

gland of goats derived from lineage progenitor 155–92.

(b) *Sponsor*. See No. 042976 in § 510.600 of this chapter.

(c) *Limitations*. Food or feed from GTC–155–92 goats is not permitted in the food or feed supply.

Dated: February 6, 2009.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E9–2881 Filed 2–6–09; 4:15 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9444]

RIN 1545–B142

Application of Section 367 to a Section 351 Exchange Resulting From a Transaction Described in Section 304(a)(1); Treatment of Gain Recognized Under Section 301(c)(3) for Purposes of Section 1248

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations under sections 367(a), 367(b) and 1248(a) of the Internal Revenue Code (Code). The final regulations under section 367 revise existing final regulations and add cross-references. The final regulations under section 1248 update an effective/applicability date. The temporary regulations under section 367(a) and (b) revise existing final regulations concerning transfers of stock to a foreign corporation that are described in section 351 by reason of section 304(a)(1). The temporary regulations under section 1248(a) provide that, for purposes of section 1248(a), gain recognized by a shareholder under section 301(c)(3) in connection with the receipt of a distribution of property from a foreign corporation with respect to its stock shall be treated as gain from the sale or exchange of the stock of such foreign corporation. The temporary regulations affect certain persons that transfer stock to a foreign corporation in a transaction described in section 304(a)(1), or certain persons that recognize gain under section 301(c)(3) in connection with the receipt of a distribution of property from a foreign corporation with respect to its stock. The text of the temporary regulations serves as the text of the

proposed regulations set forth in the notice of proposed rulemaking on this subject published in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on February 11, 2009.

Applicability Date: These regulations apply to acquisitions of stock occurring on or after February 11, 2009.

FOR FURTHER INFORMATION CONTACT:

Sean W. Mullaney, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 367(a)(1) generally provides that if a United States person transfers property to a foreign corporation in an exchange described in section 332, 351, 354, 356, or 361, the foreign corporation shall not be considered a corporation for purposes of determining the extent to which the United States person recognizes gain on such transfer. Exceptions to the general rule are provided by section 367(a)(2) and (3), and the Secretary has broad authority under section 367(a)(6) to promulgate regulations providing exceptions for other transactions.

Section 367(b)(1) provides that in the case of an exchange described in section 332, 351, 354, 355, 356, or 361 in connection with which there is no transfer of property described in section 367(a)(1), a foreign corporation shall be considered to be a corporation except to the extent provided in regulations prescribed by the Secretary which are necessary or appropriate to prevent the avoidance of Federal income taxes. Section 367(b)(2) provides that the regulations prescribed pursuant to section 367(b)(1) shall include (but shall not be limited to) regulations dealing with the sale or exchange of stock or securities in a foreign corporation by a United States person, including regulations providing the circumstances under which gain is recognized, amounts are included in gross income as a dividend, adjustments are made to earnings and profits, or adjustments are made to the basis of stock or securities.

Regulations under section 367(b) generally provide that if the potential application of section 1248 cannot be preserved immediately following the acquisition of the stock or assets of a foreign corporation (foreign acquired corporation) by another foreign corporation in an exchange subject to section 367(b), then certain exchanging shareholders of the foreign acquired corporation must include in income as a dividend the section 1248 amount (as defined in § 1.367(b)–2(c)) attributable

to the stock of the foreign acquired corporation. See § 1.367(b)–4(b).

Section 304(a)(1) generally provides that, for purposes of sections 302 and 303, if one or more persons are in control of each of two corporations and in return for property one of the corporations (the acquiring corporation) acquires stock in the other corporation (the issuing corporation) from the person (or persons) so in control, then such property shall be treated as a distribution in redemption of the stock of the acquiring corporation. To the extent section 301 applies to the distribution, the transferor and the acquiring corporation are treated as if (1) the transferor transferred the stock of the issuing corporation to the acquiring corporation in exchange for stock of the acquiring corporation in a transaction to which section 351(a) applies, and (2) the acquiring corporation then redeemed the stock it is deemed to have issued. Under section 304(b)(2), the determination of the amount of the property distribution that is a dividend (and the source thereof) is made as if the property is distributed by the acquiring corporation to the extent of its earnings and profits, and then by the issuing corporation to the extent of its earnings and profits.

