



Internal Revenue Service

DEPARTMENT OF THE TREASURY

LB&I International Practice Service Transaction Unit

Shelf		Business Inbound		
Volume	6	Inbound Income Shifting	UIL Code	9422
Part	6.10	Gain Exportation (Through Distributions, Spin-Off, Incorporation, or Reorg (§ 367(a) or (e)))	Level 2 UIL	9422.10
Chapter	6.10.1	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	Level 3 UIL	N/A
Sub-Chapter	N/A	N/A		

Unit Name	Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview
------------------	--

Document Control Number (DCN)	ISI/9422.10_01(2013)
Date of Last Update	08/29/2014

Note: This document is not an official pronouncement of law, and cannot be used, cited or relied upon as such. Further, this document may not contain a comprehensive discussion of all pertinent issues or law or the IRS's interpretation of current law.

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

Table of Contents

(View this PowerPoint in “Presentation View” to click on the links below)

General Overview

- [Issue and Transaction Overview](#)
- [Transaction and Fact Pattern](#)
- [Effective Tax Rate Overview](#)

[Summary of Potential Issues](#)

[Audit Steps](#)

[Training and Additional Resources](#)

[Glossary of Terms and Acronyms](#)

[Index of Related Issues](#)

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

Issue and Transaction Overview

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

- In general, upon the liquidation of a corporation, IRC §§ 331 and 336 require a shareholder and the liquidating corporation, respectively, to recognize gain or loss. There is an exception to this general rule. If a corporate shareholder owns 80% or more of the vote and value of a domestic liquidating corporation, then IRC §§ 332 and 337 generally allow non-recognition for both the corporate shareholder and the liquidating corporation, respectively.
- As a general rule, if a corporate shareholder is a foreign corporation (FC) and a domestic corporation is the liquidating corporation, then IRC § 367(e)(2) (as opposed to IRC § 367(a)) may apply to the outbound liquidation. In that case, IRC § 332 will continue to apply, so that the foreign corporate shareholder will not recognize any gain or loss on the receipt of property that the domestic liquidating subsidiary distributes in the liquidation. However, if IRC § 367(e)(2) is applicable, then IRC § 337 will not apply to the domestic liquidating corporation. Consequently, pursuant to IRC § 367(e)(2) (and if an exception does not otherwise exist), the domestic liquidating corporation will recognize gain or loss on the distribution of property to the foreign shareholder. However, any loss in excess of the gain from the distribution shall not be recognized.
- Regulations issued under IRC § 367(e)(2) contain three general exceptions that “turn off” IRC § 367(e)(2) when a domestic corporation distributes property to its foreign corporate shareholder. These exceptions include: (1) the distribution of property that the liquidating corporation used in a U.S. trade or business (T/B) before the liquidation and which the foreign shareholder continues to use in a U.S. trade or business after the liquidation; (2) the distribution of a U.S. real property interest; and (3) the distribution of stock of an 80% domestic subsidiary.
- If a corporate shareholder is a foreign corporation (FC) and a foreign corporation is the liquidating corporation, then the foreign liquidating corporation will recognize gain or loss upon the liquidation only in very limited circumstances. Unless an exception applies, the foreign liquidating corporation will recognize gain or loss upon distributing certain property that is used by the foreign liquidating corporation in the conduct of a trade or business within the United States at the time of the distribution.
- This Practice Unit will focus on the tax consequences of IRC § 367(e)(2) on the outbound liquidation of a U.S. subsidiary into its FP

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

Transaction and Fact Pattern

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Diagram of Transaction	Facts
<p>The diagram illustrates the relationship between the Foreign Parent (FP) and the U.S. Subsidiary (USS). The FP is shown in a blue box at the top, and the USS is in a white box at the bottom. A solid black arrow points from the FP down to the USS, indicating ownership. A dashed red arrow points from the USS up to the FP, labeled 'Liquidates', representing the liquidation process.</p>	<p><u>Outbound Liquidation:</u></p> <p><u>Facts:</u></p> <ul style="list-style-type: none"> ▪ Foreign Parent, (FP) a foreign corporation, owns all of the stock (by vote and value) of a U.S. subsidiary corporation (USS),. ▪ USS liquidates into FP. USS was solvent at the time of the liquidation. ▪ USS has indicated that it transferred the following assets upon the liquidation: <ul style="list-style-type: none"> – Asset A: Fair Market Value (FMV) \$100M; Basis \$90M – Asset B: FMV \$60M; Basis \$80M – Asset C: Intangible: FMV \$40M; Basis \$0

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

Effective Tax Rate Overview

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

ETR of Company

- With an outbound transfer of appreciated property, corporations are often attempting to minimize their overall tax exposure by moving such gain to a foreign country that has a foreign tax rate that is lower than the U.S. corporate tax rate. If the outbound transfer is accomplished with little to no residual U.S. tax exposure, the corporation has permanently reduced its ETR attributable to any future disposition of such property. You should determine the potential gain on the appreciated property that was transferred outbound in the liquidation.
- If FP is not a CFC, an outbound liquidation of USS into FP does not simply result in the deferral of foreign earnings in the foreign corporation until they are repatriated (such as would be the case in a 367(a) transfer to a CFC). Rather, it would permanently remove non-effectively connected income (ECI) assets from US taxing jurisdiction.
- If the FP in an outbound liquidation is a CFC, the liquidation of FP’s US subsidiary may reduce the ETR of its US parent by reducing its exposure to an inclusion under section 956.

ETR Impact of Adjustment

- A liquidating US subsidiary’s outbound transfer of appreciated property to its FP that is located in a low tax foreign country that is subject to the general rule of IRC § 367(e)(2) will generally reduce a corporation’s ETR over time; however, there may be a one-time increase due to the up-front U.S. tax cost. An outbound liquidation of appreciated property that is subject to the general rule of IRC § 367(e)(2) will cause an increase in the corporation’s ETR.

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

Summary of Potential Issues

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

<u>Issue 1</u>	Whether the outbound transfer of property to a foreign corporation in liquidation by a domestic corporation would initially qualify as a nonrecognition IRC § 332 liquidation.
<u>Issue 2</u>	Whether the outbound IRC § 332 liquidation of a U.S. subsidiary into its foreign parent requires gain recognition under the IRC § 367(e)(2) general rule.
<u>Issue 3</u>	Whether the U.S. subsidiary's liquidating distribution of property used in a U.S. trade or business (T/B) to its foreign parent meets the U.S. T/B nonrecognition exception to IRC § 367(e)(2).
<u>Issue 4</u>	Whether the U.S. subsidiary's liquidating distribution of certain U.S. real property interests (USRPI) to its foreign parent meets an exception to IRC § 367(e)(2).
<u>Issue 5</u>	Whether the U.S. subsidiary's liquidating distribution of certain domestic stock to its foreign parent meets an exception to IRC § 367(e)(2) to secure nonrecognition.

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

All Issues, Step 1: Initial Factual Development

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

As a general rule, if a corporate shareholder is a foreign corporation (FC) and a domestic corporation is the liquidating corporation, then IRC § 367(e)(2) (as opposed to IRC § 367(a)) may apply to the outbound liquidation. In that case, IRC § 332 will continue to apply, so that the foreign corporate shareholder will not recognize any gain or loss on the receipt of property that the domestic liquidating subsidiary distributes in the liquidation. However, if IRC § 367(e)(2) is applicable, then IRC § 337 will not apply to the domestic liquidating corporation. Consequently, pursuant to IRC § 367(e)(2) (and if an exception does not otherwise exist), the domestic liquidating corporation will recognize gain or loss on the distribution of property to the foreign shareholder. However, any loss in excess of the gain from the distribution shall not be recognized.

Fact Element	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Determine whether the U.S. corporation had a complete outbound liquidation into its foreign corporate parent (FP), i.e., a shareholder that held 80% or more of the vote and value of the liquidating corporation. 	<ul style="list-style-type: none"> ▪ Final Form 1120 ▪ Form 966 Corporate Dissolution or Liquidation ▪ Identification of Shareholders 	
<ul style="list-style-type: none"> ▪ Determine what property was distributed to FP by the domestic liquidating corporation. <ul style="list-style-type: none"> – Tangible property – Stock – Intangible property 	<ul style="list-style-type: none"> ▪ Form 926 Return by a US Transferor of Property to a Foreign Corporation (Part III) ▪ IRC § 367(e)(2) Disclosure (with Master Property Description schedule) 	
<ul style="list-style-type: none"> ▪ Determine if the domestic liquidating corporation reported any gains (or losses) relating to the outbound liquidation 	<ul style="list-style-type: none"> ▪ Form 1120 Schedule D Capital Gains and Losses ▪ Form 4797 Sales of Business Property ▪ Form 926, Part III 	

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

Issue 1, Step 2: Review Potential Issues

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 1

Whether the outbound transfer of property to a foreign corporation in liquidation by a domestic corporation would initially qualify as a nonrecognition IRC § 332 liquidation.

