

The dividends received deduction allowable to each member under section 243(a)(1) (computed without regard to the limitation in section 246(b)) is as follows: P has \$5,100 (85 percent of \$6,000), S has \$8,500 (85 percent of \$10,000), and S-1 has \$28,900 (85 percent of \$34,000), or a total of \$42,500. Since \$42,500 is less than \$85,000 (85 percent of \$100,000), the consolidated dividends received deduction is \$42,500.

Example (2). Assume the same facts as in example (1) except that consolidated taxable income (computed without regard to the consolidated net operating loss deduction, consolidated dividends received deduction, and the consolidated section 247 deduction) was \$40,000. The aggregate of the dividends received deductions, \$42,500, computed without regard to section 246(b), results in a consolidated net operating loss of \$2,500. See section 172(d)(6). Therefore, paragraph (a)(2) of this section does not apply and the consolidated dividends received deduction is \$42,500.

[T.D. 6894, 31 FR 11794, Sept. 8, 1966, as amended by T.D. 7631, 44 FR 40497, July 11, 1979; T.D. 8597, 60 FR 36710, July 18, 1995; T.D. 8677, 61 FR 33323, June 27, 1996; T.D. 8823, 64 FR 36099, July 2, 1999]

§ 1.1502-27 Consolidated section 247 deduction.

(a) *Amount of deduction.* The consolidated section 247 deduction for the taxable year shall be an amount computed as follows:

(1) First, determine the amount which is the lesser of:

(i) The aggregate of the dividends paid (within the meaning of section 247(a)) during such year by members of the group which are public utilities (within the meaning of section 247(b)(1)) on preferred stock (within the meaning of section 247(b)(2)), other than dividends paid to other members of the group, or

(ii) The aggregate of the taxable income (or loss) (as determined under paragraph (b) of this section) of each such member which is a public utility.

(2) Then, multiply the amount determined under subparagraph (1) of this paragraph by the fraction specified in section 247(a)(2).

(b) *Computation of taxable income.* For purposes of paragraph (a)(1)(ii) of this section, the taxable income (or loss) of a member of the group described in paragraph (a)(1)(i) shall be determined under § 1.1502-12, adjusted for the following items taken into account in the

computation of consolidated taxable income:

(1) The portion of the consolidated net operating loss deduction, the consolidated charitable contributions deduction, and the consolidated dividends received deduction, attributable to such member;

(2) Such member's capital gain net income (net capital gain for taxable years beginning before January 1, 1977) (determined without regard to any net capital loss carryover or carryback attributable to such member);

(3) Such member's net capital loss and section 1231 net loss, reduced by the portion of the consolidated net capital loss attributable to such member; and

(4) The portion of any consolidated net capital loss carryover or carryback attributable to such member which is absorbed in the taxable year.

[T.D. 6894, 31 FR 11794, Sept. 8, 1966, as amended by T.D. 7728, 45 FR 72650, Nov. 3, 1980]

BASIS, STOCK OWNERSHIP, AND EARNINGS AND PROFITS RULES

§ 1.1502-30 Stock basis after certain triangular reorganizations.

(a) *Scope.* This section provides rules for determining the basis of the stock of an acquiring corporation as a result of a triangular reorganization. The definitions and nomenclature contained in § 1.358-6 apply to this section.

(b) *General rules*—(1) *Forward triangular merger, triangular C reorganization, or triangular B reorganization.* P adjusts its basis in the stock of S as a result of a forward triangular merger, triangular C reorganization, or triangular B reorganization under § 1.358-6(c) and (d), except that § 1.358-6(c)(1)(ii) and (d)(2) do not apply. Instead, P adjusts such basis by taking into account the full amount of—

(i) T liabilities assumed by S or the amount of liabilities to which the T assets acquired by S are subject, and

(ii) The fair market value of any consideration not provided by P pursuant to the plan of reorganization.

(2) *Reverse triangular merger.* If P adjusts its basis in the T stock acquired as a result of a reverse triangular merger under § 1.358-6(c)(2)(i) and (d),

§ 1.358-6 (c)(1)(ii) and (d)(2) do not apply. Instead, *P* adjusts such basis by taking into account the full amount of—

(i) *T* liabilities deemed assumed by *S* or the amount of liabilities to which the *T* assets deemed acquired by *S* are subject, and

(ii) The fair market value of any consideration not provided by *P* pursuant to the plan of reorganization.

(3) *Excess loss accounts.* Negative adjustments under this section may exceed *P*'s basis in its *S* or *T* stock. The resulting negative amount is *P*'s excess loss account in its *S* or *T* stock. See § 1.1502-19 for rules treating excess loss accounts as negative basis, and treating references to stock basis as including references to excess loss accounts.

