



LB&I International Practice Service Transaction Unit

IPS Level	Number	Title	UIL Code	Number
Shelf	N/A	Business Outbound	–	–
Volume	1	Income Shifting Outbound	Level 1 UIL	9411
Part	1.8	Gain Exportation (through contribution or reorg)	Level 2 UIL	9411.08
Chapter	1.8.3	Inbound Transactions – IRC 367(b)	Level 3 UIL	N/A
Sub-Chapter	N/A	N/A	–	–

Unit Name	Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder
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Document Control Number (DCN)	ISO/9411.08_02(2014)
Date of Last Update	07/28/15

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Issue and Transaction Overview

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

- Generally, a domestic corporation (U.S. S/H) is not subject to U.S. taxation on the earnings and profits (E&P) of a foreign corporation (FC) that it owns until the earnings are distributed, i.e. repatriated, to the U.S. S/H. Therefore, the U.S. S/H generally has deferral of U.S. income taxes on the earnings of its FCs. Anti-deferral provisions, such as subpart F of the Code, may require U.S. S/H to currently recognize certain passive or “mobile” income earned by a FC in which it has an ownership interest.
- FC may transfer property to its U.S. S/H in transactions that typically would be considered tax-free transactions. For example, FC may liquidate under Internal Revenue Code (IRC) section 332 into its sole owner U.S. S/H. Given the general rule that U.S. tax on the foreign corporation’s earnings is deferred, an inbound (I/B) liquidation of a FC under IRC 332 could enable the earnings to escape U.S. taxation at the corporate-level. A similar result could occur in an I/B asset reorganization under IRC 368. IRC 367(b) ensures that the previously deferred foreign earnings of FC do not escape U.S. taxation at ordinary rates through non-recognition transactions.
- Unless described otherwise in the regulations, IRC 367(b) allows for nonrecognition to apply to certain I/B transactions. The IRC 367(b) regulations may require the U.S. S/H to report deemed dividend income equal to FC’s “all earnings and profits amount” (“all E&P amount”) which will be described in this Practice Unit, on certain I/B liquidations or asset reorganizations of a controlled foreign corporation (CFC). For example, a domestic corporation that acquires the assets of a CFC in a liquidation described in IRC 332 must include in income as a deemed dividend the all E&P amount.
- This Practice Unit will cover the I/B liquidation of a CFC into a US corporate S/H.
- The application of IRC 367(b) to an I/B liquidation will be triggered only if the liquidation is described in IRC 332. Therefore, as a threshold matter, it is necessary to determine whether the requirements of an IRC 332 liquidation have been met, including that the corporate S/H own 80% or more of the liquidating corporation and that the liquidating corporation is solvent at the time of the liquidation.

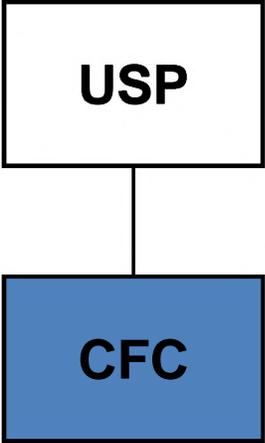
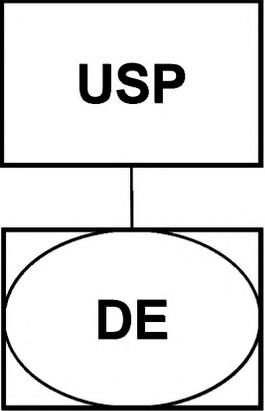
Issue and Transaction Overview (cont'd)

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

 **CAUTION:** Although this Practice Unit focuses exclusively on an I/B liquidation of a CFC, it should be noted that IRC 367(b) also governs the treatment of other I/B asset transactions, such as an I/B distribution by a 1st Tier CFC of its stock in a 2nd Tier CFC to its U.S. S/H under IRC 355, I/B asset reorganization of a FC into a DC, or I/B IRC 351 transfer of assets or stock to a DC. In addition, IRC 367(b) may also apply to certain foreign-to-foreign (F-to-F) transactions which are also beyond the scope of this Practice Unit and are covered in a separate Practice Unit, “Foreign-to-Foreign Transactions – IRC 367(b) Overview,” DCN: ISO/9411.08_03(2013) for details.

Transaction and Fact Pattern

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Diagram of Transaction	Facts
<p>Before</p>  <p>After</p> 	<p>Facts:</p> <ul style="list-style-type: none"> ▪ U.S. Parent (USP) has owned 100% of a controlled foreign corporation (CFC) since CFC's incorporation in year 1. ▪ CFC has one class of common stock outstanding (common stock). ▪ CFC operates a trade or business outside of the U.S. and does not engage in any activity in the U.S. ▪ In year 3, CFC makes a check-the-box (CTB) election to change its classification from a corporation to a disregarded entity (DE). ▪ Immediately prior to the effective date of the CTB election, CFC has \$10 million in accumulated E&P. <p>Results:</p> <ul style="list-style-type: none"> ▪ Due to the CTB election, CFC is deemed to distribute all of its assets and liabilities to USP in liquidation. ▪ Due to the CTB election, CFC ceases to be treated as a corporation and is generally disregarded for U.S. federal tax purposes; however CFC continues to be treated as a corporation for foreign tax purposes. ▪ After the CTB election, USP continues to operate CFC's trade or business outside the U.S. through its interest in DE.

Effective Tax Rate Overview

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

ETR of Company

- The ETR of the company may increase in the year that FC's earnings are repatriated to US S/H as a dividend if such earnings were previously asserted as permanently reinvested income (PRI). If PRI was asserted then ETR may be increased if such foreign earnings were repatriated from a lower-tax jurisdiction. FC may transfer property to US S/H in an exchange described in IRC 332 or an asset reorganization in IRC 368. However, IRC 367(b) may require such S/H to include in income a deemed dividend, which, if applicable, would result in an increase in ETR. The increase in ETR may be reduced or eliminated by any related foreign tax credit (FTC) attributable to the "deemed" dividend.
- A primary purpose of IRC 367(b) is to ensure that previously deferred foreign earnings of a FC do not escape U.S. taxation at ordinary rates through non-recognition transactions. In certain transactions that otherwise would be tax-free, regulations under IRC 367(b) may require the exchanging S/H to include in income as a deemed dividend the "all E&P amount" attributable to the FC stock.

ETR Impact of Adjustment

- Upon an I/B IRC 332 liquidation, the exchanging U.S. S/H must include in income as a deemed dividend the all E&P amount with respect to the FC. With such dividend, the U.S. S/H may be allowed to claim a related FTC. Such tax credits may reduce or eliminate the impact of the "deemed dividend" income inclusion on the U.S. corporation's ETR.

Summary of Potential Issues

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

<u>Issue 1</u>	Whether the transaction is a liquidation described in IRC 332?
<u>Issue 2</u>	Whether Treas. Reg. 1.367(b)-3, applicable to the transaction as an I/B liquidation described in IRC 332, potentially subjects USP to a current income inclusion?
<u>Issue 3</u>	What is the “all E&P amount,” if any, that USP is required to include in income as deemed dividend under Treas. Reg. 1.367(b)-3 as a result of the transaction?