Explanation of Issue	Resources	6103 Protected Resources
<p>IRC §367(e)(2) may be applicable only if the requirements of IRC §332 are first met.</p> <p>IRC § 332 is satisfied if the following criteria are met:</p> <ul style="list-style-type: none"> ▪ The shareholder of the liquidating corporation must be a corporation; ▪ The shareholder of the liquidating corporation must own at least 80% of the vote and value of the liquidating corporation before the liquidation; ▪ All of the property of the liquidating corporation is distributed completely to the shareholders pursuant to a plan of liquidation; ▪ The liquidating corporation must be “solvent”; and ▪ The shareholder received the liquidating corporation’s property within a certain period of time. <p>If a liquidation meets the criteria of IRC § 332, then IRC § 337 generally allows nonrecognition at the liquidating corporation’s level. However, the presence of a foreign distributee (i.e. FP, a foreign corporation) makes the transaction potentially subject to gain recognition under IRC § 367(e)(2) at the liquidating corporation’s level. In other words, IRC § 367(e)(2) may trump the application of IRC § 337.</p>	<ul style="list-style-type: none"> ▪ IRC § 332 – Nontaxable liquidation of subsidiary into a parent- no recognition of gain or loss at shareholder level ▪ IRC § 337 – Nontaxable treatment at liquidating subsidiary’s level in a IRC § 332 liquidation ▪ IRC § 7701(a)(3) – Definition of corporation ▪ IRC § 1504(a)(2) – Definition of ownership percentages for purposes of IRC § 332 liquidation 	

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

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

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 1

Whether the outbound transfer of property to a foreign corporation in liquidation by a domestic corporation would initially qualify as a nonrecognition IRC § 332 liquidation.

Explanation of Issue	Resources	6103 Protected Resources
<p><u>Shareholder must be a corporation:</u></p> <ul style="list-style-type: none"> Determine if the FP is a corporation. IRC § 332 does not apply to non-corporate shareholders such as partnerships, individuals, etc. Verify that FP is not treated as a disregarded entity or partnership for federal tax purposes under Treas. Reg. § 301.7701-3 even if it is treated as a corporation under foreign law. <p><u>Ownership requirements:</u> The corporate shareholder must own at least 80% of the vote and value of the liquidating corporation.</p> <ul style="list-style-type: none"> Determine if FP owns at least 80% of the vote and value of liquidating USS. If the ownership test is not met, then the liquidation will not qualify as a nontaxable IRC § 332 liquidation. Instead, it will be considered to be a taxable IRC § 331/§336 liquidation. <p><u>Complete liquidation of the corporation:</u> A complete liquidation of a subsidiary is required for IRC § 332.</p> <ul style="list-style-type: none"> Determine if the distribution is considered to be a complete cancellation of all the stock of USS pursuant to a plan of liquidation. If it is not a complete liquidation, then it will not qualify under IRC § 332. 	<ul style="list-style-type: none"> IRC § 332 – Nontaxable liquidation of subsidiary into a parent- no recognition of gain or loss at shareholder level IRC § 337 – Nontaxable treatment at liquidating subsidiary's level in a IRC § 332 liquidation IRC § 7701(a)(3) – Definition of corporation IRC § 1504(a)(2) – Definition of ownership percentages for purposes of IRC § 332 liquidation Treas. Reg. § 1.332-2 – Liquidation of subsidiary <i>Granite Trust Co.</i>, 238 F.2d 670 (1st Cir. 1956) – Taxpayers may generally elect out of IRC § 332 treatment by disposing of more than 20% of USS shares before liquidation 	

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

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

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 1

Whether the outbound transfer of property to a foreign corporation in liquidation by a domestic corporation would initially qualify as a nonrecognition IRC § 332 liquidation.

Explanation of Issue	Resources	6103 Protected Resources
<p><u>Solvency of the subsidiary:</u></p> <ul style="list-style-type: none"> ▪ The shareholder must have received payment for its shares on the complete liquidation in order for IRC § 332 to apply. ▪ A shareholder receives payment for its shares only if the liquidating corporation is solvent at the time of the liquidation. ▪ If USS' liabilities (i.e., the liabilities of the liquidating corporation) exceed the FMV of its assets at the time of the liquidation, then FP (i.e., the shareholder) is not treated as having received any payment from USS because USS was not solvent at the time of the liquidation. In that case, the liquidation does not qualify as an IRC § 332 liquidation. ▪ If IRC § 332 is not applicable because USS was insolvent, see IRC § 165(g) relative to allowance of losses on worthless securities. ▪ If a distribution is received with respect to USS's preferred stock, USS may still be insolvent if common stock has no value. 	<ul style="list-style-type: none"> ▪ Treas. Reg. § 1.332-2(b) - IRC § 332 applies only when the parent receives at least partial payment for the common stock it owns in the subsidiary. ▪ Rev. Rul. 2003-125, 2003-2 CB 1243- IRC § 332 does not apply when the FMV of assets is less than liabilities as the shareholder does not receive payment upon complete liquidation. ▪ Rev. Rul. 2003-125 – Valuation ▪ IRC § 165(g) ▪ <i>Spaulding Bakeries v. Commissioner</i>, 252 F.2d 693 (2d Cir. 1958) – worthlessness based on value of common stock ▪ See related Practice Unit – “IRC § 332 Liquidations” for more details (coming soon) 	

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

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

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 1

Whether the outbound transfer of property to a foreign corporation in liquidation by a domestic corporation would initially qualify as a nonrecognition IRC § 332 liquidation.

Explanation of Issue	Resources	6103 Protected Resources
<p><u>Solvency of the subsidiary:</u></p> <ul style="list-style-type: none"> ▪ A valuation of the subsidiary’s assets and liabilities is necessary to determine its solvency. ▪ An improper valuation can result in the failure to satisfy IRC § 332. ▪ Therefore, a taxpayer incorrectly could avoid the application of IRC § 367(e)(2) to an outbound liquidation if the taxpayer erroneously concludes that the liquidating corporation is insolvent from an improper valuation of the liquidating corporation’s assets. ▪ The valuation standards for estate tax purpose are generally used here. ▪ A valuation should identify “off balance-sheet” intangible assets (self-created intangibles) and the FMV of assets that are not on USS’ books such as customer lists, workforce in place, going concern value, etc. ▪ Liabilities should be properly classified with respect to intercompany debt and capital contributions. Contingent liabilities should be taken into consideration, when appropriate. A clear understanding of liabilities will assist in the determination of solvency and whether IRC § 332 applies to the liquidation. 	<ul style="list-style-type: none"> ▪ Treas. Reg. § 1.332-2(b)- IRC § 332 applies only when the parent receives at least partial payment for the common stock it owns in the subsidiary. ▪ Rev. Rul. 2003-125, 2003-2 CB 1243- IRC § 332 does not apply when the FMV of assets is less than liabilities as the shareholder does not receive payment upon complete liquidation. ▪ Rev. Rul. 2003-125 – Valuation ▪ IRC § 165(g) – Worthless stock loss 	

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

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

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 1

Whether the outbound transfer of property to a foreign corporation in liquidation by a domestic corporation would initially qualify as a nonrecognition IRC § 332 liquidation.

Explanation of Issue	Resources	6103 Protected Resources
<p><u>Solvency of the subsidiary:</u></p> <ul style="list-style-type: none"> An advance (and/or other intercompany debt) carefully should be examined to see if it is actually debt or disguised equity. See related Practice Unit “Bona Fide Debt Determination” (DCN IBF/9423.01_01) on Bona Fide debt. 	<ul style="list-style-type: none"> See related Practice Unit – “IRC § 332 Liquidations” for more details (coming soon). 	

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

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

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 1

Whether the outbound transfer of property to a foreign corporation in liquidation by a domestic corporation would initially qualify as a nonrecognition IRC § 332 liquidation.

