

§ 351. Transfer to corporation controlled by transferor

(a) General rule

No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock in such corporation and immediately after the exchange such person or persons are in control (as defined in section 368(c)) of the corporation.

(b) Receipt of property

If subsection (a) would apply to an exchange but for the fact that there is received, in addition to the stock permitted to be received under subsection (a), other property or money, then—

(1) gain (if any) to such recipient shall be recognized, but not in excess of—

(A) the amount of money received, plus

(B) the fair market value of such other property received; and

(2) no loss to such recipient shall be recognized.

(c) Special rules where distribution to shareholders

(1) In general

In determining control for purposes of this section, the fact that any corporate transferor distributes part or all of the stock in the corporation which it receives in the exchange to its shareholders shall not be taken into account.

(2) Special rule for section 355

If the requirements of section 355 (or so much of section 356 as relates to section 355) are met with respect to a distribution described in paragraph (1), then, solely for purposes of determining the tax treatment of the transfers of property to the controlled corporation by the distributing corporation, the fact that the shareholders of the distributing corporation dispose of part or all of the distributed stock, or the fact that the corporation whose stock was distributed issues additional stock, shall not be taken into account in determining control for purposes of this section.

(d) Services, certain indebtedness, and accrued interest not treated as property

For purposes of this section, stock issued for—

(1) services,

(2) indebtedness of the transferee corporation which is not evidenced by a security, or

(3) interest on indebtedness of the transferee corporation which accrued on or after the beginning of the transferor's holding period for the debt,

shall not be considered as issued in return for property.

(e) Exceptions

This section shall not apply to—

(1) Transfer of property to an investment company

A transfer of property to an investment company. For purposes of the preceding sentence, the determination of whether a company is an investment company shall be made—

(A) by taking into account all stock and securities held by the company, and

(B) by treating as stock and securities—

(i) money,

(ii) stocks and other equity interests in a corporation, evidences of indebtedness, options, forward or futures contracts, notional principal contracts and derivatives,

(iii) any foreign currency,

(iv) any interest in a real estate investment trust, a common trust fund, a regulated investment company, a publicly-traded partnership (as defined in section 7704(b)) or any other equity interest (other than in a corporation) which pursuant to its terms or any other arrangement is readily convertible into, or exchangeable for, any asset described in any preceding clause, this clause or clause (v) or (viii),

(v) except to the extent provided in regulations prescribed by the Secretary, any interest in a precious metal, unless such metal is used or held in the active conduct of a trade or business after the contribution,

(vi) except as otherwise provided in regulations prescribed by the Secretary, interests in any entity if substantially all of the assets of such entity consist (directly or indirectly) of any assets described in any preceding clause or clause (viii),

(vii) to the extent provided in regulations prescribed by the Secretary, any interest in any entity not described in clause (vi), but only to the extent of the value of such interest that is attributable to assets listed in clauses (i) through (v) or clause (viii), or

(viii) any other asset specified in regulations prescribed by the Secretary.

The Secretary may prescribe regulations that, under appropriate circumstances, treat any asset described in clauses (i) through (v) as not so listed.

(2) Title 11 or similar case

A transfer of property of a debtor pursuant to a plan while the debtor is under the jurisdiction of a court in a title 11 or similar case (within the meaning of section 368(a)(3)(A)), to the extent that the stock received in the exchange is used to satisfy the indebtedness of such debtor.

(f) Treatment of controlled corporation

If—

(1) property is transferred to a corporation (hereinafter in this subsection referred to as the "controlled corporation") in an exchange with respect to which gain or loss is not recognized (in whole or in part) to the transferor under this section, and

(2) such exchange is not in pursuance of a plan of reorganization,

section 311 shall apply to any transfer in such exchange by the controlled corporation in the same manner as if such transfer were a distribution to which subpart A of part I applies.

(g) Nonqualified preferred stock not treated as stock**(1) In general**

In the case of a person who transfers property to a corporation and receives nonqualified preferred stock—

(A) subsection (a) shall not apply to such transferor, and

(B) if (and only if) the transferor receives stock other than nonqualified preferred stock—

(i) subsection (b) shall apply to such transferor; and

(ii) such nonqualified preferred stock shall be treated as other property for purposes of applying subsection (b).

(2) Nonqualified preferred stock

For purposes of paragraph (1)—

(A) In general

The term “nonqualified preferred stock” means preferred stock if—

(i) the holder of such stock has the right to require the issuer or a related person to redeem or purchase the stock,

(ii) the issuer or a related person is required to redeem or purchase such stock,

(iii) the issuer or a related person has the right to redeem or purchase the stock and, as of the issue date, it is more likely than not that such right will be exercised, or

(iv) the dividend rate on such stock varies in whole or in part (directly or indirectly) with reference to interest rates, commodity prices, or other similar indices.