All Issues, Step 1: Initial Factual Development

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Except to the extent provided in regulations, IRC 367(b) confirms the application of the non-recognition provisions to exchanges involving a FC in which there is no transfer of property described in IRC 367(a)(1). Regulations under IRC 367(b) provide that in an I/B liquidation described in IRC 332 the domestic corporate S/H must include in income as a deemed dividend the “all E&P amount” attributable to the FC stock.

Fact Element	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Review global organization tax organizational charts for ownership of CFC. <ul style="list-style-type: none"> – Compare org chart at the beginning and end of the tax year that includes the liquidation – Does the CFC disappear from the org chart? – Does the CFC have a change in how it is depicted on the org chart <ul style="list-style-type: none"> ▪ Square - FC status ▪ Circle within a square – DE status ▪ Other? 	<ul style="list-style-type: none"> ▪ Tax Organizational Charts – Beginning of Year and Ending of Year for each year under examination. 	

All Issues, Step 1: Initial Factual Development (cont'd)

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Except to the extent provided in regulations, IRC 367(b) confirms the application of the non-recognition provisions to exchanges involving a FC in which there is no transfer of property described in IRC 367(a)(1). Regulations under IRC 367(b) provide that in an I/B liquidation described in IRC 332 the domestic corporate S/H must include in income as a deemed dividend the “all E&P amount” attributable to the FC stock.

Fact Element	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Review disclosures or forms on U.S. tax return for any statement related to CFC. ▪ Did CFC timely file a CTB election to be classified as a DE? 	<ul style="list-style-type: none"> ▪ Form 8832 – Entity Classification Election ▪ Form 8858 (initial) ▪ Statement on Plan for Liquidation (per Treas. Reg. 1.332-6) ▪ Form 5471 ▪ Form 5471, Sch O ▪ Form 966 (if required under IRC 6046(a)) 	
<ul style="list-style-type: none"> ▪ Did USP report any gains or losses resulting from the liquidation? <ul style="list-style-type: none"> – Ordinary or Capital Loss – may be labeled as “Worthless Stock Loss” – Dividend Income – “All E&P amount Inclusion” sourced from CFC. 	<ul style="list-style-type: none"> ▪ Form 1120 ▪ Form 1120, Schedule D ▪ Form 1120, Schedule C ▪ Form 1118 ▪ Other Deductions 	

Issue 1, Step 2: Review Potential Issues

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 1

Whether the transaction is a liquidation described in IRC 332?

Explanation of Issue	Resources
<ul style="list-style-type: none"> ▪ Under IRC 367(b), a domestic corporation that acquires the assets of a FC in a liquidation described in IRC 332 must include in income as a deemed dividend the “all E&P amount” with respect to the stock in the FC. Therefore, as a threshold matter, you must first determine whether the liquidation of the FC is a liquidation described in IRC 332. ▪ A liquidation of a corporation is described in IRC 332 if: <ul style="list-style-type: none"> – The corporation completely liquidates; – The corporation has a corporate S/H which owns 80% or more of the corporation; – The liquidating corporation is solvent at the time of the liquidation; and – In the liquidation, the 80% corporate S/H receives payment for its stock in the liquidating corporation. 	<ul style="list-style-type: none"> ▪ IRC 332 – Nontaxable Liquidation of Subsidiary – S/H Level ▪ IRC 337 – Nontaxable Liquidation – Liquidating Corporation Level ▪ IRC 1504(a)(2) – 80 Percent Ownership Test ▪ IRC 331 – Taxable Liquidation at S/H Level ▪ IRC 336 – Taxable Liquidation at Liquidating Corporation Level

Issue 1, Step 2: Review Potential Issues (cont'd)

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 1

Whether the transaction is a liquidation described in IRC 332?

Explanation of Issue	Resources
<p><u>The corporation completely liquidates:</u></p> <ul style="list-style-type: none"> ▪ For the liquidation to be a complete liquidation within the meaning of IRC 332, the distribution must be made by a liquidating corporation in complete cancellation or redemption of all stock in accordance with a plan of liquidation or one of a series of distributions in complete cancellation or redemption of all of its stock in accordance with a plan of liquidation. <ul style="list-style-type: none"> - Absent a formal plan of liquidation, an election by a corporation to be classified as an entity disregarded from its owner is considered to be the adoption of a plan of liquidation. (i.e. Check-The-Box (CTB) Election) 	<ul style="list-style-type: none"> ▪ IRC 332 – Nontaxable Liquidation of Subsidiary ▪ Treas. Reg. 1.332-2(c) – Complete liquidation ▪ Treas. Reg. 301.7701-3(g) – CTB election ▪ IRC 1504(a)(2) – 80 Percent Ownership Test ▪ Treas. Reg. 1.332-2(b) – Interplay of IRC 332 and IRC 165(g) worthless stock deduction

Issue 1, Step 2: Review Potential Issues (cont'd)

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 1

Whether the transaction is a liquidation described in IRC 332?

Explanation of Issue	Resources
<p><u>The liquidating corporation has a corporate S/H which owns 80% or more of the corporation:</u></p> <ul style="list-style-type: none">▪ For the liquidation to be described in IRC 332, a corporate S/H receiving property in the liquidation must own 80% or more of the total voting power and total value of the stock of the liquidating corporation on the date of the plan of liquidation and at all times until receipt of the property distributed<ul style="list-style-type: none">– For this purpose, the stock owned by members of an affiliated group filing as part of a U.S. consolidated return is aggregated.	<ul style="list-style-type: none">▪ IRC 332 – Nontaxable Liquidation of Subsidiary▪ IRC 1504(a)(2) – 80 Percent Ownership Test▪ Treas. Reg. 1.1502-34 – Special aggregate stock ownership rules.

Issue 1, Step 2: Review Potential Issues (cont'd)

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 1

Whether the transaction is a liquidation described in IRC 332?

Explanation of Issue	Resources
<p><u>The liquidating corporation is solvent:</u></p> <ul style="list-style-type: none"> ▪ For the liquidation to be described in IRC 332, the liquidating corporation must be solvent at the time of the liquidation. ▪ For this purpose, a corporation is considered solvent if the FMV of its assets is greater than its liabilities. All assets, including all tangible and intangible assets (such as goodwill and going concern value) and assets that may not appear on the corporation's balance sheet, must be taken into account. 	<ul style="list-style-type: none"> ▪ IRC 332 – Nontaxable Liquidation of Subsidiary ▪ IRC 1504(a)(2) – 80 Percent Ownership Test ▪ IRC 165(g) – Worthless stock loss ▪ Rev. Rul. 2003-125 – Worthless stock loss on CTB liquidations ▪ Treas. Reg. 1.332-2(b) – Interplay of IRC 332 and IRC 165(g) worthless stock deduction

Issue 1, Step 2: Review Potential Issues (cont'd)

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 1

Whether the transaction is a liquidation described in IRC 332?

