987-2 CB 395) apply. In addition, if a U.S. transferor entered into a gain recognition agreement for transfers before July 20, 1998, then the rules of §1.367(a)-3T(g) (see 26 CFR part 1, revised April 1, 1998) continue to apply in lieu of this section in the event of any direct or indirect non-recognition transfer of the same property. See also, §1.367(a)-3(h).

(2) *Applicability to transfers occurring before March 13, 2009* March 13, 2009—(i) *General rule.* Taxpayers may apply the rules of this regulation §1.367(a)-8 that were not included in §1.367(a)-8T (see 26 CFR part 1, revised April 1, 2007), to

gain recognition agreements filed with respect to transfers of stock or securities for all open taxable years, if done consistently to all transfers. A U.S. transferor subject to section 877 and §1.367(a)-8T(d)(6) shall not apply the rules of this regulation to reach a contrary result. A taxpayer that failed to file a gain recognition agreement for a transfer, or to comply materially with any requirement of this section with respect to an existing gain recognition agreement, must obtain relief for reasonable cause for such failure under §1.367(a)-8T(e)(10) before applying the rules of this regulation §1.367(a)-8 that were not included in §1.367(a)-8T as permitted by this paragraph (r)(2). See paragraph (q)(2) of this section, *Examples 24 and 25* for illustrations of the rule provided by this paragraph (r)(2)(i).

(ii) *Taxable years ending before March 13, 2009.* Notwithstanding the requirements of §1.367(a)-8(d), any gain recognition agreement or other filing required by reason of electing to apply the rules of this regulation §1.367(a)-8 that were not included in §1.367(a)-8T, as permitted by this paragraph (r)(2), for a taxable year ending before March 13, 2009 shall be considered filed in accordance with the requirements of §1.367(a)-8(d), provided the gain recognition agreement or other filing is attached to an original or amended return for such taxable year. An amended return required to be filed by reason of electing to apply the rules of this regulation §1.367(a)-8 that were not included in §1.367(a)-8T, as permitted by this paragraph (r)(2), must be filed on or before August 10, 2009. A taxpayer that wishes to apply the rules of this regulation §1.367(a)-8 that were not included in §1.367(a)-8T, as permitted by this paragraph (r)(2), but that fails to meet the filing requirement described in the preceding sentence must request relief for reasonable cause under paragraph (p) of this section.

(iii) *Taxable years ending after effective date.* A taxpayer that entered into a gain recognition agreement to which §1.367(a)-8T (see 26 CFR part 1, revised April 1, 2007) applies may apply the rules of this section in a tax year ending on or after March 13, 2009 by attaching the agreement, certification,



or other information related to such gain recognition agreement that the rules of this section require in accordance with the rules of this section and with the time and manner rules provided in § 1.367(a)-8(d).

(3) *Applicability to requests for relief submitted before November 19, 2014.* The eleventh sentence of paragraph (a) and paragraphs (b)(1)(iv), (b)(1)(vi), (b)(1)(xiii), (d)(1), (j)(8), and (p) of this section will apply to requests for relief submitted before November 19, 2014 if—

(i) The statute of limitations on the assessment of tax has not expired for any year to which the request relates; and

(ii) The U.S. transferor resubmits the request under paragraph (p) of this section, notes on the request that the request is being submitted pursuant to this paragraph (r)(3), and acknowledges on the request that the last sentence of § 1.6038B-1(g)(6) provides a special rule regarding the application of § 1.6038B-1 to any transfer that is the subject of the request.

[T.D. 9446, 74 FR 6960, Feb. 11, 2009; 74 FR 10175, Mar. 10, 2009, as amended at T.D. 9446, 74 FR 13340, Mar. 27, 2009; T.D. 9614, 78 FR 17039, Mar. 19, 2013; T.D. 9704, 79 FR 68768, Nov. 19, 2014; 80 FR 167, Jan. 5, 2015; T.D. 9760, 81 FR 15169, Mar. 22, 2016; T.D. 9803, 81 FR 91029, Dec. 16, 2016]

**§ 1.367(a)-9T Treatment of deemed section 351 exchanges pursuant to section 304(a)(1) (temporary).**

(a) *Scope and general rule.* This section applies to the extent that, pursuant to section 304(a)(1), a United States person is treated as transferring stock of a domestic or foreign corporation to a foreign corporation (foreign acquiring corporation) in exchange for stock of the foreign acquiring corporation in a transaction to which section 351(a) applies (deemed section 351 exchange). Except to the extent provided in paragraph (b) of this section, a transfer of stock by a United States person to a foreign acquiring corporation in a deemed section 351 exchange is not subject to section 367(a)(1).

(b) *Special rule.* Notwithstanding paragraph (a) of this section, if the distribution received by the United States person in redemption of the stock of the foreign acquiring corporation deemed issued in the deemed section

351 exchange is applied against and reduces (in whole or in part), pursuant to section 301(c)(2), the basis of stock of the foreign acquiring corporation held by the United States person other than the stock deemed issued in the deemed section 351 exchange, the United States person shall recognize gain pursuant to this paragraph (b). The exceptions described in § 1.367(a)-3(b)(1) and (c)(1) shall not apply to a transfer of stock described in paragraph (a) of this section. The amount of gain recognized by a United States person pursuant to this paragraph (b) shall equal the amount, if any, by which—

(1) The gain realized by the United States person with respect to the transferred stock in connection with the deemed section 351 exchange exceeds;

(2) The amount of the distribution received by the United States person in redemption of the stock of the foreign acquiring corporation deemed issued in the deemed section 351 exchange that is treated as a dividend under section 301(c)(1) and included in gross income by the United States person.

(c) *Ordering rule.* For purposes of paragraph (b)(1) of this section, the amount of gain realized by the United States person in connection with the deemed section 351 exchange shall be determined without regard to the amount of gain recognized by the United States person under paragraph (b) of this section.

(d) *Allocation of recognized gain.* Gain recognized by a United States person pursuant to paragraph (b) of this section shall be treated as recognized with respect to the stock transferred in the deemed section 351 exchange in proportion to the amount of gain realized by the United States person with respect to such stock. See § 1.367(a)-1T(b)(4) for additional rules on the character, source, and adjustments relating to gain recognized under section 367(a).

(e) *Example.* The following example illustrates the rules of this section:

*Example.* (i) *Facts.* (A) USP, a domestic corporation, wholly owns FC1 and FC2, each a foreign corporation. USP, FC1 and FC2 use a calendar taxable year. The FC1 stock has a \$40x basis and \$100x fair market value. The FC2 stock has a \$100x basis and \$100x fair market value. As of December 31, year 1, FC1 has zero earnings and profits, and FC2 has