(B) Limitations

Clauses (i), (ii), and (iii) of subparagraph (A) shall apply only if the right or obligation referred to therein may be exercised within the 20-year period beginning on the issue date of such stock and such right or obligation is not subject to a contingency which, as of the issue date, makes remote the likelihood of the redemption or purchase.

(C) Exceptions for certain rights or obligations**(i) In general**

A right or obligation shall not be treated as described in clause (i), (ii), or (iii) of subparagraph (A) if—

(I) it may be exercised only upon the death, disability, or mental incompetency of the holder, or

(II) in the case of a right or obligation to redeem or purchase stock transferred in connection with the performance of services for the issuer or a related person (and which represents reasonable compensation), it may be exercised only upon the holder's separation from service from the issuer or a related person.

(ii) Exception

Clause (i)(I) shall not apply if the stock relinquished in the exchange, or the stock acquired in the exchange is in—

(I) a corporation if any class of stock in such corporation or a related party is

readily tradable on an established securities market or otherwise, or

(II) any other corporation if such exchange is part of a transaction or series of transactions in which such corporation is to become a corporation described in subclause (I).

(3) Definitions

For purposes of this subsection—

(A) Preferred stock

The term “preferred stock” means stock which is limited and preferred as to dividends and does not participate in corporate growth to any significant extent. Stock shall not be treated as participating in corporate growth to any significant extent unless there is a real and meaningful likelihood of the shareholder actually participating in the earnings and growth of the corporation. If there is not a real and meaningful likelihood that dividends beyond any limitation or preference will actually be paid, the possibility of such payments will be disregarded in determining whether stock is limited and preferred as to dividends.

(B) Related person

A person shall be treated as related to another person if they bear a relationship to such other person described in section 267(b) or 707(b).

(4) Regulations

The Secretary may prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection and sections 354(a)(2)(C), 355(a)(3)(D), and 356(e). The Secretary may also prescribe regulations, consistent with the treatment under this subsection and such sections, for the treatment of nonqualified preferred stock under other provisions of this title.

(h) Cross references

(1) For special rule where another party to the exchange assumes a liability, see section 357.

(2) For the basis of stock or property received in an exchange to which this section applies, see sections 358 and 362.

(3) For special rule in the case of an exchange described in this section but which results in a gift, see section 2501 and following.

(4) For special rule in the case of an exchange described in this section but which has the effect of the payment of compensation by the corporation or by a transferor, see section 61(a)(1).

(5) For coordination of this section with section 304, see section 304(b)(3).

(Aug. 16, 1954, ch. 736, 68A Stat. 111; Pub. L. 89-809, title II, §203(a), (b), Nov. 13, 1966, 80 Stat. 1577; Pub. L. 94-455, title XIX, §1901(a)(48)(A), (B), Oct. 4, 1976, 90 Stat. 1772; Pub. L. 96-589, §5(e), Dec. 24, 1980, 94 Stat. 3406; Pub. L. 97-248, title II, §226(a)(1)(B), Sept. 3, 1982, 96 Stat. 491; Pub. L. 100-647, title I, §1018(d)(5)(G), Nov. 10, 1988, 102 Stat. 3580; Pub. L. 101-239, title VII, §7203(a), (b), Dec. 19, 1989, 103 Stat. 2333; Pub. L. 101-508, title XI, §11704(a)(3), Nov. 5, 1990, 104 Stat. 1388-518; Pub. L. 105-34, title X, §§1002(a), 1012(c)(1), 1014(a), Aug. 5, 1997, 111 Stat. 909, 916, 919; Pub. L. 105-206, title VI, §6010(c)(3)(A), (e)(1), July 22, 1998, 112 Stat. 813, 814; Pub. L. 105-277,

div. J, title IV, §4003(f)(1), Oct. 21, 1998, 112 Stat. 2681-910; Pub. L. 106-36, title III, §3001(d)(1), June 25, 1999, 113 Stat. 183; Pub. L. 107-147, title IV, §417(9), Mar. 9, 2002, 116 Stat. 56; Pub. L. 108-357, title VIII, §899(a), Oct. 22, 2004, 118 Stat. 1649; Pub. L. 109-135, title IV, §403(kk), Dec. 21, 2005, 119 Stat. 2632.)

Editorial Notes

AMENDMENTS

2005—Subsec. (g)(3)(A). Pub. L. 109-135 inserted at end “If there is not a real and meaningful likelihood that dividends beyond any limitation or preference will actually be paid, the possibility of such payments will be disregarded in determining whether stock is limited and preferred as to dividends.”

2004—Subsec. (g)(3)(A). Pub. L. 108-357 inserted at end “Stock shall not be treated as participating in corporate growth to any significant extent unless there is a real and meaningful likelihood of the shareholder actually participating in the earnings and growth of the corporation.”

2002—Subsec. (h)(1). Pub. L. 107-147 inserted comma after “liability”.