On February 21, 2006, the IRS and Treasury Department issued final regulations (TD 9250) providing that section 367(a) and (b) shall not apply to certain transfers of stock of a foreign or domestic corporation to a foreign acquiring corporation to which section 351 applies (deemed section 351 exchange) by reason of section 304(a)(1) (final 2006 regulations). Specifically, § 1.367(a)–3(a) provides that if, 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 in exchange for stock of such foreign corporation in a deemed section 351 exchange, the deemed section 351 exchange is not a transfer to a foreign corporation subject to section 367(a). Similarly, § 1.367(b)–4(a) provides that if, pursuant to section 304(a)(1), a foreign corporation is treated as acquiring the stock of another foreign corporation in a deemed section 351 exchange, the deemed section 351 exchange is not an acquisition subject to section 367(b).

The preamble to the final 2006 regulations explained that the IRS and Treasury Department determined that the policies underlying section 367(a) and (b) are preserved even if a deemed section 351 exchange is not subject to section 367(a) and (b) because generally the income recognized by the transferor in the transaction (dividend income,

capital gain, or both) should equal or exceed the built-in gain in the transferred stock. Comments were received, however, stating that the transferor may not recognize income equal to or greater than the built-in gain in the transferred stock if, under section 301(c)(2), the transferor were permitted to recover the basis of shares of the foreign acquiring corporation held before (and after) the transaction. For example, assume a domestic corporation, P, wholly owns F1 and F2, both foreign corporations. The F1 stock has a \$0x basis and \$100x fair market value. The F2 stock has a \$100x basis and \$100x fair market value. Neither F1 nor F2 has current or accumulated earnings and profits. In a transaction subject to section 304(a)(1), P sells the F1 stock to F2 for \$100x cash. Under section 304(a)(1), P and F2 are treated as if P transferred the F1 stock to F2 in exchange for F2 stock in a transaction to which section 351 applies, and then F2 redeemed its stock deemed issued to P. Because the redemption of the F2 stock would be described in section 302(d) and therefore subject to section 301, the commentators posited that P may not recognize gain under section 301(c)(3) on the receipt of the \$100x cash in redemption of the F2 stock if the basis of both the F2 stock that is received by P in the deemed section 351 exchange (\$0x), and of the F2 stock held by P prior to (and after) the transaction (\$100x), is available for reduction under section 301(c)(2). If that were the case, P would recognize no gain in the transaction.

The preamble to the final 2006 regulations stated, however, that the IRS and Treasury Department believe current law does not provide for the recovery of basis of any shares of the acquiring corporation other than the shares deemed issued to the transferor and redeemed by the acquiring corporation as provided under section 304(a)(1). Thus, in the example above, P would recognize \$100x gain under section 301(c)(3) (the built-in gain on the F1 stock), and the basis of the F2 stock held by P after the transaction would continue to be \$100x. The IRS and Treasury Department continue to study the basis recovery issue as part of a larger project and have determined that it is necessary to revise the final 2006 regulations prior to the completion of that project.

Explanation of Provisions

A. Modified Application of Section 367(a) to Deemed Section 351 Exchanges

Consistent with the final 2006 regulations, the temporary regulations under section 367(a) generally provide that if, 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 in exchange for stock of such foreign corporation in a deemed section 351 exchange, the deemed section 351 exchange is not a transfer to a foreign corporation subject to section 367(a). However, if the distribution received by the United States person in redemption of the foreign acquiring corporation stock received in the deemed section 351 exchange is subject to section 301 (by reason of section 302(d)), the temporary regulations provide an exception to the general rule if the distribution 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 to the United States person in the deemed section 351 exchange. In such a case, the United States person shall recognize gain under section 367(a)(1) equal to the amount by which the gain realized by the United States person with respect to the transferred stock in the deemed section 351 exchange exceeds the amount of the distribution received by the United States person in redemption of the foreign acquiring corporation stock that is treated as a dividend under section 301(c)(1) and included in gross income by the United States person. Thus, in the hypothetical transaction described above, if any amount of the distribution received by P in redemption of the F2 stock was applied against the basis of the F2 stock held by P before (and after) the transaction, then under the temporary regulations P would recognize \$100x gain under section 367(a)(1) in connection with its transfer of the F1 stock to F2 in the deemed section 351 exchange.