Explanation of Issue	Resources	6103 Protected Resources
<p><u>The shareholder must receive the liquidating corporation's property within a certain period of time.</u></p> <ul style="list-style-type: none"> ▪ Generally, the liquidating corporation distributes its property to its shareholder within the taxable year. ▪ Alternatively, the liquidating distribution may be one of a series of distributions when the transfer of all of the property is to be completed within 3 years from the close of the taxable year during which is made the first of a series of distributions under the plan of liquidation. 	<ul style="list-style-type: none"> ▪ IRC § 332(b)(2) ▪ IRC § 332(b)(3) 	

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

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

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 1

Whether the outbound transfer of property to a foreign corporation in liquidation by a domestic corporation would initially qualify as a nonrecognition IRC § 332 liquidation.

Explanation of Issue	Resources	6103 Protected Resources
<p>The valuation of each asset should reflect what an unrelated, willing buyer would pay an unrelated willing seller. All of the assets of the corporation along with the sum of the corporation's liabilities should be considered (along with any potential going concern value) in the valuation.</p> <p>Tangible assets should be valued at fair market value, not book value.</p> <p>Identifying and properly valuing intangible assets may avoid the incorrect conclusion that a corporation is insolvent. Intangible assets may include self-created intangibles, workforce in place, sales force, customer lists, manufacturing processes, etc.</p>	<ul style="list-style-type: none"> ▪ <i>Figgie Int'l, Inc. v. Commr</i>, T.C. Memo 1985-369, aff'd., 807 F.2d (6th Cir. 1986) -- The ultimate value of stock, and conversely its worthlessness, will depend not only on its current liquidating value, but also on what value it may acquire in the future through the foreseeable operations of the corporation. ▪ <i>VGS Corp. v. Commr</i>, 68 T.C. 563 (1977) - Even in the absence of goodwill, excess earning capacity, and the like, the ability of a business to continue to function and generate income without interruption as a consequence of the change in ownership is a vital part of the value of a going concern 	

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

Issue 1, Step 3: Additional Factual Development

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 1

Whether the outbound transfer of property to a foreign corporation in liquidation by a domestic corporation would initially qualify as a nonrecognition IRC § 332 liquidation.

Fact Element	Resources	6103 Protected Resources
<p>Determine if the FP is a corporation.</p> <ul style="list-style-type: none"> Is the FP treated as a corporation for U.S. tax purposes? <p>Verify FP's ownership % (by vote and value) of the liquidating U.S. corporation (USS) immediately before the liquidation.</p> <ul style="list-style-type: none"> Determine the number and percentage of "voting" shares that FP owned in USS. Determine the value of shares that FP owned in USS. Determine if FP's ownership (by vote and value) in USS remained at 80% or more until the final liquidating distributions were made. If warranted, review articles of association (articles of incorporation), board minutes and/or share register to determine FP's percentage of voting rights/power for the shares held in USS. 	<p>Form 1120</p> <ul style="list-style-type: none"> Sch K – Questions 4a, 7, 10 Sch G (if filed) Form 5472, Part II (if attached to Form 1120) Form 5471, if FP is a CFC (generally not the case) Form 8832 Entity Classification Election (was not filed to treat FP as other than a corporation) 	

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

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

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 1

Whether the outbound transfer of property to a foreign corporation in liquidation by a domestic corporation would initially qualify as a nonrecognition IRC § 332 liquidation.

Fact Element	Resources	6103 Protected Resources
<p>You need to determine if the U.S. corporation completely liquidated:</p> <ul style="list-style-type: none"> ▪ Review Form 1120 for “final return” indication ▪ Review Form 966 (Corporate Dissolution or Liquidation) ▪ Review plan of liquidation ▪ Review shareholders' adoption of a resolution authorizing the distribution of all assets of USS in complete cancellation or redemption of all of its stock and the timing of completion of the distribution within 3 years. 	<ul style="list-style-type: none"> ▪ Final Form 1120 ▪ Form 966 Corporate Dissolution or Liquidation ▪ Form 926 Return by a U.S. Transferor of Property to a Foreign Corporation, Part I, Question 1b ▪ Statement attached to tax return under IRC § 6038B ▪ Board Minutes ▪ A copy of the plan of liquidation 	


Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

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

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 1

Whether the outbound transfer of property to a foreign corporation in liquidation by a domestic corporation would initially qualify as a nonrecognition IRC § 332 liquidation.

Fact Element	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ If minority shareholders exist, determine amount of gain reported under IRC § 336 on the property distributed to the minority shareholders. <ul style="list-style-type: none"> – Is the valuation used to compensate the minority shareholders the same as the valuation used to redeem FP's shares? 	<ul style="list-style-type: none"> ▪ Form 1120, Sch G, Part I ▪ Form 1120 Schedule D Capital Gains and Losses ▪ Form 4797 Sales of Business Property 	
<ul style="list-style-type: none"> ▪ Obtain the valuation of assets and liabilities. <ul style="list-style-type: none"> – Are there any off balance sheet assets not included in the valuation such as self-created intangibles, off balance sheet financing activities, intangible assets, etc.? – Verify if any contingent liabilities (if it is more probable than not that the obligation will have to be paid) and guarantees if any were taken into account in computing solvency. 	<ul style="list-style-type: none"> ▪ <i>Continental Grain Co. v. Comm'r</i>, T.C. Memo 1989-155 	
 CONSULTATION: Consultation with an economist on the valuation.		


Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

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

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 1

Whether the outbound transfer of property to a foreign corporation in liquidation by a domestic corporation would initially qualify as a nonrecognition IRC § 332 liquidation.

Fact Element	Resources	6103 Protected Resources
<p>Verify that all tangible and intangible assets, including self-developed intangibles, and off-balance sheet financing are valued appropriately at arm's length and included in the total valuation.</p> <p>Request the Valuation Study and related workpapers from taxpayer.</p> <p>Review proper categorization of contingent liabilities or guarantees which were likely to be paid.</p>	<p>Valuation Study and related workpapers from taxpayer.</p>	
 <p>CONSULTATION: Request Economist consultation for review of valuation study and workpapers. Economist to review for arm's length valuation of complete list of assets and liabilities to determine if domestic corporation was solvent at time of liquidation.</p>		


Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

Issue 1, Step 4: Develop Arguments

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 1

Whether the outbound transfer of property to a foreign corporation in liquidation by a domestic corporation would initially qualify as a nonrecognition IRC § 332 liquidation.

Explanation of Approach	Resources	6103 Protected Resources
 <p>DECISION POINT: If the economist determines that the FMV of all of the assets of the corporation exceeds the sum of the corporation's liabilities, then the corporation is solvent, and IRC § 332 applies to the liquidation (assuming that the other criteria discussed in slide 20 are satisfied).</p> <p>An engineer will assist in determining the FMV of tangible assets.</p>	<ul style="list-style-type: none"> ▪ Valuation Report ▪ IRC § 336 – Taxable liquidation at liquidating corporation's level ▪ IRC § 332 – Nontaxable liquidation of subsidiary into a parent- no recognition of gain or loss at shareholder – parent level ▪ IRC § 337 – Nontaxable treatment at liquidating subsidiary's level in a IRC § 332 liquidation ▪ IRC § 367(e)(2) – Outbound liquidations ▪ Treas. Reg. § 1.367(e)-2 – general rule – gain and loss recognition ▪ See related Practice Unit – “IRC § 332 Liquidations” (coming soon) for more details. 	


Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

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

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 1

Whether the outbound transfer of property to a foreign corporation in liquidation by a domestic corporation would initially qualify as a nonrecognition IRC § 332 liquidation.

Explanation of Approach	Resources	6103 Protected Resources
 <p>DECISION POINT: The transaction will qualify as an outbound IRC § 332 liquidation if you conclude that: (1) FP is a foreign corporation; (2) FP owned at least 80% of the vote and value in USS until the last distribution; (3) all of USS’s property was completely distributed in the liquidation; (4) USS was solvent at the time of the liquidation; and (5) USS’ property was timely distributed (i.e., either within the taxable year or through a series of distributions that were completed within a 3-year period).</p> <p>If you conclude that the transaction qualifies as an outbound IRC § 332 liquidation, then you should continue with the analysis of IRC § 367(e)(2) to determine if gain recognition is required for the U.S. liquidating corporation or if the distribution meets an exception for nonrecognition. Continue to Issue 2 in this Unit.</p>	<ul style="list-style-type: none"> ▪ IRC § 336 – Taxable liquidation at liquidating corporation’s level ▪ IRC § 332 – Nontaxable liquidation of subsidiary into a parent- no recognition of gain or loss at shareholder – parent level ▪ IRC § 337 – Nontaxable treatment at liquidating subsidiary’s level in a IRC § 332 liquidation ▪ IRC § 367(e)(2) – Outbound liquidations ▪ Treas. Reg. § 1.367(e)-2 – general rule – gain and loss recognition ▪ See related Practice Unit – “IRC § 332 Liquidations” (coming soon) for more details. 	