Explanation of Issue	Resources
<p><u>In the liquidation, the 80% corporate S/H receives payment for its stock in the liquidating corporation:</u></p> <ul style="list-style-type: none"> ▪ For the liquidation to be described in IRC 332, a corporate S/H meeting the 80% ownership test must receive payment for its stock in the liquidating corporation. ▪ In other words, there must be sufficient net value in the liquidating corporation such that an 80% corporate S/H receives some payment in exchange for its stock. For example, if an 80% corporate S/H receives payment from the liquidating corporation only in its capacity as a creditor of the liquidating corporation, the 80% S/H has not received payment for its stock in the liquidating corporation. 	<ul style="list-style-type: none"> ▪ IRC 332 – Nontaxable Liquidation of Subsidiary ▪ Treas. Reg. 1.332-2(b) – Solvency requirement for IRC 332 – receipt by S/H of at least partial payment for stock in liquidating corporation

Issue 1, Step 2: Review Potential Issues (cont'd)

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 1

Whether the transaction is a liquidation described in IRC 332?

Explanation of Issue	Resources
<ul style="list-style-type: none"> ▪ If the transaction is a complete liquidation but is not a liquidation described in IRC 332: <ul style="list-style-type: none"> – IRC 367(b) will not apply and – Depending on the facts of the particular transaction, IRC 331 (and 336) or IRC 165(g) may apply. 	<ul style="list-style-type: none"> ▪ Corporate Organization Chart ▪ Form 5471 and Sch. O ▪ Form 8832 ▪ Form 8858 ▪ IRC 332 Disclosure ▪ Step Plan and/or Tax Opinions, if any ▪ IRC 332 – Nontaxable liquidation of subsidiary ▪ Rev. Rul. 2003-125 ▪ Treas. Reg. 1.332-2(b) – Solvency requirement for IRC 332 – receipt by S/H of at least partial payment for stock in liquidating corporation ▪ IRC 367(b) Treas. Reg. 301.7701-3(g)(1)(iii) – CTB election to change from corporation to DE status – deemed liquidation treatment ▪ IRC 165(g) – Worthless stock loss

Issue 1, Step 2: Review Potential Issues (cont'd)

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 1

Whether the transaction is a liquidation described in IRC 332?

Explanation of Issue	Resources
<p><u>Solvent Corporation: Liquidation under IRC 331 and 336:</u></p> <ul style="list-style-type: none"> ▪ If the liquidating corporation is solvent and IRC 332 does not apply, the liquidation is governed by IRC 331 and 336. ▪ Under IRC 331, the amounts received by the S/Hs in distribution are treated as in full payment for the stock in the liquidating corporation and therefore taxable to the S/Hs. ▪ Under IRC 336, generally the liquidating corporation recognizes gain or loss on the distribution of property in liquidation as if such property were sold to the distributees at FMV. 	<ul style="list-style-type: none"> ▪ IRC 331 – Taxable liquidation at S/H level ▪ IRC 336 – Taxable liquidation at liquidating corporation level ▪ IRC 332 – Nontaxable liquidation of subsidiary at S/H level ▪ IRC 337 – Nontaxable liquidation of subsidiary at liquidating corporation level ▪ Treas. Reg. 1.332-2(b) – Solvency requirement for IRC 332 – receipt by S/H of at least partial payment for stock in liquidating corporation

Issue 1, Step 2: Review Potential Issues (cont'd)

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 1

Whether the transaction is a liquidation described in IRC 332?

Explanation of Issue	Resources
<p><u>Insolvent Corporation: Worthless stock loss (WSL) deduction under IRC 165(g):</u></p> <ul style="list-style-type: none"> ▪ If the liquidating corporation is not solvent at the time of the liquidation, the treatment of the S/Hs is not governed by IRC 331. Rather, the S/Hs may be able to claim WSL deductions under IRC 165(g). <ul style="list-style-type: none"> – A S/H may only claim the deduction in the taxable year in which the stock became worthless. If the S/H's stock in the corporation became worthless in a taxable year prior to the liquidation, the S/H is not entitled to a WSL deduction in the year of the liquidation – Stock is worthless when it has neither liquidating value nor potential future value. 	<ul style="list-style-type: none"> ▪ IRC 331 – Taxable liquidation at S/H level ▪ IRC 332 – Nontaxable liquidation of subsidiary ▪ IRC 165(g) – WSL loss ▪ Rev. Rul. 2003-125 – WSL loss on CTB liquidations

Issue 1, Step 2: Review Potential Issues (cont'd)

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 1

Whether the transaction is a liquidation described in IRC 332?

Explanation of Issue	Resources
<p><u>Insolvent Corporation: WSL deduction under IRC 165(g), (cont'd):</u></p> <ul style="list-style-type: none"> Generally, the WSL is treated as a loss from the sale or exchange of a capital asset. However, if the S/H owns 80% or more of the total voting power and total value of the stock of the liquidating corporation and more than 90% of the aggregate of the corporation's gross receipts for all taxable years are from sources other than royalties, certain rents, dividends, certain interest, annuities, and gains from sales of stock and securities, the loss receives ordinary treatment. <p> CAUTION: Taxpayers may assert that the liquidating corporation is insolvent in order to extricate the liquidation from the nonrecognition rules of IRC 332 and claim a WSL under IRC 165(g). Scrutinize WSL deductions based on CTB deemed liquidations.</p>	<ul style="list-style-type: none"> IRC 165(g) - WSL Rev. Rul. 2003-125 – WSL loss on CTB liquidations Treas. Reg. 1.332-2(b) – Interplay of IRC 332 and IRC 165(g) WSL deduction

Issue 1, Step 2: Review Potential Issues (cont'd)

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 1

Whether the transaction is a liquidation described in IRC 332?

Explanation of Issue	Resources
<p><u>Insolvent Corporation: Bad Debt Deduction:</u></p> <ul style="list-style-type: none"> ▪ Note that if the liquidating corporation is insolvent and a related person (e.g. a S/H) is a creditor of the liquidating corporation, the related person may be entitled to a bad debt deduction under IRC 166. It is not uncommon for the alleged related-party debt to be the reason why the liquidating corporation is purportedly insolvent. 	<ul style="list-style-type: none"> ▪ Form 5471 and Sch. O ▪ Plan of Liquidation ▪ Form 8832 ▪ IRC 165(g) – <i>WSL</i> ▪ IRC 166 – <i>Bad Debt Deduction</i> ▪ See Practice Unit, “Bona Fide Debt Determination,” DCN: IBF/9423.01_01(2013)
<p> CAUTION: Scrutinize cases in which a S/H, or other related person, claims a bad debt deduction triggered by a liquidation of the debtor- corporation.</p>	
<ul style="list-style-type: none"> ▪ Re-characterizing the alleged related-party debt as equity <ul style="list-style-type: none"> – will eliminate the bad debt deduction, and – may, depending on the facts, <ul style="list-style-type: none"> ▪ shift the status of the liquidating corporation from insolvent to solvent, ▪ allow the former purported creditor to claim a WSL deduction for its new deemed equity interest in the liquidating corporation or ▪ still allow former shareholders who were not creditors to claim a WSL deduction. 	

Issue 1, Step 3: Additional Factual Development

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 1

Whether the transaction is a liquidation described in IRC 332?