The exceptions to the application of section 367(a)(1) for transfers of stock provided in § 1.367(a)–3 are not available to transfers covered by the temporary regulations. For example, a United States person cannot avoid gain recognition under the temporary regulations by entering into a gain recognition agreement under §§ 1.367(a)–3(b)(1)(ii) and 1.367(a)–8 with respect to the deemed section 351 exchange.

The temporary regulations provide rules to coordinate the recognition of gain under the temporary regulations and the corresponding increase to the basis of the stock of the foreign acquiring corporation received by the United States person in the transaction. Under such rules the increase to the basis of the stock of the foreign acquiring corporation by reason of gain recognized by the United States person under the temporary regulations would be taken into account before determining the consequences of the redemption of the shares of the foreign acquiring corporation. For example, in the hypothetical transaction described above, the basis of the F2 stock deemed received by P in exchange for the F1 stock would be increased to \$100x under section 358 before determining the consequences of the redemption of such stock under section 301. The gain recognized by P will be treated as recognized with respect to the F1 stock transferred in the deemed section 351 exchange in proportion to the gain realized with respect to the F1 stock.

B. Modified Application of Section 367(b) to Deemed Section 351 Exchanges

The temporary regulations make similar revisions to the final 2006 regulations under section 367(b). Specifically, the temporary regulations provide that § 1.367(b)–4(b) shall apply to a deemed section 351 exchange to the extent the distribution received by the exchanging shareholder in redemption of the stock deemed issued by the foreign acquiring corporation is applied against and reduces, pursuant to section 301(c)(2), the adjusted basis of stock of the foreign acquiring corporation held by the exchanging shareholder before the transaction.

The temporary regulations provide rules to determine the amount of an income inclusion that is attributable to the shares of stock of the foreign acquired corporation transferred in the deemed section 351 exchange when the income inclusion required under the regulations is less than the aggregate section 1248 amount attributable to all of the shares of stock transferred in the deemed section 351 exchange.

C. Treatment of Gain Recognized Under Section 301(c)(3) for Purposes of Section 1248(a)

The temporary regulations under section 1248(a) provide that gain recognized under section 301(c)(3) on the receipt of a distribution of property from a foreign corporation shall be treated, for purposes of section 1248(a), as gain from the sale or exchange of the

stock of such corporation. The temporary regulations preserve the policies underlying section 367(b), are consistent with the premise of the final 2006 regulations, and ensure that the earnings and profits of lower-tier foreign subsidiaries described in section 1248(c)(2) are taken into account.

D. Effective Dates

The temporary regulations apply to transfers or distributions occurring on or after February 11, 2009.

Availability of IRS Documents

IRS notices cited in this preamble are made available by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. These temporary and final regulations are necessary to ensure that the appropriate amount of income (dividend income, capital gain or both) is recognized currently in the transactions described in the explanation of provisions section in this preamble. Accordingly, good cause is found for dispensing with notice and public comment pursuant to 5 U.S.C. 553(b) and (c) and with a delayed effective date pursuant to 5 U.S.C. 553(d). For applicability of the Regulatory Flexibility Act, see the cross-referenced notice of proposed rulemaking published elsewhere in this **Federal Register**. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

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

PART 1—INCOME TAXES

■ **Paragraph. 1.** The authority citation for part 1 is amended by adding new

entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.367(a)–9T also issued under 26 U.S.C. 367(a) and (b). * * *

Section 1.367(b)–4T also issued under 26 U.S.C. 367(b). * * *

■ **Par. 2.** Section 1.367(a)–3 is amended by revising the third sentence in paragraph (a) to read as follows:

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

(a) * * * For rules applicable when, 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 in exchange for stock of such foreign corporation in a transaction to which section 351(a) applies, see § 1.367(a)–9T. * * *

* * * * *

■ **Par. 3.** Section 1.367(a)–9T is added to read as follows:

§ 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; and

(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 \$20x earnings and profits. On December 31, year 1, in a transaction described in section 304(a)(1), USP sells the FC1 stock to FC2 for \$100x cash.