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

Issue 2, Step 2: Review Potential Issues

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 2

Whether the outbound IRC § 332 liquidation of a U.S. subsidiary into its foreign parent requires gain recognition under the IRC § 367(e)(2) general rule.

Explanation of Issue	Resources	6103 Protected Resources
<p>The IRC § 367(e)(2) regulations require gain recognition to the liquidating U.S. corporation in its outbound IRC § 332 liquidation into its foreign parent unless an exception applies. Thus, without IRC § 367(e)(2) gain from a liquidation on the transfer of appreciated property to FP would not be taxed in the U.S. (unless it would be effectively connected income).</p> <p>Based upon your analysis under Issue 1, you have determined that USS' liquidation into FP initially qualifies as an IRC § 332 liquidation that would normally receive nonrecognition treatment to both USS and FP resulting in no U.S. tax.</p>	<ul style="list-style-type: none"> ▪ IRC § 367(e)(2) ▪ Treas. Reg. § 1.367(e)-2 – general rule – gain and loss recognition ▪ Treas. Reg. § 1.367(e)-2(b)(2)(i)-(iii) – exceptions to general rule ▪ BNA TMFEDPORT No. 920 s IV - Section B.2 – <i>O/B IRC § 332 Liquidations</i> ▪ U.S. Tax. Int'l Mergers, Acquis. & Jt. Ventures ¶ 15.05 (USTIMAJV WGL ¶ 15.05) – <i>Outbound Liquidations – Liquidation of Domestic Subsidiary into Foreign Parent</i> 	

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

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

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 2

Whether the outbound IRC § 332 liquidation of a U.S. subsidiary into its foreign parent requires gain recognition under the IRC § 367(e)(2) general rule.

Explanation of Issue	Resources	6103 Protected Resources
<p>Under the general rule of IRC § 367(e)(2) and Treas. Reg. §§ 1.367(e)-2(a) and (b)(1), the U.S. liquidating corporation must recognize gain and loss on the liquidating distribution of property to its FP.</p> <p>Under IRC § 367(e)(2), the normal nonrecognition provision of IRC § 337, which typically applies to a liquidating subsidiary, is turned off, and IRC § 336 is turned on. IRC § 336 requires a liquidating corporation to recognize gain and loss upon distributing property to a foreign parent in an outbound IRC § 332 liquidation unless an exception applies.</p> <p>There is an overall loss limitation whereby losses under IRC § 336 (and 367(e)(2)) are allowed only to the extent of gains. No overall loss is allowed on an outbound liquidation pursuant to IRC § 367(e)(2).</p> <p>Under IRC § 6038B, any liquidation subject to IRC § 367(e)(2) requires the liquidating domestic corporation to file a Form 926 on the outbound transfer of the property to its FP. A failure to file a Form 926 is subject to IRC § 6038B penalties and may hold open the statute of limitations under IRC § 6501(c)(8).</p>	<ul style="list-style-type: none"> ▪ IRC § 367(e)(2) ▪ Treas. Reg. § 1.367(e)-2 – general rule – gain recognition ▪ Treas. Reg. § 1.367(e)-2(b)(2)(i)-(iii) – exceptions to general rule ▪ IRC § 6038B ▪ IRC § 6501(c)(8) – Statute of limitation ▪ Treas. Reg. § 1.6038B-1(e) – Filing of Form 926 on an outbound liquidation ▪ BNA TFMEDPORT No. 920 s IV - Section B.2 – <i>O/B IRC § 332 Liquidations</i> ▪ U.S. Tax. Int'l Mergers, Acquis. & Jt. Ventures ¶ 15.05 (USTIMAJV WGL ¶ 15.05) – <i>Outbound Liquidations – Liquidation of Domestic Subsidiary into Foreign Parent</i> 	

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

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

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 2

Whether the outbound IRC § 332 liquidation of a U.S. subsidiary into its foreign parent requires gain recognition under the IRC § 367(e)(2) general rule.

Explanation of Issue	Resources	6103 Protected Resources
<p>There are three exceptions to the IRC § 367(e)(2) general rule of taxation. These exceptions apply to certain types of property distributed to the FP as part of the outbound liquidation.</p> <p>If the U.S. corporation distributes one or more of the following properties to its FP in an outbound liquidation, then the liquidating subsidiary may receive nontaxable treatment on:</p> <ul style="list-style-type: none"> ▪ Property used in a U.S. Trade or Business by the FP immediately after the transfer and for the next 10 years (except for IRC § 936(h)(3)(B) intangibles) if certain reporting requirements are met ▪ Certain U.S. real property interests (USRPI) ▪ Stock of a domestic subsidiary of the liquidating corporation if certain reporting requirements are met. <p>Proposed regs have been issued to clarify certain reporting requirements under IRC § 367(e)(2).</p>	<ul style="list-style-type: none"> ▪ IRC § 367(e)(2) ▪ Treas. Reg. § 1.367(e)-2 – general rule – gain recognition ▪ Treas. Reg. § 1.367(e)-2(b)(2)(i) – U.S. T/B exception ▪ Treas. Reg. § 1.367(e)-2(b)(2)(ii) – U.S. Real Property Interest exception ▪ Treas. Reg. § 1.367(e)-2(b)(2)(iii) – Distribution of domestic stock exception. ▪ 78 FR 6772-01 (Full proposed Reg site – excerpt) <i>Prop. Treas. Reg. § 1.367(e)-2 – IRC § 367(e)(2) reporting requirements and failure to file 367(e) document provisions.</i> ▪ BNA TMFEDPORT No. 920 s IV - Section B.2 b, c and d – <i>IRC § 367(e)(2) Exceptions</i> ▪ U.S. Tax. Int'l Mergers, Acquis. & Jt. Ventures ¶ 15.05 (<i>USTIMAJV WGL ¶ 15.05</i>) – <i>Outbound Liquidations – Liquidation of Domestic Subsidiary into Foreign Parent</i> 	

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

Issue 2, Step 3: Additional Factual Development

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 2

Whether the outbound IRC § 332 liquidation of a U.S. subsidiary into its foreign parent requires gain recognition under the IRC § 367(e)(2) general rule.

Fact Element	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ In order to determine whether the general rule of IRC § 367(e)(2) or one of its exceptions applies, you must determine the type of property transferred and whether there is built-in gains or losses attributable to each type of property. ▪ Treatment under IRC § 367(e)(2) differs by type of property transferred. ▪ A review of USS' valuation study, if any, is needed. A consultation with an economist or engineer may be needed to evaluate the FMV of the assets transferred. ▪ Request USS' listing of assets transferred including FMV and basis calculations. Verification of basis in the assets may be warranted to check for accuracy on the computation of built-in gain or loss for each transferred property. Compare the listing to the Form 926 filed with the return. 	<ul style="list-style-type: none"> ▪ Valuation Study ▪ Valuation Analysis by Economist/Engineer ▪ Listing of transferred property by category (including FMV and basis) ▪ Form 926 Return by a U.S. Transferor of Property to a Foreign Corporation, Part III 	

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

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

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 2

Whether the outbound IRC § 332 liquidation of a U.S. subsidiary into its foreign parent requires gain recognition under the IRC § 367(e)(2) general rule.

Fact Element	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ An analysis of the transferred/liquidated property by type should be completed. ▪ Review a breakdown of assets, including FMV and basis, by the following categories: <ul style="list-style-type: none"> – U.S. T/B assets – IRC § 936(h)(3)(B) intangibles – U.S. real property interests – Domestic subsidiary stock – All other transferred assets ▪ A review of the final Form 1120 of the liquidating domestic corporation is needed to determine the amount of gain reported. You should also ensure that no losses were claimed as a result of the liquidation (i.e., because there is an overall loss limitation whereby losses are allowed only to the extent of gains). ▪ Request information to obtain details of the corporation's tax treatment of the outbound liquidation. 	<ul style="list-style-type: none"> ▪ Valuation Study ▪ Valuation Analysis by Economist/Engineer ▪ Listing of transferred property by category (including FMV and basis) ▪ Form 926 Return by a U.S. Transferor of Property to a Foreign Corporation, Part III ▪ Form 1120 ▪ Form 1120 Schedule D Capital Gains and Losses ▪ Form 4797 Sales of Business Property ▪ Form 966 Corporate Dissolution or Liquidation 	

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

Issue 2, Step 4: Develop Arguments

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 2

Whether the outbound IRC § 332 liquidation of a U.S. subsidiary into its foreign parent requires gain recognition under the IRC § 367(e)(2) general rule.