Fact Element	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Determine whether CFC completely liquidated in accordance with a plan of liquidation. <ul style="list-style-type: none"> - Absent a formal plan of liquidation, a CTB election by CFC to be classified as an entity disregarded from its owner USP is considered to be the adoption of a plan of liquidation. 	<ul style="list-style-type: none"> ▪ Organizational Chart ▪ Form 5471, Sch A, Sch B, Sch O ▪ Plan of Liquidation Disclosure ▪ Form 8832 – <i>CTB Election</i> ▪ Form 966 – <i>Corporate Dissolution or Liquidation</i> 	
<ul style="list-style-type: none"> ▪ Determine whether USP owned 80% or more of the vote and value of CFC stock at the time of the deemed liquidation resulting from the CTB election. 	<ul style="list-style-type: none"> ▪ Organizational Chart ▪ Form 5471, Sch A, Sch B, Sch O ▪ Plan of Liquidation Disclosure ▪ Stock Ownership Records 	

Issue 1, Step 3: Additional Factual Development (cont'd)

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 1

Whether the transaction is a liquidation described in IRC 332?

Fact Element	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Determine whether CFC was solvent at the time of the deemed liquidation resulting from the CTB election. ▪ This determination may require extensive factual development, for example: <ul style="list-style-type: none"> – requesting that the taxpayer provide information to substantiate the FMV of the assets and the liabilities of the CFC at the time of the liquidation – determining whether the CFC owned any valuable intangibles not reflected on the balance sheets or reported on the return 	<ul style="list-style-type: none"> ▪ Organizational Chart ▪ Form 5471, Sch A, Sch B, Sch O ▪ Plan of Liquidation Disclosure ▪ Valuation study prepared by taxpayer, if any ▪ Financial Statements, Balance Sheet ▪ Any intangible contractual arrangement involving CFC, particularly any CSAs 	
 <p>CONSULTATION: A consultation with an economist or engineer may be required to determine the FMV of CFC's assets.</p>		

Issue 1, Step 3: Additional Factual Development (cont'd)

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 1

Whether the transaction is a liquidation described in IRC 332?

Fact Element	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Determine whether in the liquidation USP, the sole owner of CFC, received payment for its stock in CFC. – USP must have received payment in its capacity as a S/H. 	<ul style="list-style-type: none"> ▪ Organizational Chart ▪ Form 5471, Sch A, Sch B, Sch O ▪ Plan of Liquidation Disclosure ▪ Treas. Reg. 1.332-6(a) – Statement Pursuant to Section 332 – A Corporation Receiving a Liquidating Distribution 	

Issue 1, Step 4: Develop Arguments

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 1

Whether the transaction is a liquidation described in IRC 332?

Explanation of Adjustment	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Based upon your analysis of the facts gathered, you must determine whether CFC's liquidation meets the following criteria for IRC 332: <ul style="list-style-type: none"> - Complete liquidation of CFC - USP was a 80% or more S/H of CFC at the time of liquidation - CFC was solvent - USP received some consideration for its stock in CFC in a liquidating distribution. ▪ Each of these four criteria will be addressed separately in this section. 	<ul style="list-style-type: none"> ▪ IRC 332 – Nontaxable liquidation of subsidiary ▪ IRC 367(b) ▪ Treas. Reg. 301.7701-3(g)(1)(iii) and (2)(ii)– CTB election to change from corporation to DE status – deemed liquidation treatment and deemed plan of liquidation 	

Issue 1, Step 4: Develop Arguments (cont'd)

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 1

Whether the transaction is a liquidation described in IRC 332?

Explanation of Adjustment	Resources	6103 Protected Resources
 <p>DECISION POINT: Determine whether CFC completely liquidated in accordance with a plan of liquidation.</p> <ul style="list-style-type: none"> ▪ CFC's CTB election to be classified as an entity disregarded from USP is considered to be the adoption of a plan of liquidation. ▪ You have verified that CFC timely filed the CTB election, thus CFC is deemed to completely liquidate. <p>▪ <u>NOTE:</u> The result would be the same if CFC formally liquidated pursuant to an actual plan of liquidation.</p>	<ul style="list-style-type: none"> ▪ Form 8832, <i>Entity Classification Election</i> ▪ IRC 332 ▪ IRC 367(b) ▪ Treas. Reg. 301.7701-3(g)(1)(iii) and (2)(ii)– CTB election to change from corporation to DE status – deemed liquidation treatment and deemed plan of liquidation 	

Issue 1, Step 4: Develop Arguments (cont'd)

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 1

Whether the transaction is a liquidation described in IRC 332?

Explanation of Adjustment	Resources	6103 Protected Resources
 <p>DECISION POINT: Determine whether USP owned 80% or more of the vote and value of CFC stock at the time of the deemed liquidation resulting from the CTB election.</p> <ul style="list-style-type: none"> ▪ Given that USP is the sole owner of CFC, USP owned 80% or more (100%) of the vote and value of CFC stock at the time of the deemed liquidation. <p>▪ NOTE: The result would be the same if CFC formally liquidated.</p>	<ul style="list-style-type: none"> ▪ IRC 332 – Nontaxable liquidation of subsidiary ▪ IRC 1504(a)(2) – 80 Percent Ownership Test 	

Issue 1, Step 4: Develop Arguments (cont'd)

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 1

Whether the transaction is a liquidation described in IRC 332?

Explanation of Adjustment	Resources	6103 Protected Resources
 <p>DECISION POINT: Determine whether CFC was solvent at the time of the deemed liquidation resulting from the CTB election.</p> <ul style="list-style-type: none"> This determination may require extensive factual development, including requesting that the taxpayer provide information to substantiate the FMV of the assets and the liabilities of the CFC at the time of the liquidation 	<ul style="list-style-type: none"> IRC 332 – Nontaxable liquidation of subsidiary Treas. Reg. 1.332-2(b) – Solvency requirement for IRC 332 – receipt by S/H of at least partial payment for stock in liquidating corporation Treas. Reg. 301.7701-3(g)(1)(iii) – CTB election to change from corporation to DE status – deemed liquidation treatment 	
 <p>CONSULTATION: Consultation with an economist or engineer may be required to determine the FMV of CFC's assets.</p>	<ul style="list-style-type: none"> Rev. Rul. 2003-125 – Worthless stock loss and CTB election 	

Issue 1, Step 4: Develop Arguments (cont'd)

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 1

Whether the transaction is a liquidation described in IRC 332?

Explanation of Adjustment	Resources	6103 Protected Resources
 <p>DECISION POINT: Determine whether in the deemed liquidation USP, the sole owner of CFC, received payment for its stock in CFC.</p> <ul style="list-style-type: none"> ▪ Given that USP is the sole owner of CFC and CFC has only one class of stock, if CFC was solvent USP received payment for its stock in CFC. ▪ NOTE: The result would be the same if CFC had formally liquidated. 	<ul style="list-style-type: none"> ▪ IRC 332 – Nontaxable liquidation of subsidiary ▪ Treas. Reg. 1.332-2(b) – Solvency requirement for IRC 332 – receipt by S/H of at least partial payment for stock in liquidating corporation ▪ Treas. Reg. 1.332-6(a) – Statements filed by recipient corporation and liquidating corporation 	

Issue 1, Step 4: Develop Arguments (cont'd)

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 1

Whether the transaction is a liquidation described in IRC 332?