1999—Subsec. (h)(1). Pub. L. 106-36 struck out “, or acquires property subject to a liability,” after “liability”.

1998—Subsec. (c). Pub. L. 105-206, §6010(c)(3)(A), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “In determining control for purposes of this section—

“(1) the fact that any corporate transferor distributes part or all of the stock in the corporation which it receives in the exchange to its shareholders shall not be taken into account, and

“(2) if the requirements of section 355 are met with respect to such distribution, the shareholders shall be treated as in control of such corporation immediately after the exchange if the shareholders own (immediately after the distribution) stock possessing—

“(A) more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and

“(B) more than 50 percent of the total value of shares of all classes of stock of such corporation.”

Subsec. (c)(2). Pub. L. 105-277 inserted “, or the fact that the corporation whose stock was distributed issues additional stock,” after “dispose of part or all of the distributed stock”.

Subsec. (g)(1)(A) to (C). Pub. L. 105-206, §6010(e)(1), inserted “and” at end of subpar. (A), added subpar. (B), and struck out former subpars. (B) and (C) which read as follows:

“(B) subsection (b) shall apply to such transferor, and

“(C) such nonqualified preferred stock shall be treated as other property for purposes of applying subsection (b).”

1997—Subsec. (c). Pub. L. 105-34, §1012(c)(1), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: “In determining control, for purposes of this section, the fact that any corporate transferor distributes part or all of the stock which it receives in the exchange to its shareholders shall not be taken into account.”

Subsec. (e)(1). Pub. L. 105-34, §1002(a), inserted last two sentences.

Subsecs. (g), (h). Pub. L. 105-34, §1014(a), added subsec. (g) and redesignated former subsec. (g) as (h).

1990—Subsec. (e)(2). Pub. L. 101-508 substituted “is used” for “are used”.

1989—Subsec. (a). Pub. L. 101-239, §7203(a), struck out “or securities” after “stock”.

Subsecs. (b), (d), (e)(2). Pub. L. 101-239, §7203(b)(1), struck out “or securities” after “stock”.

Subsec. (g)(2). Pub. L. 101-239, §7203(b)(2), substituted “stock or property” for “stock, securities, or property”.

1988—Subsecs. (f), (g). Pub. L. 100-647 added subsec. (f) and redesignated former subsec. (f) as (g).

1982—Subsec. (f)(5). Pub. L. 97-248 added par. (5).

1980—Subsec. (a). Pub. L. 96-589, §5(e)(2), struck out provision that stock or securities issued for services shall not be considered as issued in return for property for purposes of this section.

Subsec. (d). Pub. L. 96-589, §5(e)(1), added subsec. (d). Former subsec. (d) redesignated (e)(1).

Subsec. (e). Pub. L. 96-589, §5(e)(2), redesignated former subsec. (d) as par. (1) and added par. (2). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 96-589, §5(e)(1), redesignated former subsec. (e) as (f).

1976—Subsec. (a). Pub. L. 94-455, §1901(a)(48)(A), struck out “(including, in the case of transfers made on or before June 30, 1967, an investment company)” after “property is transferred to a corporation”.

Subsec. (d). Pub. L. 94-455, §1901(a)(48)(B), among other changes, substituted “Exception” for “Application of June 30, 1967, date” in heading and in text provision that this section does not apply to a transfer of property to an investment company for provisions relating to treatment of a transfer of property to an investment company as made on or before June 30, 1967.

1966—Subsec. (a). Pub. L. 89-809, §203(a), inserted “(including, in the case of transfers made on or before June 30, 1967, an investment company)” after “if property is transferred to a corporation”.

Subsecs. (d), (e). Pub. L. 89-809, §203(b), added subsec. (d) and redesignated former subsec. (d) as (e).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which such amendment relates, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, §899(b), Oct. 22, 2004, 118 Stat. 1649, provided that: “The amendment made by this section [amending this section] shall apply to transactions after May 14, 2003.”

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-36, title III, §3001(e), June 25, 1999, 113 Stat. 184, provided that: “The amendments made by this section [amending this section and sections 357, 358, 362, 368, 584, and 1031 of this title] shall apply to transfers after October 18, 1998.”

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105-277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 4003(j) of Pub. L. 105-277, set out as a note under section 86 of this title.

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title X, §1002(b), Aug. 5, 1997, 111 Stat. 909, provided that:

“(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to transfers after June 8, 1997, in taxable years ending after such date.

“(2) BINDING CONTRACTS.—The amendment made by subsection (a) shall not apply to any transfer pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before such transfer if such contract provides for the transfer of a fixed amount of property.”