Explanation of Approach	Resources	6103 Protected Resources
<p>Based upon the analysis, you have determined that the outbound (O/B) liquidation is subject to IRC § 367(e)(2). At this point, you now must apply IRC § 367(e)(2) to the different types of property distributed to the FP.</p> <p>Generally, an outbound liquidation of a domestic corporation to its FP, in an otherwise nontaxable IRC § 332 liquidation, requires immediate taxation of the gain realized (not loss). This gain would be recognized on the domestic corporation's final Form 1120.</p>	<ul style="list-style-type: none"> ▪ IRC § 367(e)(2) ▪ Treas. Reg. § 1.367(e)-2 – general rule – gain recognition ▪ BNA TMFEDPORT No. 920 s IV - Section B.2 – <i>O/B IRC § 332 Liquidations</i> ▪ U.S. Tax. Int'l Mergers, Acquis. & Jt. Ventures ¶ 15.05 (USTIMAJV WGL ¶ 15.05) – <i>Outbound Liquidations – Liquidation of Domestic Subsidiary into Foreign Parent</i> ▪ Form 926 Return by a U.S. Transferor of Property to a Foreign Corporation, Part III ▪ Form 1120 ▪ Form 1120 Schedule D Capital Gains and Losses ▪ Form 4797 Sales of Business Property 	

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

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

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 2

Whether the outbound IRC § 332 liquidation of a U.S. subsidiary into its foreign parent requires gain recognition under the IRC § 367(e)(2) general rule.

Explanation of Approach	Resources	6103 Protected Resources
<p>Unless an exception applies, IRC § 367(e)(2) trumps the IRC § 337 nonrecognition treatment on an IRC § 332 outbound liquidation and turns on the taxable IRC § 336 provision at the liquidating U.S. corporation's level.</p> <p>Generally under IRC § 336, the liquidating subsidiary may recognize gain or loss. However, IRC § 367(e)(2) prohibits the ability to claim an overall loss on the liquidation. Any built-in losses realized on certain property may be used to reduce the built-in gain on other property, but not below zero. No overall loss may be claimed under IRC §367(e)(2).</p>	<ul style="list-style-type: none"> ▪ IRC § 367(e)(2) ▪ IRC § 337 – Nontaxable treatment at liquidating corporation's level ▪ IRC § 336 – Taxable treatment at liquidating corporation's level ▪ Treas. Reg. § 1.367(e)-2(b)(1) – General rule of taxation under IRC § 367(e)(2) ▪ Treas. Reg. § 1.367(e)-2(b)(1)(ii)(B) – Overall loss limitation rule ▪ BNA TMFEDPORT No. 920 s IV - Section B.2 – <i>O/B IRC § 332 Liquidations</i> ▪ U.S. Tax. Int'l Mergers, Acquis. & Jt. Ventures ¶ 15.05 (USTIMAJV WGL ¶ 15.05) – <i>Outbound Liquidations – Liquidation of Domestic Subsidiary into Foreign Parent</i> 	

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

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

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 2

Whether the outbound IRC § 332 liquidation of a U.S. subsidiary into its foreign parent requires gain recognition under the IRC § 367(e)(2) general rule.

Explanation of Approach	Resources	6103 Protected Resources
<p>Although the general rule on the outbound IRC § 332 liquidation under IRC § 367(e)(2) is taxation of gain and loss (subject to the overall loss limitation rule), there are exceptions allowing nontaxable treatment which are dependent on the type of property distributed outbound in liquidation.</p> <p>One exception involves the distribution of certain property used by the U.S. liquidating corporation in a U.S. trade or business immediately before the liquidation and by the transferee (the FP) for a period of 10 years immediately after the liquidation, if certain reporting requirements are met. However, distributions of any intangibles (defined in IRC § 936(h)(3)(B)) do <u>not</u> qualify for the U.S. T/B exception and are subject to immediate gain recognition. See Issue #3</p> <p>Two other exceptions involve the distribution of USRPI and domestic subsidiary stock, if certain criteria are met. See Issue #4 or Issue #5.</p>	<ul style="list-style-type: none"> ▪ IRC § 367(e)(2) ▪ Treas. Reg. § 1.367(e)-2 – general rule – gain recognition ▪ Treas. Reg. § 1.367(e)-2(b)(2)(i) – U.S. T/B exception ▪ Treas. Reg. § 1.367(e)-2(b)(2)(ii) – U.S. Real Property Interest exception ▪ Treas. Reg. § 1.367(e)-2(b)(2)(iii) – Distribution of domestic stock exception. ▪ BNA TMFEDPORT No. 920 s IV - Section B.2 b, c and d – <i>IRC § 367(e)(2) Exceptions</i> ▪ U.S. Tax. Int'l Mergers, Acquis. & Jt. Ventures ¶ 15.05 (USTIMAJV WGL ¶ 15.05) – <i>Outbound Liquidations – Liquidation of Domestic Subsidiary into Foreign Parent</i> 	

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

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

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 2

Whether the outbound IRC § 332 liquidation of a U.S. subsidiary into its foreign parent requires gain recognition under the IRC § 367(e)(2) general rule.

Explanation of Approach	Resources	6103 Protected Resources
<p>Based upon your analysis, you have identified and categorized the property distributed in liquidation to the FP. Determine whether gain or loss is to be recognized for each such property or whether an exception may apply.</p> <p>Determine whether the liquidating corporation has properly reported the appropriate amount of gain on its final Form 1120 return based upon the corrected FMV and basis calculations.</p>	<ul style="list-style-type: none"> ▪ IRC § 367(e)(2) ▪ Treas. Reg. § 1.367(e)-2 – general rule – gain recognition ▪ Treas. Reg. § 1.367(e)-2(b)(2)(i) – U.S. T/B exception ▪ Treas. Reg. § 1.367(e)-2(b)(2)(ii) – U.S. Real Property Interest exception ▪ Treas. Reg. § 1.367(e)-2(b)(2)(iii) – Distribution of domestic stock exception. ▪ Form 926 Return by a U.S. Transferor of Property to a Foreign Corporation, Part III ▪ Form 1120 Schedule D Capital Gains and Losses ▪ Form 4797 Sales of Business Property 	


Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

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

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 2

Whether the outbound IRC § 332 liquidation of a U.S. subsidiary into its foreign parent requires gain recognition under the IRC § 367(e)(2) general rule.

Explanation of Approach	Resources	6103 Protected Resources
 <p>CONSULTATION: A consultation with the assigned local counsel, economist, and/or engineer may be needed in order to properly identify and value all of the transferred assets subject to 367(e)(2) gain income recognition.</p>		


Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

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

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 2

Whether the outbound IRC § 332 liquidation of a U.S. subsidiary into its foreign parent requires gain recognition under the IRC § 367(e)(2) general rule.

Explanation of Approach	Resources	6103 Protected Resources
 <p>DECISION POINT: If one or more of the following applies, then you should continue with your analysis under IRC § 367(e)(2) for each applicable issue. You may need to review more than one of the following issues based upon the assets transferred:</p> <ul style="list-style-type: none"> ▪ Go to Issue #3 - Gain on: <ul style="list-style-type: none"> – U.S. T/B assets – IRC § 936(h)(3)(B) Intangibles ▪ Go to Issue #4 – Gain on distribution of USRPI ▪ Go to Issue #5 – Gain on distribution of domestic subsidiary stock ▪ Gain on all other transferred assets will be recognized by the U.S. liquidating corporation and will be subject to tax under the general rule of IRC § 367(e)(2). Losses are only allowed to offset gains, no overall net loss allowed under IRC § 367(e)(2). 	<ul style="list-style-type: none"> ▪ IRC § 367(e)(2) ▪ Treas. Reg. § 1.367(e)-2(b)(1) – General rule of taxation under IRC § 367(e)(2) ▪ Treas. Reg. § 1.367(e)-2(b)(1)(ii)(B) – Overall loss limitation rule ▪ Treas. Reg. § 1.367(e)-2(b)(2)(i) – U.S. T/B exception (Issue 3) ▪ Treas. Reg. § 1.367(e)-2(b)(2)(ii) – U.S. Real Property Interest exception (Issue 4) ▪ Treas. Reg. § 1.367(e)-2(b)(2)(iii) – Distribution of domestic stock exception. (Issue 5) ▪ Form 926 Return by a U.S. Transferor of Property to a Foreign Corporation, Part III ▪ Form 1120 Schedule D Capital Gains and Losses ▪ Form 4797 Sales of Business Property 	

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

Issue 3, Step 2: Review Potential Issues

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 3

Whether the U.S. subsidiary's liquidating distribution of property used in a U.S. trade or business (T/B) to its foreign parent meets the U.S. T/B nonrecognition exception to IRC § 367(e)(2).