Explanation of Adjustment	Resources	6103 Protected Resources
<p> DECISION POINT: If <u>all</u> the requirements for a particular transaction to be described in IRC 332 are met (as developed and determined for the particular transaction under this Issue 1, step 4), proceed to Issue 2 in order to determine the consequences of an I/B IRC 332 liquidation, including the consequences under IRC 367(b) and certain other IRC provisions specific to I/B liquidations, e.g. IRC 334(b).</p> <p>If <u>all</u> of the requirements for a particular transaction to be described in IRC 332 are <u>not</u> met, IRC 367(b) will not apply and no further 367(b) analysis in this Practice Unit is required. However, you must determine the tax consequences of the liquidation, depending on the facts developed, under IRC 331 (and 336) or possibly IRC 165(g).</p>	<ul style="list-style-type: none"> ▪ IRC 332 – Nontaxable liquidation of subsidiary ▪ Treas. Reg. 1.332-2(b) – Solvency requirement for IRC 332 – receipt by S/H of at least partial payment for stock in liquidating corporation ▪ Treas. Reg. 301.7701-3(g)(1)(iii) – CTB election to change from corporation to DE status – deemed liquidation treatment ▪ Rev. Rul. 2003-125 – WSL on CTB liquidations 	

Issue 2, Step 2: Review Potential Issues

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 2

Whether Treas. Reg. 1.367(b)-3, applicable to the transaction as an I/B liquidation described in IRC 332, potentially subjects USP to a current income inclusion?

Explanation of Issue	Resources
<ul style="list-style-type: none"> ▪ Based on your determinations made under Issue 1, you have concluded that the deemed liquidation of CFC into USP is an I/B liquidation described in IRC 332. The next step is to determine the U.S. federal tax consequences of this I/B IRC 332 liquidation, in particular the consequences under IRC 367(b). <ul style="list-style-type: none"> - Under IRC 337, no gain or loss is recognized to the liquidating corporation on the distribution of property to an 80% corporate S/H in an IRC 332 liquidation. - Under IRC 332, generally no gain or loss is recognized to an 80% corporate S/H on the receipt of property distributed in an IRC 332 liquidation. However, IRC 367(b) may require an income inclusion resulting from an I/B IRC 332 liquidation. 	<ul style="list-style-type: none"> ▪ IRC 367(b) – General Rule – Nontaxable Treatment ▪ Treas. Reg. 1.367(b)-3 – I/B Asset Transactions Exception - IRC 332 or Asset Reorg – All E&P Income Inclusion ▪ Treas. Reg. 1.367(b)-3(b)(1) and (2) – Definition of exchanging S/H and U.S. S/H ▪ Treas. Reg. 1.367(b)-3(b)(3) – Inclusion of All E&P Amount

Issue 2, Step 2: Review Potential Issues (cont'd)

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 2

Whether Treas. Reg. 1.367(b)-3, applicable to the transaction as an I/B liquidation described in IRC 332, potentially subjects USP to a current income inclusion?

Explanation of Issue	Resources
<ul style="list-style-type: none"> ▪ The primary purpose of IRC 367(b) is to ensure that the CFC's previously deferred E&P do not escape U.S. taxation through non-recognition transactions. ▪ Regulations under IRC 367(b) accomplish this by either: <ol style="list-style-type: none"> 1) requiring immediate U.S. taxation of the CFC's accumulated E&P to the "exchanging S/H" in the non-recognition transaction or 2) allowing deferral of recognition of the E&P to continue so long as the E&P is preserved in a CFC after the transaction. ▪ The regulations under IRC 367(b) provide that in certain I/B IRC 332 liquidations a U.S. S/H must include in income as a deemed dividend the "all E&P amount" attributable to the liquidating FC stock. 	<ul style="list-style-type: none"> ▪ IRC 367(b) – General Rule – Nontaxable Treatment ▪ Treas. Reg. 1.367(b)-3 – I/B Asset Transactions Exception - IRC 332 or Asset Reorg – All E&P Income Inclusion ▪ Treas. Reg. 1.367(b)-3(b)(1) and (2) – Definition of exchanging S/H and U.S. S/H ▪ Treas. Reg. 1.367(b)-3(b)(3) – Inclusion of All E&P Amount

Issue 2, Step 2: Review Potential Issues (cont'd)

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 2

Whether Treas. Reg. 1.367(b)-3, applicable to the transaction as an I/B liquidation described in IRC 332, potentially subjects USP to a current income inclusion?

Explanation of Issue	Resources
<ul style="list-style-type: none"> ▪ For example, Treas. Reg. 1.367(b)-3 applies, in part, to an acquisition by a domestic corporation of the assets of a CFC in a liquidation described in IRC 332. If Treas. Reg. 1.367(b)-3 applies, the “exchanging shareholder” (“exchanging S/H”) must include in income as a deemed dividend the all E&P amount. ▪ The “all E&P amount” is defined as the net positive E&P of the foreign acquired corporation attributable to the S/H ownership in the FC (subject to certain exceptions). See Issue 3 for more details on the computation of the all E&P amount. 	<ul style="list-style-type: none"> ▪ IRC 367(b) – General Rule – Nontaxable Treatment ▪ Treas. Reg. 1.367(b)-3 – I/B Asset Transactions Exception - IRC 332 or Asset Reorg – All E&P Income Inclusion ▪ Treas. Reg. 1.367(b)-3(b)(1) and (2) – Definition of exchanging S/H and U.S. S/H ▪ Treas. Reg. 1.367(b)-3(b)(3) – Inclusion of All E&P Amount

Issue 2, Step 2: Review Potential Issues (cont'd)

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 2

Whether Treas. Reg. 1.367(b)-3, applicable to the transaction as an I/B liquidation described in IRC 332, potentially subjects USP to a current income inclusion?

Explanation of Issue	Resources
<ul style="list-style-type: none"> ▪ Under Treas. Reg. 1.367(b)-3, an “exchanging S/H” includes: <ul style="list-style-type: none"> - A U.S. shareholder (“U.S. S/H”) of the foreign acquired corporation, who owns 10% or more of the foreign acquired corporation OR - A FC with respect to which there are one or more such 10% U.S. S/Hs. ▪ For purposes of Treas. Reg. 1.367(b)-3, a “U.S. S/H” includes any S/H described in IRC 951(b), without regard to whether the FC is a CFC. 	<ul style="list-style-type: none"> ▪ IRC 367(b) – General Rule – Nontaxable Treatment ▪ Treas. Reg. 1.367(b)-3 – I/B Asset Transactions Exception - IRC 332 or Asset Reorg – All E&P Income Inclusion ▪ Treas. Reg. 1.367(b)-3(b)(1) and (2) – Definition of exchanging S/H and U.S. S/H ▪ Treas. Reg. 1.367(b)-3(b)(3) – Inclusion of All E&P Amount

Issue 2, Step 2: Review Potential Issues (cont'd)

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 2

Whether Treas. Reg. 1.367(b)-3, applicable to the transaction as an I/B liquidation described in IRC 332, potentially subjects USP to a current income inclusion?