(B) Because USP wholly owns FC1 before the transactions and is treated, under section 318, as indirectly owning 100% of the FC1 stock after the transfer, under section 304(a)(1), USP and FC2 are treated in the same manner as if USP contributed the FC1 stock to FC2 in a deemed section 351 exchange in exchange solely for \$100x of FC2 stock, and then FC2 redeemed for \$100x cash its stock deemed issued to USP. Because USP wholly owns FC1 before the sale and is treated as owning 100% of FC1 after the sale, section 302(a) does not apply to the redemption. Instead, under section 302(d), the redemption is treated as a distribution to which section 301 applies. Pursuant to section 304(b)(2), \$20x of the distribution is treated as a dividend from FC2. With respect to the remaining \$80x, USP takes the position that \$40x is applied against and reduces the basis of the FC2 stock issued in the deemed section 351 exchange, and \$40x is applied against and reduces the basis of the FC2 stock

held by USP prior to (and after) the transaction.

(ii) *Analysis.* Under paragraph (b) of this section, USP must recognize gain of \$40x on its transfer of the FC1 stock to FC2 in the deemed section 351 exchange (the amount by which the \$60x gain realized by USP on the deemed section 351 exchange with respect to the F1 stock exceeds the \$20x dividend inclusion). Pursuant to paragraph (b) of this section, the exception under § 1.367(a)–3(b) is not available to the transfer of the FC1 stock by USP to FC2 in the deemed section 351 exchange. Thus, USP cannot avoid gain recognition under paragraph (b) of this section by entering into a gain recognition agreement with respect to its transfer of the FC1 stock to FC2 in the deemed section 351 exchange. Under paragraph (d) of this section, the \$40x gain recognized is allocated among the shares of FC1 stock transferred to FC2 in the deemed section 351 exchange in proportion to the gain realized by USP on the transfer of such shares. Under paragraph (c) of this section, the application of paragraph (b) of this section is determined prior to taking into account the \$40x increase to the basis of the FC1 stock transferred by USP. Under section 362, the basis of the FC1 stock in the hands of FC2 is increased by \$40x, the amount of gain recognized by the USP on the transfer of the FC1 stock under paragraph (b) of this section. Under section 358, the basis of the FC2 stock received by USP in the deemed section 351 exchange is similarly increased by \$40x. See § 1.367(a)–1T(b)(4). The \$40x increase to the basis of the FC2 stock is taken into account before determining the consequences of the redemption of such stock under section 304(a)(1).

(f) *Effective/applicability date.* This section applies to transfers occurring on or after February 10, 2009. See § 1.367(a)–3(a), as contained in 26 CFR part 1 revised as of April 1, 2008, for transfers occurring on or after February 21, 2006, and before February 10, 2009.

(g) *Expiration date.* This section expires on or before February 10, 2012.

■ **Par. 4.** Section 1.367(b)–4 is amended by revising the second sentence in paragraph (a) and adding paragraphs (e), (f) and (g) to read as follows:

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

(a) * * * For rules applicable when, pursuant to section 304(a)(1), a foreign acquiring corporation is treated as acquiring the stock of a foreign acquired corporation in a transaction to which section 351(a) applies, see § 1.367(b)–4T(e). * * *

* * * * *

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

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

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

■ **Par. 5.** Section 1.367(b)–4T is added to read as follows:

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

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

(e) Application of section 367(b) to transactions described in section 304(a)(1)—(1) *Scope and general rule.* This section applies to the extent that, pursuant to section 304(a)(1), an exchanging shareholder is treated as transferring the stock of a foreign acquired corporation to a foreign acquiring corporation in a transaction to which section 351(a) applies (deemed section 351 exchange). Except to the extent provided in paragraph (e)(2) of this section, a transfer of stock of a foreign acquired corporation by an exchanging shareholder in a deemed section 351 exchange shall not be subject to paragraph (b) of this section.

(2) *Special rule.* Notwithstanding paragraph (e)(1) of this section, a transfer of stock of a foreign acquired corporation by an exchanging shareholder to a foreign acquiring corporation in a deemed section 351 exchange shall be subject to paragraph (b) of this section to the extent the distribution received by the exchanging shareholder in redemption of the stock of the foreign acquiring corporation is applied against and reduces, pursuant to section 301(c)(2), the basis of stock of the foreign acquiring corporation held by the exchanging shareholder other than the stock deemed issued by the foreign acquiring corporation in the deemed section 351 exchange.