Explanation of Issue	Resources	6103 Protected Resources
<p>You have determined that some of the transferred property distributed to FP by USS in its IRC § 332 liquidation included property used by USS in the conduct of a trade or business (T/B) within the U.S.</p> <p>Generally, IRC § 367(e)(2) requires gain recognition (no overall loss) by the U.S. liquidating corporation in an outbound IRC § 332 liquidation. However, there are exceptions. One exception is the distribution of “certain” qualifying property used in a U.S. T/B, if certain criteria and reporting requirements are met. Such qualifying property can be transferred to FP without gain recognition, if:</p> <ul style="list-style-type: none"> ▪ The foreign distributee corporation (FP) immediately after the liquidation and for the next 10 years uses the property in an active U.S. T/B; ▪ USS attaches a 367(e)(2) statement to its U.S. return and Form 8838 (statute extension); and ▪ FP attaches a copy of the property description statement to its U.S. tax return (normally a Form 1120-F). 	<ul style="list-style-type: none"> ▪ IRC § 367(e)(2) ▪ Treas. Reg. § 1.367(e)-2(b)(2)(i) – U.S. T/B business exception ▪ Treas. Reg § 1.367(e)-2(b)(2)(i)(C)(1)-(5) –IRC § 367(e)(2) Statement by USS ▪ Treas. Reg. § 1.367(e)-2(b)(2)(i)(C)(2) – IRC § 367(e)(2) Master Property Description by FP ▪ BNA TMFEDPORT No. 920 s IV - Section B.2 c.– <i>U.S. T/B Exception</i> ▪ U.S. Tax. Int'l Mergers, Acquis. & Jt. Ventures ¶ 15.05[1][b][i] (<i>USTIMAJV WGL ¶ 15.05</i>) – <i>U.S. T/B Exception</i> 	

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

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

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 3

Whether the U.S. subsidiary's liquidating distribution of property used in a U.S. trade or business (T/B) to its foreign parent meets the U.S. T/B nonrecognition exception to IRC § 367(e)(2).

Explanation of Issue	Resources	6103 Protected Resources
<p>The T/B exception under IRC § 367(e)(2) only applies to the distribution of certain “qualified property” used in the active conduct of a U.S. T/B by USS and then by FP after the liquidation.</p> <p>Qualifying property includes:</p> <ul style="list-style-type: none"> Property – only if all income and gain from the use, sale or exchange of such property would be subject to taxation under IRC § 882(a) as effectively connected income (ECI) Inventory (including any stock held by a dealer as inventory or for sale in the ordinary course of its T/B) <p>Intangibles (defined in IRC § 936(h)(3)(B)) are specifically <u>excluded</u> from the definition of qualifying property for the T/B exception. ANY gain attributable to the outbound distribution of intangibles meeting the definition of IRC § 936(h)(3)(B) is subject to immediate taxation to the U.S. liquidating subsidiary. The T/B exception does not apply to such intangibles.</p>	<ul style="list-style-type: none"> IRC § 367(e)(2) Treas. Reg. § 1.367(e)-2(b)(2)(i) – U.S. T/B exception Treas. Reg. § 1.367(e)-2(b)(2)(i)(B) – Definition of qualifying property and the exclusion of IRC § 936(h)(3)(B) intangibles IRC § 936(h)(3)(B) – Intangible definition BNA TMFEDPORT No. 920 s IV - Section B.2 c.– <i>U.S. T/B Exception</i> U.S. Tax. Int'l Mergers, Acquis. & Jt. Ventures ¶ 15.05[1][b][i] (<i>USTIMAJV WGL</i> ¶ 15.05) – <i>U.S. T/B Exception</i> 	

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

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

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 3

Whether the U.S. subsidiary's liquidating distribution of property used in a U.S. trade or business (T/B) to its foreign parent meets the U.S. T/B nonrecognition exception to IRC § 367(e)(2).

Explanation of Issue	Resources	6103 Protected Resources
<p>In order to meet the T/B exception on the qualifying transferred property and secure nonrecognition, the liquidating U.S. subsidiary must also file the required IRC § 367(e)(2) statement.</p> <p>The “Required Statement under § 1.367(e)-2(b)(2)(i)” is filed with the taxpayer’s Form 1120. This statement is a certification that the property distributed meets the T/B exception, a description of all property (including intangibles subject to immediate taxation), an identification of FP, and an agreement to extend the statute of limitations and to waive treaty benefits.</p> <p>If the transferred property ceases to be used by the FP in the active U.S. T/B within the required 10 years following the liquidation, the FP must file an amended return for USS to report the gain on such property (hence the need for the statute extension), plus interest.</p>	<ul style="list-style-type: none"> ▪ IRC § 367(e)(2) ▪ Treas. Reg. § 1.367(e)-2(b)(2)(i) – U.S. T/B exception ▪ Treas. Reg § 1.367(e)-2(b)(2)(i)(C)(1)-(5) – IRC § 367(e)(2) Statement by USS ▪ Treas. Reg. § 1.367(e)-2(b)(2)(i)(C)(2) – IRC § 367(e)(2) Master Property Description by FP ▪ Treas. Reg. § 1.367(e)-2(b)(2)(i)(E)(1) – Ten year – taxable disposition recognition rule ▪ BNA TMFEDPORT No. 920 s IV - Section B.2 c.– <i>U.S. T/B Exception</i> ▪ U.S. Tax. Int'l Mergers, Acquis. & Jt. Ventures ¶ 15.05[1][b][i] (<i>USTIMAJV WGL ¶ 15.05</i>) – <i>U.S. T/B Exception</i> ▪ See related IPS Unit – IRC § 367(e)(2) – U.S. Trade or Business Exception” (coming soon) for more details on the IRC § 367(e)(2) T/B exception. 	

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

Issue 3, Step 3: Additional Factual Development

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 3

Whether the U.S. subsidiary's liquidating distribution of property used in a U.S. trade or business (T/B) to its foreign parent meets the U.S. T/B nonrecognition exception to IRC § 367(e)(2).

Fact Element	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Determine whether USS is taking a return position that the T/B exception is applicable. – If tax position is unknown, request the taxpayer's tax treatment of the outbound liquidation transaction (including the taxpayer's tax law authority) 	<ul style="list-style-type: none"> ▪ Required Disclosure Statement under IRC § 367(e)(2)(b)(2)(i) ▪ <u>Form 8838</u> Consent To Extend the Time To Assess Tax Under Section 367 - Gain Recognition Agreement (Statute extension up to 13 years) ▪ Master Property Description schedule 	

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

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

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 3

Fact Element	Resources	6103 Protected Resources
<p>If the T/B exception is being claimed by USS, you must determine whether the taxpayer has met all the criteria for such position.</p> <ul style="list-style-type: none"> ▪ Was the property used in a U.S. T/B by USS? ▪ Is FP continuing to conduct the U.S. T/B after the liquidation? ▪ Were the proper reporting requirements met by both USS and FP? <p>The next step is to determine if the taxpayer properly accounted for any possible gain inclusions relating to transferred intangibles.</p> <p>All other U.S. T/B assets may secure nonrecognition treatment under the T/B exception.</p>	<ul style="list-style-type: none"> ▪ Treas. Reg. § 1.367(e)-2(b)(2)(i) - U.S. T/B Exception ▪ Review return for: <ul style="list-style-type: none"> – “Required Statement under § 1.367(e)-2(b)(2)(i)” disclosure – Master Property Description schedule ▪ Request Valuation Study ▪ Examine FP’s 1120F for evidence that FP is engaged in US trade or business formerly carried on by USS 	


Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

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

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 3

Whether the U.S. subsidiary's liquidating distribution of property used in a U.S. trade or business (T/B) to its foreign parent meets the U.S. T/B nonrecognition exception to IRC § 367(e)(2).