Explanation of Issue	Resources
<ul style="list-style-type: none"> ▪ Note: Treas. Reg. 1.367(b)-3 does not impact the application of IRC 337 to CFC. Thus, CFC does not recognize gain or loss on the distribution to USP and CFC's current year E&P is not affected by the liquidation. ▪ This Practice Unit only illustrates an I/B IRC 332 liquidation of a CFC into a domestic corporate S/H which is the exchanging S/H. However, a FC may be treated as the exchanging S/H in certain situations. For example, Treas. Reg. 1.367(b)-3 may require that a FC, as the exchanging S/H, include in income as a deemed dividend the all E&P amount, if applicable, where FC is owned by a U.S. S/H and FC owns a CFC that merges I/B into a domestic corporation under IRC 368. See Treas. Reg. 1.367(b)-3(b)(3)(ii), Example 5. 	<ul style="list-style-type: none"> ▪ IRC 367(b) – General Rule – Nontaxable Treatment ▪ Treas. Reg. 1.367(b)-3 – I/B Asset Transactions Exception - IRC 332 or Asset Reorg – All E&P Income Inclusion ▪ Treas. Reg. 1.367(b)-3(b)(1) and (2) – Definition of exchanging S/H and U.S. S/H ▪ Treas. Reg. 1.367(b)-3(b)(3) – Inclusion of All E&P Amount

Issue 2, Step 2: Review Potential Issues (cont'd)

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 2

Whether Treas. Reg. 1.367(b)-3, applicable to the transaction as an I/B liquidation described in IRC 332, potentially subjects USP to a current income inclusion?

Explanation of Issue	Resources
<ul style="list-style-type: none"> ▪ Although not directly addressed by IRC 367(b) or the regulations thereunder, in analyzing an I/B IRC 332 liquidation you should consider special rules that apply in determining the basis of the assets received by the distributee corporation. In some cases, there may be an importation of built-in losses (BIL) in the assets (FMV of the asset received is less than the adjusted tax basis) into the U.S. as a result of the transaction. IRC 362(e) and IRC 334(b)(1)(B) provide special rules addressing the limitation on the importation of built-in losses. This potential basis issue is briefly described in this issue #2 as an awareness only for an I/B IRC 332 liquidation. ▪ Given that the transaction is an I/B liquidation described in IRC 332, under IRC 334(b) the 80% domestic corporate S/H may be required to take a FMV basis in certain property received pursuant to the liquidation. 	<ul style="list-style-type: none"> ▪ IRC 367(b) – General Rule – Nontaxable Treatment ▪ IRC 334 – Basis of Property Received in Liquidations ▪ IRC 362(e) – Limitations on Built-In Losses

Issue 2, Step 2: Review Potential Issues (cont'd)

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 2

Whether Treas. Reg. 1.367(b)-3, applicable to the transaction as an I/B liquidation described in IRC 332, potentially subjects USP to a current income inclusion?

Explanation of Issue	Resources
<ul style="list-style-type: none"> ▪ Under IRC 334(b)(1): <ul style="list-style-type: none"> - If the S/H receives property described in IRC 362(e)(1)(B) (“IRC 362(e)(1)(B) property”) and - The S/H’s aggregate adjusted basis of the IRC 362(e)(1)(B) property exceeds (in the absence of IRC 334(b)) the FMV of the property immediately after the liquidation ▪ then the S/H’s basis in the IRC 362(e)(1)(B) property shall be the FMV of the property at the time of the liquidation. ▪ Property is considered IRC 362(e)(1)(B) property if: <ul style="list-style-type: none"> - Gain/loss with respect to the property is not subject to U.S. income tax in the hands of the CFC immediately before the liquidation, AND - Gain/loss with respect to such property is subject to U.S. income tax in the hands of the U.S/ S/H immediately after the liquidation. 	<ul style="list-style-type: none"> ▪ IRC 367(b) – General Rule – Nontaxable Treatment ▪ IRC 334 – Basis of Property Received in Liquidations ▪ IRC 362(e) – Limitations on Built-In Losses

Issue 2, Step 2: Review Potential Issues (cont'd)

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 2

Whether Treas. Reg. 1.367(b)-3, applicable to the transaction as an I/B liquidation described in IRC 332, potentially subjects USP to a current income inclusion?

Explanation of Issue	Resources
<ul style="list-style-type: none">▪ Stated another way, if CFC would not be subject to U.S. income tax on the gain/loss in a “phantom pre-liquidation sale” of the property and USP would be subject to U.S. tax on the gain/loss in a “phantom post-liquidation sale” of the property it received, then the assets distributed to USP in the liquidation of CFC would qualify as IRC 362(e)(1)(B) property.▪ Generally, the property of a CFC would fall under this definition since any gain/loss on the sale of property at the CFC level would not be subject to U.S. taxation unless the CFC had used the property in a U.S. trade or business and the potential gain or loss on such property was subject to U.S. tax (effectively connected property).	<ul style="list-style-type: none">▪ IRC 367(b) – General Rule – Nontaxable Treatment▪ IRC 334 – Basis of Property Received in Liquidations▪ IRC 362(e) – Limitations on Built-In Losses

Issue 2, Step 3: Additional Factual Development

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 2

Whether Treas. Reg. 1.367(b)-3, applicable to the transaction as an I/B liquidation described in IRC 332, potentially subjects USP to a current income inclusion?

Fact Element	Resources	6103 Protected Resources
<ul style="list-style-type: none">▪ Determine whether USP is considered a “US S/H”, and thus is an exchanging S/H, with respect to CFC immediately before the “deemed liquidation”<ul style="list-style-type: none">– USP must meet the definition of a “U.S. S/H” in order for Treas. Reg. 1.367(b)-3 to apply to CFC’s I/B IRC 332 liquidation.	<ul style="list-style-type: none">▪ Organizational Chart▪ Form 5471, Sch A, Sch B, Sch O	

Issue 2, Step 3: Additional Factual Development (cont'd)

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 2

Whether Treas. Reg. 1.367(b)-3, applicable to the transaction as an I/B liquidation described in IRC 332, potentially subjects USP to a current income inclusion?

Fact Element	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Determine if there is a potential issue regarding importation of built-in loss subject to the IRC 334(b)(1)(B) limitation rules. <ul style="list-style-type: none"> – For example, if FMV of CFC’s assets distributed in an IRC 332 liquidation are less than CFC’s tax basis in such assets, there may be a NET BIL in the assets received by USP. – Determine if any of CFC’s assets were used in an active U.S. trade or business. Such assets are excluded in the computation of a net BIL for assets (as defined in IRC 362(e)(1)(B)). – You may need to request that the taxpayer substantiate CFC’s tax basis in assets distributed to USP to compare with the total FMV of such assets. 	<ul style="list-style-type: none"> ▪ Taxpayer’s valuation study of CFC’s assets ▪ Complete list of assets received in liquidation – FMV and tax basis. ▪ Computation of tax basis of CFC’s assets 	

Issue 2, Step 4: Develop Arguments

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 2

Whether Treas. Reg. 1.367(b)-3, applicable to the transaction as an I/B liquidation described in IRC 332, potentially subjects USP to a current income inclusion?