Pub. L. 105-34, title X, §1012(d), Aug. 5, 1997, 111 Stat. 917, as amended by Pub. L. 105-206, title VI, §6010(c)(1), July 22, 1998, 112 Stat. 813, provided that:

“(1) SECTION 355 RULES.—The amendments made by subsections (a) and (b) [amending sections 355 and 358 of this title] shall apply to distributions after April 16, 1997; except that the amendment made by subsection (a) [amending section 355 of this title] shall apply to such distributions only if pursuant to a plan (or series of related transactions) which involves an acquisition described in section 355(e)(2)(A)(ii) of the Internal Revenue Code of 1986 occurring after such date.

“(2) DIVISIVE TRANSACTIONS.—The amendments made by subsection (c) [amending this section and section 368 of this title] shall apply to transfers after the date of the enactment of this Act [Aug. 5, 1997].

“(3) TRANSITION RULE.—The amendments made by this section [amending this section and sections 355, 358, and 368 of this title] shall not apply to any distribution pursuant to a plan (or series of related transactions) which involves an acquisition described in section 355(e)(2)(A)(ii) of the Internal Revenue Code of 1986 (or, in the case of the amendments made by subsection (c), any transfer) occurring after April 16, 1997, if such acquisition or transfer is—

“(A) made pursuant to an agreement which was binding on such date and at all times thereafter,

“(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

“(C) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission required solely by reason of the acquisition or transfer.

This paragraph shall not apply to any agreement, ruling request, or public announcement or filing unless it identifies the acquirer of the distributing corporation or any controlled corporation, or the transferee, whichever is applicable.”

Pub. L. 105-34, title X, §1014(f), Aug. 5, 1997, 111 Stat. 921, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and sections 354 to 356 and 1036 of this title] shall apply to transactions after June 8, 1997.

“(2) TRANSITION RULE.—The amendments made by this section shall not apply to any transaction after June 8, 1997, if such transaction is—

“(A) made pursuant to a written agreement which was binding on such date and at all times thereafter,

“(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

“(C) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission required solely by reason of the transaction.”

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-239, title VII, §7203(c), Dec. 19, 1989, 103 Stat. 2334, provided that:

“(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to transfers after October 2, 1989, in taxable years ending after such date.

“(2) BINDING CONTRACT.—The amendments made by this section shall not apply to any transfer pursuant to a written binding contract in effect on October 2, 1989, and at all times thereafter before such transfer.

“(3) CORPORATE TRANSFERS.—In the case of property transferred (directly or indirectly through a partnership or otherwise) by a C corporation, paragraphs (1) and (2) shall be applied by substituting ‘July 11, 1989’ for ‘October 2, 1989’. The preceding sentence shall not apply where the corporation meets the requirements of section 1504(a)(2) of the Internal Revenue Code of 1986 with respect to the transferee corporation (and where the transfer is not part of a plan pursuant to which the transferor subsequently fails to meet such requirements).”

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, §1018(d)(5)(G), Nov. 10, 1988, 102 Stat. 3580, provided that the amendment made by that

section is effective with respect to transfers on or after June 21, 1988.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to transfers occurring after Aug. 31, 1982, except for certain transfers pursuant to an application to form a BHC filed with the Federal Reserve Board before Aug. 16, 1982, see section 226(c) of Pub. L. 97-248, set out as a note under section 304 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-589 applicable to transactions which occur after Dec. 31, 1980, other than transactions which occur in proceedings in bankruptcy cases or similar judicial proceedings or in proceedings under Title 11, Bankruptcy, commencing on or before Dec. 31, 1980, except as otherwise provided, see section 7 of Pub. L. 96-589, set out as a note under section 108 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title XIX, §1901(a)(48)(C), Oct. 4, 1976, 90 Stat. 1772, provided that: “The amendments made by this paragraph [amending this section] shall take effect with respect to transfers of property occurring after the date of the enactment of this Act [Oct. 4, 1976].”

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89-809, title II, §203(c), Nov. 13, 1966, 80 Stat. 1577, provided that: “The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to transfers of property to investment companies whether made before, on, or after the date of the enactment of this Act [Nov. 13, 1966].”

SUBPART B—EFFECTS ON SHAREHOLDERS AND SECURITY HOLDERS

Sec. 354.	Exchanges of stock and securities in certain reorganizations.
355.	Distribution of stock and securities of a controlled corporation.
356.	Receipt of additional consideration.
357.	Assumption of liability.
358.	Basis to distributees.

§ 354. Exchanges of stock and securities in certain reorganizations

(a) General rule

(1) In general

No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

(2) Limitation

(A) Excess principal amount

Paragraph (1) shall not apply if—

(i) the principal amount of any such securities received exceeds the principal amount of any such securities surrendered, or

(ii) any such securities are received and no such securities are surrendered.

(B) Property attributable to accrued interest

Neither paragraph (1) nor so much of section 356 as relates to paragraph (1) shall apply to the extent that any stock (including nonqualified preferred stock, as defined in section 351(g)(2)), securities, or other