Fact Element	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ If the T/B exception is being claimed by USS, you must determine whether the taxpayer transferred any IRC § 936(h)(3)(B) intangibles that are subject to immediate gain recognition. <ul style="list-style-type: none"> – Did any IRC § 936(h)(3)(B) intangibles exist? – Did USS report any gains relating to such intangibles? – Did USS reflect the intangibles on the Master Property Description disclosure? ▪ Was a valuation completed? Request Valuation Study. Did it include self-created intangibles 	<ul style="list-style-type: none"> ▪ Treas. Reg. § 1.367(e)-2(b)(2)(i) – U.S. T/B Exception ▪ Required Disclosure Statement under § 1.367(e)-2(b)(2)(i) ▪ Master Property Description schedule ▪ Valuation Study ▪ Form 926 Return by a U.S. Transferor of Property to a Foreign Corporation, Part III 	
 <p>CONSULTATION: Consult with local counsel, economist, engineer, and/or transfer pricing specialist in order to properly identify and value the transferred IRC § 936(h)(3)(B) intangibles subject to IRC § 367(e)(2) gain recognition.</p>		

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

Issue 3, Step 4: Develop Arguments

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 3

Whether the U.S. subsidiary's liquidating distribution of property used in a U.S. trade or business (T/B) to its foreign parent meets the U.S. T/B nonrecognition exception to IRC § 367(e)(2).

Explanation of Approach	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ See related Practice Unit – “Deemed Annual Royalty Income Under IRC §367(d)” – (DCN ISO/9411.02_02) for further analysis and computation of income inclusion under IRC § 367(d). However, note that unlike IRC § 367(d), there is no carve out under IRC § 367(e)(2) for goodwill or going concern. ▪ Any distribution of an intangible that meets the definition of IRC § 936(h)(3)(B) will be subject to gain recognition under IRC § 367(e)(2), regardless of its use in an active U.S. T/B. 	<ul style="list-style-type: none"> ▪ Treas. Reg. § 1.367(e)-2(b)(2)(i) – U.S. T/B Exception ▪ BNA TMFEDPORT No. 920 s IV - Section B.2 c.– <i>U.S. T/B Exception</i> ▪ U.S. Tax. Int'l Mergers, Acquis. & Jt. Ventures ¶ 15.05[1][b][i] (<i>USTIMAJV WGL</i> ¶ 15.05) – <i>U.S. T/B Exception</i> 	

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

Issue 4, Step 2: Review Potential Issues

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 4

Whether the U.S. subsidiary's liquidating distribution of certain U.S. real property interests (USRPI) to its foreign parent meets an exception to IRC § 367(e)(2).

Explanation of Issue	Resources	6103 Protected Resources
<p><u>Distribution of investment held in United States Real Property interest (USRPI):</u></p> <p>Determine whether some of the transferred property to FP by USS in its IRC § 332 liquidation includes U.S. real property interests.</p> <p>Generally, IRC §367(e)(2) requires gain recognition (no overall loss) by the U.S. liquidating corporation in an outbound IRC § 332 liquidation. However, there are exceptions. A second exception involves the distribution of certain U.S. real property interests (USRPI).</p> <p>USS shall not recognize gain (or loss) under IRC § 367(e)(2) on the distribution to FP of a USRPI (other than stock in a former U.S. real property holding corporation (USRPHC) that is treated as a USRPI for five years).</p>	<ul style="list-style-type: none"> ▪ IRC § 367(e)(2) ▪ Treas. Reg. § 1.367(e)-2 – General rule – gain recognition ▪ Treas. Reg. § 1.367(e)-2(b)(2)(ii) – U.S. Real Property Interest (USRPI) exception ▪ IRC § 897(c)(1)- Definition of USRPI ▪ IRC § 897(e) – Coordination with nonrecognition provision ▪ IRC § 897(a) a foreign corporation's gain or loss from the disposition of a USRPI shall be taken into account as if the foreign corporation was engaged in a U.S. trade or business and as if such gain or loss were ECI. 	

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

Issue 4, Step 2: Review Potential Issues (cont'd)

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 4

Whether the U.S. subsidiary's liquidating distribution of certain U.S. real property interests (USRPI) to its foreign parent meets an exception to IRC § 367(e)(2).

Explanation of Issue	Resources	6103 Protected Resources
<p><u>Distribution of investment held in United States Real Property interest (USRPI):</u></p> <p>If property distributed by USS is a USRPI that qualifies for nonrecognition under both the USRPI exception and the U.S. trade or business (T/B) exception, then the USRPI exception will apply.</p>	<ul style="list-style-type: none"> ▪ BNA TMFEDPORT No. 920 s IV - Section B.2 b.– <i>USRPI Exception</i> ▪ U.S. Tax. Int'l Mergers, Acquis. & Jt. Ventures ¶ 15.05[1][b][ii] (<i>USTIMAJV WGL</i> ¶ 15.05) – <i>USRPI Exception</i> 	


Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

Issue 4, Step 3: Additional Factual Development

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 4

Whether the U.S. subsidiary's liquidating distribution of certain U.S. real property interests (USRPI) to its foreign parent meets an exception to IRC § 367(e)(2).

Fact Element	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Does any of the property distributed by USS to FP meet the definition of a USRPI (other than stock of a USRPHC)? ▪ Did USS file a notice of non-recognition transfer of USRPI to FP with its return? 	<ul style="list-style-type: none"> ▪ Treas. Reg. § 1.367(e)-2(b)(2)(ii) – U.S. Real Property Interest exception ▪ IRC § 897(c)(1) – Definition of USRPI ▪ Treasury Regulations § 1.897-6T(a)(1) and -5T(d)(1)(iii) – USRPI distribution disclosure ▪ Form 1120 – Disclosure Statement 	
 CONSULTATION: Consult with an Engineer or Economist to determine the FMV of US Real Property Interests.		


Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

Issue 4, Step 4: Develop Arguments

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 4

Whether the U.S. subsidiary's liquidating distribution of certain U.S. real property interests (USRPI) to its foreign parent meets an exception to IRC § 367(e)(2).

Explanation of Approach	Resources	6103 Protected Resources
 <p>DECISION POINT: If any of USS' assets consist of a USRPI, then gain on the transfer of the USPRI (other than stock in a former USRPHC that is treated as a U.S. real property interest for five years) is not recognized, and FP will inherit USS' basis in any USRPI.</p> <p>If USS' assets do not qualify as a USRPI, then the gain on the assets transferred to FP may be recognized under IRC §367(e)(2), unless such assets meet a different exception. See for example, Issue 2.</p>	<ul style="list-style-type: none"> ▪ IRC § 897(c)(1) – Definition of USRPI ▪ IRC § 367(e)(2) ▪ Treas. Reg. § 1.367(e)-2 – general rule – gain recognition ▪ Treas. Reg. § 1.367(e)-2(b)(2)(ii) – U.S. Real Property Interest exception ▪ Treas. Reg. § 1.367(e)-2(b)(3)(i) – Distributee basis in property ▪ BNA TMFEDPORT No. 920 s IV - Section B.2 b.– <i>USRPI Exception</i> ▪ U.S. Tax. Int'l Mergers, Acquis. & Jt. Ventures ¶ 15.05[1][b][ii] (<i>USTIMAJV WGL</i> ¶ 15.05) – <i>USRPI Exception</i> 	

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

Issue 5, Step 2: Review Potential Issues

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 5

Whether the U.S. subsidiary's liquidating distribution of certain domestic stock to its foreign parent meets an exception to IRC § 367(e)(2) to secure nonrecognition.