Explanation of Adjustment	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ It has already been determined that the transaction is a liquidation described in IRC 332 and an I/B liquidation to which Treas. Reg. 1.367(b)-3 applies. <p> DECISION POINT: Determine whether USP is considered a “US S/H” with respect to CFC at the time of the “deemed liquidation”</p> <ul style="list-style-type: none"> ▪ At the time of the deemed liquidation, USP is a US S/H as that term is defined for purposes of Treas. Reg. 1.367(b)-3. ▪ Thus, USP is an exchanging S/H for purposes of Treas. Reg. 1.367(b)-3 	<ul style="list-style-type: none"> ▪ IRC 367(b) – General Rule – Nontaxable Treatment ▪ Treas. Reg. 1.367(b)-3 – I/B Asset Transactions Exception - IRC 332 or Asset Reorg – All E&P Income Inclusion ▪ Treas. Reg. 1.367(b)-3(b)(1) and (2) – Definition of exchanging S/H and U.S. S/H ▪ Treas. Reg. 1.367(b)-2(d) – Definition of All E&P Amount 	

Issue 2, Step 4: Develop Arguments (cont'd)

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 2

Whether Treas. Reg. 1.367(b)-3, applicable to the transaction as an I/B liquidation described in IRC 332, potentially subjects USP to a current income inclusion?

Explanation of Adjustment	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Given the determination that USP is an exchanging S/H for purposes of Treas. Reg. 1.367(b)-3, proceed to Issue 3 to determine the all E&P amount, if any, that USP would be required to include in income as a deemed dividend. ▪ If based upon your analysis you have determined the assets distributed to USP have a net built-in loss, you need to determine the application of IRC 334(b) and whether the basis in the assets received is limited to FMV. 	<ul style="list-style-type: none"> ▪ IRC 367(b) – General Rule – Nontaxable Treatment ▪ Treas. Reg. 1.367(b)-3 – I/B Asset Transactions Exception - IRC 332 or Asset Reorg – All E&P Income Inclusion ▪ Treas. Reg. 1.367(b)-3(b)(1) and (2) – Definition of exchanging S/H and U.S. S/H ▪ Treas. Reg. 1.367(b)-2(d) – Definition of All E&P Amount ▪ IRC 334(b) – Basis in property received in liquidation ▪ IRC 362(e)(2) – Limitation on built-in losses 	

Issue 3, Step 2: Review Potential Issues

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 3

What is the “all E&P amount,” if any, that USP is required to include in income as deemed dividend under Treas. Reg. 1.367(b)-3 as a result of the transaction?

Explanation of Issue	Resources
<ul style="list-style-type: none"> ▪ At this point, you have determined that (1) the transaction is a liquidation described in IRC 332 and therefore covered by Treas. Reg. 1.367(b)-3 and (2) USP is an exchanging S/H subject to a possible immediate income inclusion of the all E&P amount. As a result, the next step is to determined what is the all E&P amount, if any, that USP is required to include in income as a deemed dividend under Treas. Reg. 1.367(b)-3. ▪ The all E&P amount is defined as the net positive E&P of the FC attributable to the S/H’s ownership in the FC. The “all E&P amount” is determined using the attribution rules of IRC 1248 without regard to whether: <ul style="list-style-type: none"> – The FC was a CFC at any time during the 5 years preceding the IRC 367(b) exchange; – The S/H owned 10% or more interest in the FC stock; – The E&P of FC were accumulated before or after 1962 or while the FC was a CFC; and – The amount of gain that would have been realized on a sale of FC’s stock by the S/H. 	<ul style="list-style-type: none"> ▪ Form 5471, Sch J – E&P Schedule ▪ IRC 367(b) – General Rule – Nontaxable Treatment ▪ Treas. Reg. 1.367(b)-3 – I/B Asset Transactions Exception - IRC 332 or Asset Reorg – All E&P Income Inclusion ▪ Treas. Reg. 1.367(b)-2(d) – Definition of All E&P ▪ IRC 1248 – Attribution principles to S/H ownership

Issue 3, Step 2: Review Potential Issues (cont'd)

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 3

What is the “all E&P amount,” if any, that USP is required to include in income as deemed dividend under Treas. Reg. 1.367(b)-3 as a result of the transaction?

Explanation of Issue	Resources
<ul style="list-style-type: none"> ▪ The all E&P amount is reduced by PTI, ECI, and certain other E&P as specified in IRC 1248(d). Treas. Reg. 1.367(b)-3 does not impact the application of IRC 337 to CFC. Thus, CFC does not recognize gain or loss on the distribution to USP and CFC’s current year E&P is not affected by the liquidation. Unlike E&P determined under IRC 1248, the all E&P amount does not include E&P from lower-tier CFCs. 	<ul style="list-style-type: none"> ▪ Form 5471, Sch J – E&P Schedule ▪ IRC 367(b) – General Rule – Nontaxable Treatment ▪ Treas. Reg. 1.367(b)-3 – I/B Asset Transactions Exception - IRC 332 or Asset Reorg – All E&P Income Inclusion ▪ Treas. Reg. 1.367(b)-2(d) – Definition of All E&P ▪ IRC 1248 – Attribution principles to S/H ownership

Issue 3, Step 2: Review Potential Issues (cont'd)

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 3

What is the “all E&P amount,” if any, that USP is required to include in income as deemed dividend under Treas. Reg. 1.367(b)-3 as a result of the transaction?

Explanation of Issue	Resources
<ul style="list-style-type: none"> ▪ If the FC has a net deficit in E&P at the time of the I/B IRC 332 liquidation, the exchanging S/H: <ul style="list-style-type: none"> - Does not include in income any all E&P amount; - May not claim a loss as a result of the transaction; and - Does not succeed to any carryover of the deficit in E&P under IRC 381(c)(2), except for E&P effectively connected with a U.S. trade or business or attributable to a permanent establishment (PE) in the U.S. under an applicable U.S. income tax treaty. ▪ The FC's deficit in E&P (except for a deficit in E&P that is attributable to ECI or a PE) shall not carryover to the DC and thus is eliminated. ▪ If the liquidating FC has positive E&P, the exchanging S/H must include the “all E&P” amount attributable to its stock ownership as a deemed dividend regardless of the amount of the gain that would be realized on a sale or exchange of the stock of FC. 	<ul style="list-style-type: none"> ▪ Form 5471, Sch J – E&P Schedule ▪ IRC 367(b) – General Rule – Nontaxable Treatment ▪ Treas. Reg. 1.367(b)-3 – I/B Asset Transactions Exception - IRC 332 or Asset Reorg – All E&P Income Inclusion ▪ Treas. Reg. 1.367(b)-2(d) – Definition of All E&P ▪ IRC 1248 – Attribution principles to S/H ownership

Issue 3, Step 3: Additional Factual Development

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 3

What is the “all E&P amount,” if any, that USP is required to include in income as deemed dividend under Treas. Reg. 1.367(b)-3 as a result of the transaction?

Fact Element	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Determine whether CFC had positive accumulated E&P at the time of the I/B liquidation. <ul style="list-style-type: none"> – A positive balance of accumulated E&P is needed for potential “deemed dividend” income inclusion by the U.S. S/H on an I/B IRC 332 liquidation – You may need to request a computation of the CFC’s E&P, PTI and FTC tax pools from the taxpayer. – An analysis should be completed to ensure accuracy of the E&P computation. 	<ul style="list-style-type: none"> ▪ Form 5471, Sch J ▪ CFC’s computation of E&P 	

Issue 3, Step 3: Additional Factual Development (cont'd)

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 3

What is the “all E&P amount,” if any, that USP is required to include in income as deemed dividend under Treas. Reg. 1.367(b)-3 as a result of the transaction?