(3) *Allocation of income inclusion.* If the income inclusion resulting from the application of paragraph (e)(2) of this section is less than the section 1248 amount attributable to the shares of stock of the foreign acquired corporation transferred by the exchanging shareholder in the deemed section 351 exchange, the amount of the income inclusion attributable to each share of stock transferred in the deemed section 351 exchange shall be determined by multiplying the income inclusion by the percentage that the section 1248 amount attributable to such share of stock bears to the aggregate section 1248 amount attributable to all of the shares of stock transferred in the deemed section 351 exchange.

(4) *Example.* The rules of this paragraph (e) are illustrated by the following example:

Example. (i) *Facts.* (A) FP, a foreign corporation, wholly owns USP, a domestic

corporation. USP wholly owns CFC1, and CFC1 wholly owns CFC2. CFC2 wholly owns CFC3. CFC1, CFC2 and CFC3 are controlled foreign corporations within the meaning of section 957(a). USP, CFC1, CFC2 and CFC3 use a calendar taxable year. CFC1 owns 30% of the outstanding stock of FS, a foreign corporation. FP owns the remaining 70% of the outstanding stock of FS. The CFC2 stock has a \$40x basis and \$100x fair market value. The FS stock held by CFC1 has a \$60x basis and \$100x fair market value. As of December 31, year 1, CFC2 has \$20x of section 1248 earnings and profits, CFC3 has \$40x of section 1248 earnings and profits, and FS has zero earnings and profits. On December 31, year 1, in a transaction described in section 304(a)(1), CFC1 sells the CFC2 stock to FS for \$100x cash. FS is not a controlled foreign corporation (within the meaning section 957(a)) either before or after the sale of the CFC2 stock.

(B) Because CFC1 wholly owns CFC2 before the transaction and is treated, under section 318, as indirectly owning 100% of the CFC2 stock after the transaction, under section 304(a)(1), CFC2 and FS are treated as if CFC1 contributed the CFC2 stock to FS in a deemed section 351 exchange in exchange solely for \$100x of FS stock, and then FS redeemed for \$100x cash its stock deemed issued to CFC1. Because CFC1 wholly owned CFC2 before the transaction and is treated, under section 318, as indirectly owning 100% of CFC2 after the transaction, section 302(a) does not apply to the redemption. Instead, under section 302(d), the redemption is treated as a distribution to which section 301 applies. Pursuant to section 304(b)(2), \$20x of the distribution is treated as a dividend from the earnings and profits of CFC2. With respect to the remaining \$80x, CFC1 takes the position that \$40x is applied against and reduces the basis of the FS stock deemed issued in the transaction, and \$40x is applied against and reduces the basis of the FS stock held by CFC1 prior to (and after) the transaction.

(ii) *Analysis.* Under paragraph (e)(2) of this section, the transfer by CFC1 of the CFC2 stock to FS in the deemed section 351 exchange is subject to paragraph (b) of this section to the extent the distribution received by CFC1 in redemption of the FS stock issued in the deemed section 351 exchange is applied against and reduces, under section 301(c)(2), the basis of the FS stock held by CFC1 before (and after) the transaction. Thus, because \$40x of the distribution received by CFC1 from FS in redemption of the FS stock issued in the deemed section 351 exchange is applied against and reduces, under section 301(c)(2), the basis of the FS stock held by CFC1 before (and after) the transaction, under paragraph (b) of this section, CFC1 must include \$40x in income as a deemed dividend. See § 1.367(b)–2(e) for the treatment of the \$40x income inclusion. In total, CFC1 recognizes dividend income of \$60x, \$20x from the application of section 304(a)(1) to the sale of the CFC2 stock to FS and \$40x under paragraph (b) of this section by reason of the application of paragraph (e)(2) of this section.

(f) *Effective/applicability date.* Paragraph (e) of this section applies to

transfers occurring on or after February 10, 2009. See § 1.367(b)–4, as contained in 26 CFR part 1 revised as of April 1, 2008, for transfers occurring on or after February 21, 2006, and before February 10, 2009.