Explanation of Issue	Resources	6103 Protected Resources
<p><u>Distribution of 80% domestic subsidiary:</u></p> <p>Determine whether some of the transferred property to FP by USS in its IRC § 332 liquidation includes stock of a domestic subsidiary corporation.</p> <p>Generally, IRC § 367(e)(2) requires gain recognition (no overall loss) by the U.S. liquidating corporation in an outbound IRC § 332 liquidation. However, there are exceptions. A third exception involves the distribution of certain domestic subsidiary corporation stock.</p> <p>USS shall not recognize gain (or loss) under IRC § 367(e)(2) on the distribution to FP of an 80% domestic subsidiary corporation, if USS attaches a statement, titled "Required Statement under 1.367(e)-2(b)(2)(iii)" to its Form 1120 for the year of the distribution of such stock.</p>	<ul style="list-style-type: none"> ▪ IRC § 367(e)(2) ▪ Treas. Reg. § 1.367(e)-2 – general rule – gain recognition ▪ Treas. Reg. § 1.367(e)-2(b)(2)(iii) – U.S. subsidiary stock exception ▪ Treas. Reg. § 1.367(e)-2(b)(2)(iii)(B) - Exception when the liquidating corporation is a USRPHC ▪ Treas. Reg. § 1.367(e)-2(b)(2)(iii)(C) - Anti abuse rule ▪ Treas. Reg. § 1.367(e)-2(b)(2)(iii)(D) – Required Statement under 1.367(e)-2(b)(2)(iii) ▪ IRC § 897(c)(2) - Definition of USRPHC ▪ BNA TMFEDPORT No. 920 s IV - Section B.2 d.– <i>U.S. stock exception</i> ▪ U.S. Tax. Int'l Mergers, Acquis. & Jt. Ventures ¶ 15.05[1][b][iii] (<i>USTIMAJV WGL</i> ¶ 15.05) – <i>Domestic subsidiary corporation exception</i> 	

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

Issue 5, Step 2: Review Potential Issues (cont'd)

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 5

Whether the U.S. subsidiary's liquidating distribution of certain domestic stock to its foreign parent meets an exception to IRC § 367(e)(2) to secure nonrecognition.

Explanation of Issue	Resources	6103 Protected Resources
<p>A corporation is an 80% domestic subsidiary corporation if –</p> <ul style="list-style-type: none"> ▪ the subsidiary corporation is a domestic corporation (and not a foreign corporation that has made an election under IRC §897(i) to be treated as a domestic corporation); and ▪ USS directly owns 80% of the voting power and value of the stock of the subsidiary corporation. <p>If USS is a USRPH at the time of the liquidation, then this third exception will apply only to the distribution of stock of the 80% domestic subsidiary corporation that is a USRPH at the time of the liquidation and immediately thereafter.</p>	<ul style="list-style-type: none"> ▪ IRC § 367(e)(2) ▪ Treas. Reg. § 1.367(e)-2 – general rule – gain recognition ▪ Treas. Reg. § 1.367(e)-2(b)(2)(iii) – U.S. subsidiary stock exception ▪ Treas. Reg. § 1.367(e)-2(b)(2)(iii)(A)(1)-(3) – Conditions for nonrecognition ▪ Treas. Reg. §1.367(e)-2(b)(2)(iii)(B) - Exception when the liquidating corporation is a USRPHC ▪ Treas. Reg. § 1.367(e)-2(b)(2)(iii)(C) - Anti abuse rule ▪ Treas. Reg. §1.367(e)-2(b)(2)(iii)(D) – Required Statement under 1.367(e)-2(b)(2)(iii) 	

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

Issue 5, Step 2: Review Potential Issues (cont'd)

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 5

Whether the U.S. subsidiary's liquidating distribution of certain domestic stock to its foreign parent meets an exception to IRC § 367(e)(2) to secure nonrecognition.

Explanation of Issue	Resources	6103 Protected Resources
<p>Under an anti-abuse rule, the distribution of domestic stock is presumed to be for U.S. tax avoidance if FP disposes of any stock of the domestic subsidiary within 2 years of the distribution, unless FP can demonstrate that the avoidance of tax was not a principal purpose of the liquidation.</p> <p>FP's basis in property shall be the same as USS' basis in such property immediately before the liquidation, adjusted for any recognized gain or loss.</p>	<ul style="list-style-type: none"> ▪ Treas. Reg. §1.367(e)-2(b)(3)(i) – Distributee basis in property ▪ IRC § 897(c)(2) - Definition of USRPHC ▪ BNA TMFEDPORT No. 920 s IV - Section B.2 d.– <i>U.S. stock exception</i> ▪ U.S. Tax. Int'l Mergers, Acquis. & Jt. Ventures ¶ 15.05[1][b][iii] (<i>USTIMAJV WGL</i> ¶ 15.05) – <i>Domestic subsidiary corporation exception</i> 	

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

Issue 5, Step 3: Additional Factual Development

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 5

Whether the U.S. subsidiary's liquidating distribution of certain domestic stock to its foreign parent meets an exception to IRC § 367(e)(2) to secure nonrecognition.

Fact Element	Resources	6103 Protected Resources
<ul style="list-style-type: none"> Does USS own at least 80% of vote and value in the domestic subsidiary's stock? 	<ul style="list-style-type: none"> Form 1120 – Form 851 Affiliations Schedule Organizational Chart Stock certificates, if needed 	
<ul style="list-style-type: none"> Does USS qualify as a USRPHC? <ul style="list-style-type: none"> If so, did USS transfer stock of a U.S. domestic subsidiary that was also a USRPHC? 	<ul style="list-style-type: none"> Treas. Reg. § 1.367(e)-2(b)(2)(iii)(B) IRC § 897(c) – Definition of USRPI and USRPHC 	
<ul style="list-style-type: none"> Did USS attach a statement to its U.S. income tax return for the year of the distribution of such stock? 	<ul style="list-style-type: none"> Form 1120, Disclosure Statement Treas. Reg. § 1.367(e)-2(b)(2)(iii)(D) – Disclosure requirement 	


Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

Issue 5, Step 4: Develop Arguments

Outbound Liquidation of U.S. Corp to Foreign Parent – IRC § 367(e)(2) Overview

Issue 5

Whether the U.S. subsidiary's liquidating distribution of certain domestic stock to its foreign parent meets an exception to IRC § 367(e)(2) to secure nonrecognition.

Explanation of Approach	Resources	6103 Protected Resources
 <p>DECISION POINT: If USS transferred its shares in an 80% or more owned domestic subsidiary to FP, then the gain realized on such transferred stock will not be recognized under this third exception.</p> <p>If the transfer did not include stock of: (1) an 80% or more owned U.S. subsidiary; or (2) a USRPH subsidiary (if USS was itself a USRPHC), then the disposition of property may be subject to taxation under IRC § 367(e)(2), unless a different exception applies. See for example, Issue 2.</p>	<ul style="list-style-type: none"> ▪ IRC § 367(e)(2) ▪ Treas. Reg. § 1.367(e)-2 – general rule – gain recognition ▪ Treas. Reg. § 1.367(e)-2(b)(2)(iii) – U.S. subsidiary stock exception ▪ BNA TMFEDPORT No. 920 s IV - Section B.2 d.– <i>U.S. stock exception</i> ▪ U.S. Tax. Int'l Mergers, Acquis. & Jt. Ventures ¶ 15.05[1][b][iii] (<i>USTIMAJV WGL</i> ¶ 15.05) – <i>Domestic subsidiary corporation exception</i> 	

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

Training and Additional Resources

Chapter 6.10.1 Outbound Liquidation of U.S. Subsidiary into Foreign Parent		
Type of Resource	Description(s) and/or Instructions for Accessing	References
Other Training Materials	International Issues - Phase II – Module C – Lesson 5 – Corporate Liquidations Involving Foreign Corporations (rev.3- 2009)	

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

Glossary of Terms and Acronyms

Acronym	Definition
CFC	Controlled Foreign Corporation
DCN	Document Control Number
ECI	Effectively connected income – subject to tax under IRC § 882(a)
ETR	Effective Tax Rate
FC	Foreign Corporation
FMV	Fair Market Value
FP	Foreign Parent Corporation
IRC	Internal Revenue Code
ISI	Income Shifting Inbound
ISO	Income Shifting Outbound
O/B	Outbound
T/B	Trade or Business
USRPHC	U.S. Real Property Holding Corporation
USRPI	U.S. Real Property Interest
USS	U.S. Subsidiary

Volume	Part	Chapter	Sub Chapter
Inbound Income Shifting	Gain Exportation	Outbound Liquidation of Domestic Subsidiary into Foreign Parent	N/A

Index of Related Issues

Issue	Associated UIL(s)	References
IRC § 367(d) Transfer of Intangibles	9411.02-02	IPS Unit: Deemed Annual Royalty Income IRC section 367d ISO/9411.02_02(2013)
IRC § 332 Liquidation	9415.02	Practice Unit (to be developed)
IRC § 367(e)(2) – U.S. Trade or Business Exception	9422.10	Practice Unit (to be developed)
IRC § 367(e)(2) – Other Exceptions	9422.10	Practice Unit (to be developed)
Transfers of Property to FC – IRC § 367 Overview	9411.08	IPS Unit: Outbound Transfers of Property to Foreign Corporation - IRC Section 367 Overview
Bona Fide Debt Determination	9423.01-01	IPS Unit: Bona Fide Debt Determination, IBF/9423.01_01(2013)