Fact Element	Resources	6103 Protected Resources
<ul style="list-style-type: none">NOTE: If the liquidating CFC owned any foreign disregarded entities (FDEs) at the time of the liquidation and any such FDEs were previously CFCs, you may need to ensure that the E&P from each former CFC now treated as a DE properly rolled up and were accounted for as part of the liquidating CFC's E&P and tax pools. There may be outstanding hovering deficit issues and related tax pools at the liquidating CFC's level.		

Issue 3, Step 3: Additional Factual Development (cont'd)

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 3

What is the “all E&P amount,” if any, that USP is required to include in income as deemed dividend under Treas. Reg. 1.367(b)-3 as a result of the transaction?

Fact Element	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ If CFC had positive accumulated E&P, a review of the U.S. tax return is required to determine whether USP properly reported the all E&P amount. ▪ Did USP report any deemed dividend resulting from CFC’s deemed I/B liquidation via the CTB election? <ul style="list-style-type: none"> – The reporting would be the same if CFC formally liquidated. ▪ If USP’s tax treatment of the transaction is unclear or appears incorrect, request that USP provide its position and authority. 	<ul style="list-style-type: none"> ▪ Form 1120, Sch C ▪ Form 1118 ▪ Form 5471, Sch H and Sch J 	

Issue 3, Step 4: Develop Arguments

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 3

What is the “all E&P amount,” if any, that USP is required to include in income as deemed dividend under Treas. Reg. 1.367(b)-3 as a result of the transaction?

Explanation of Adjustment	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Based upon your analysis, you have verified that: <ul style="list-style-type: none"> – CFC has positive accumulated E&P of \$10M – CFC has no PTI E&P pool. <ul style="list-style-type: none"> ▪ Note: If PTI existed, such PTI is deemed to be distributed first and USP may have a foreign exchange gain or loss on the distribution of PTI. ▪ You conclude that the all E&P amount is \$10M. 	<ul style="list-style-type: none"> ▪ IRC 367(b) – General Rule – Nontaxable Treatment ▪ Treas. Reg. 1.367(b)-3 – I/B Asset Transactions Exception – IRC 332 or Asset Report – All E&P Income Inclusion ▪ Treas. Reg. 1.367(b)-3(b)(1) – Exchanging S/H definition for I/B Asset Transactions Exception ▪ Treas. Reg. 1.367(b)-2(d) – Definition of All E&P – net positive E&P 	

Issue 3, Step 4: Develop Arguments (cont'd)

Inbound Liquidation of a Foreign Corporation into a U.S. Corporate Shareholder

Issue 3

What is the “all E&P amount,” if any, that USP is required to include in income as deemed dividend under Treas. Reg. 1.367(b)-3 as a result of the transaction?

Explanation of Adjustment	Resources	6103 Protected Resources
<p> DECISION POINT: The next step in development is to determine if USP has properly included in income as a deemed dividend the all E&P amount totaling \$10M. If USP has not, an adjustment should be proposed. In addition, USP may be entitled to claim indirect FTCs of \$1.5M as a result of the deemed dividend.</p> <p>The all E&P amount is fully taxable without regards to USP’s realized gain, if any, on its stock of CFC as a result of the liquidation.</p> <p>If CFC has an E&P deficit, confirm that USP has not claimed a loss on the return based on the liquidation and has not carried over the deficit in E&P (except to the extent the E&P deficit is attributable to ECI or a PE).</p>	<ul style="list-style-type: none"> ▪ IRC 367(b) – General Rule – Nontaxable Treatment ▪ Treas. Reg. 1.367(b)-3 – I/B Asset Transactions Exception - IRC 332 or Asset Reorg – All E&P Income Inclusion ▪ Treas. Reg. 1.367(b)-3(b) – Exchanging S/H definition for I/B Asset Transactions Exception - IRC 332 or Asset Reorg – All E&P Income Inclusion ▪ Treas. Reg. 1.367(b)-2(d) – Definition of All E&P – net positive E&P 	

Training and Additional Resources

Chapter 1.8.3 Inbound Transactions – IRC 367(b)

Type of Resource	Description(s) and/or Instructions for Accessing	References
CENTRA sessions	<ul style="list-style-type: none"> ▪ (TPO) & (IBC) FY 2013 CPE CENTRA – Hot Topics of IRC 367 	
Reference Materials/Treaties	<ul style="list-style-type: none"> ▪ BNA 920-3rd TMFEDPORT No. 920 Sec. II – IRC 367(b) Transactions <ul style="list-style-type: none"> - Section B – Domestication Transactions under 367(b) - Section B – Para. 7 – All E&P Amount and Related Rules ▪ Dolan - U.S. Tax Int'l Mergers, Acquis. & Jt. Ventures – <ul style="list-style-type: none"> - Para 13.04 – Inbound Assets Reorgs - Para 13.06 – Inbound Asset Reorgs of CFCs - Para 13.07 – Inbound Exchange of CFC stock; - Para 15.03 – Inbound Liquidations - Para 15.03[2][a] – Required Inclusion (All E&P Amount) 	

Glossary of Terms and Acronyms

Term/Acronym	Definition
BIL	Built In Loss
CFC	Controlled Foreign Corporation
CTB	Check-the-Box
C/O	Carryover
DC	Domestic Corporation
DCN	Document Control Number
DE	Disregarded Entity
E&P	Earnings and Profits
ECI	Effectively Connected Income
ETR	Effective Tax Rate
FC	Foreign Corporation
FDE	Foreign Disregarded Entity
FMV	Fair Market Value
FTC	Foreign tax credit
F-to-F	Foreign-to-Foreign

Glossary of Terms and Acronyms (cont'd)

Term/Acronym	Definition
I/B	Inbound
IRC	Internal Revenue Code
ISO	Income Shifting Outbound
O/B	Outbound
PRI	Permanently Reinvested Income
PTI	Previously Taxed Income
S/H	Shareholder
Treas. Reg.	Treasury Regulation
U.S.	United States
USP	U.S. Parent
WSL	Worthless Stock Loss

Index of Related Issues

Issue	Associated UIL(s)	References
Outbound Transfer of Property to Foreign Corporation – IRC 367 Overview	<ul style="list-style-type: none"> ▪ 9411.08 	<ul style="list-style-type: none"> ▪ Practice Unit, “Outbound Transfers of Property to Foreign Corporation – IRC 367 Overview,” DCN: ISO/9411.08_01(2013)
Foreign-To-Foreign Transactions – Under IRC 367(b)	<ul style="list-style-type: none"> ▪ 9411.08 	<ul style="list-style-type: none"> ▪ Practice Unit, “Foreign-To-Foreign Transactions – IRC 367(b) Overview,” DCN: ISO/9411.08_03(2013)
Bona Fide Debt Determination	<ul style="list-style-type: none"> ▪ 9423.01 	<ul style="list-style-type: none"> ▪ Practice Unit, “Bona Fide Debt Determination,” DCN: IBF/9423.01_01(2013)