(g) *Expiration date*. This section expires on or before February 10, 2012.

■ **Par. 6.** Section 1.1248–1 is amended by revising paragraphs (b) and (g) and adding paragraph (h) to read as follows:

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

* * * * *

(b) [Reserved]. For further guidance, see § 1.1248–1T(b).

* * * * *

(g) *Effective/applicability date*. (1) The third sentence in paragraph (a)(1), paragraph (a)(4), and paragraph (a)(5), *Example 4*, of this section apply to income inclusions that occur on or after July 30, 2007. A taxpayer may elect to apply paragraph (a)(4) of this section to income inclusions in open taxable years provided that it consistently applies paragraph (a)(4) of this section for income inclusions in the first year for which the election is applicable and in all subsequent years.

(2) [Reserved]. For further guidance, see § 1.1248–1T(g)(2).

(h) [Reserved]. For further guidance, see § 1.1248–1T(h).

■ **Par. 7.** Section 1.1248–1T is added to read as follows:

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

(a) [Reserved]. For further guidance, see § 1.1248–1(a).

(b) *Sale or exchange*. For purposes of section 1248(a), the term *sale or exchange* includes the receipt of a distribution which is treated as in exchange for stock under section 302(a) (relating to distributions in redemption of stock), section 331(a)(1) (relating to distributions in complete liquidation of a corporation), or section 331(a)(2) (relating to distributions in partial liquidation of a corporation). For purposes of section 1248(a), gain recognized by a shareholder under section 301(c)(3) in connection with a distribution of property by a corporation with respect to its stock shall be treated as gain from the sale or exchange of stock of such corporation.

(c) through (f) [Reserved]. For further guidance, see § 1.1248–1(c) through (f).

(g) *Effective/applicability dates*. (1) [Reserved]. For further guidance, see § 1.1248–1(g)(1).

(2) Paragraph (b) of this section applies to distributions that occur on or after February 10, 2009.

(h) *Expiration date*. This section expires on or before February 10, 2012.

Linda M. Kroening,

Acting Deputy Commissioner for Services and Enforcement.

Approved: January 13, 2009.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E9–2835 Filed 2–10–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9442]

RIN 1545–BA11

Consolidated Returns; Intercompany Obligations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (TD 9442) that were published in the **Federal Register** on Monday, December 29, 2008 (73 FR 79324) under section 1502 of the Internal Revenue Code providing guidance regarding the treatment of transactions involving obligations between members of a consolidated group.

DATES: This correction is effective February 11, 2009, and is applicable on December 29, 2008.

FOR FURTHER INFORMATION CONTACT: Frances Kelly, (202) 622–7770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this document are under section 1502 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9442) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

■ Accordingly, the publication of the final regulations (TD 9442), which was the subject of FR Doc. E8–30718, is corrected as follows:

■ 1. On page 79325, column 2, in the preamble, under the paragraph heading “A. Anti-Abuse Rules”, second paragraph of the column, first to fifth

lines from the bottom of the paragraph, the language “from the deemed satisfaction and reissuance model, these final regulations also adopt more specific rules regarding such transfers (described in part C.3.a. of this Preamble).” is corrected to read “from the deemed satisfaction-reissuance model, these final regulations also adopt more specific rules regarding such transfers (described in part C.3.a. of this preamble).”.

■ 2. On page 79325, column 3, in the preamble, under the paragraph heading “C. Exceptions and Related Provisions”, third paragraph of the column, first line from the bottom of the paragraph, the language “satisfaction-reissuance.” is corrected to read “satisfaction and reissuance.”.

■ 3. On page 79327, column 1, in the preamble, under the paragraph heading “5. Exceptions to the Application of Section 108(e)(4)”, first paragraph of the column, fifth line from the bottom of the paragraph, the language “short term debt exceptions for both” is corrected to read “short-term debt exceptions for both”.

Guy Traynor,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9442]

RIN 1545–BA11

Consolidated Returns; Intercompany Obligations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 9442) that were published in the **Federal Register** on Monday, December 29, 2008 (73 FR 79324) under section 1502 of the Internal Revenue Code providing guidance regarding the treatment of transactions involving obligations between members of a consolidated group.

DATES: This correction is effective February 11, 2009, and is applicable on December 29, 2008.