(4) *Application of other rules of law.* The rules for this section are in addition to other rules of law. See § 1.1502-80(d) for the non-application of section 357(c) to *P*.

(5) *Examples.* The rules of this paragraph (b) are illustrated by the following examples. For purposes of these examples, *P*, *S*, and *T* are domestic corporations, *P* and *S* file consolidated returns, *P* owns all of the only class of *S* stock, the *P* stock exchanged in the transaction satisfies the requirements of the applicable triangular reorganization provisions, the facts set forth the only corporate activity, and tax liabilities are disregarded.

Example 1. Liabilities. (a) *Facts.* *T* has assets with an aggregate basis of \$60 and fair market value of \$100. *T*'s assets are subject to \$70 of liabilities. Pursuant to a plan, *P* forms *S* with \$5 of cash (which *S* retains), and *T* merges into *S*. In the merger, the *T* shareholders receive *P* stock worth \$30 in exchange for their *T* stock. The transaction is a reorganization to which sections 368 (a)(1)(A) and (a)(2)(D) apply.

(b) *Basis adjustment.* Under § 1.358-6, *P* adjusts its \$5 basis in the *S* stock as if *P* had acquired the *T* assets with a carryover basis under section 362 and transferred these assets to *S* in a transaction in which *P* determines its basis in the *S* stock under section 358. Under the rules of this section, the limitation described in § 1.358-6(c)(1)(ii) does not apply. Thus, *P* adjusts its basis in the *S* stock by -\$10 (the aggregate adjusted basis of *T*'s assets decreased by the amount of liabilities to which the *T* assets are subject). Consequently, as a result of the reorganization, *P* has an excess loss account of \$5 in its *S* stock.

Example 2. Consideration not provided by P.

(a) *Facts.* *T* has assets with an aggregate basis of \$10 and fair market value of \$100 and no liabilities. *S* is an operating company with substantial assets that has been in existence for several years. *P* has a \$5 basis in its *S* stock. Pursuant to a plan, *T* merges into *S* and the *T* shareholders receive \$70 of *P* stock provided by *P* pursuant to the plan of reorganization and \$30 of cash provided by *S* in exchange for their *T* stock. The transaction is a reorganization to which sections 368 (a)(1)(A) and (a)(2)(D) apply.

(b) *Basis adjustment.* Under § 1.358-6, *P* adjusts its \$5 basis in the *S* stock as if *P* had acquired the *T* assets with a carryover basis under section 362 and transferred these assets to *S* in a transaction in which *P* determines its basis in the *S* stock under section 358. Under the rules of this section, the limitation described in § 1.358-6(d)(2) does not apply. Thus, *P* adjusts its basis in the *S* stock by -\$20 (the aggregate adjusted basis of *T*'s assets decreased by the fair market value of the consideration provided by *S*). As a result of the reorganization, *P* has an excess loss account of \$15 in its *S* stock.

(c) *Appreciated asset.* The facts are the same as in paragraph (a) of this *Example 2*, except that in the reorganization *S* provides an asset with a \$20 adjusted basis and \$30 fair market value instead of \$30 cash. The basis is adjusted in the same manner as in paragraph (b) of this *Example 2*. In addition, because *S* recognizes a \$10 gain from the asset under section 1001, *P*'s basis in its *S* stock is increased under § 1.1502-32(b) by *S*'s \$10 gain. Consequently, as a result of the reorganization, *P* has an excess loss account of \$5 in its *S* stock. (The results would be the same if the appreciated asset provided by *S* was *P* stock with respect to which *S* recognized gain. See § 1.1032-2(c)).

Example 3. Reverse triangular merger. (a) *Facts.* *T* has assets with an aggregate basis of \$60 and fair market value of \$100. *T*'s assets are subject to \$70 of liabilities. *P* owns all of the only class of *S* stock. *P* has a \$5 basis in its *S* stock. Pursuant to a plan, *S* merges into *T* with *T* surviving. In the merger, the *T* shareholders exchange their *T* stock for \$2 cash from *P* and \$28 worth of *P* stock provided by *P* pursuant to the plan. The transaction is a reorganization to which sections 368 (a)(1)(A) and (a)(2)(E) apply.

(b) *Basis adjustment.* Under § 1.358-6, *P*'s basis in the *T* stock acquired equals its \$5 basis in its *S* stock immediately before the transaction adjusted by the \$60 basis in the *T* assets deemed transferred, and the \$70 of liabilities to which the *T* assets are subject. Under the rules of this section, the limitation described in § 1.358-6(c)(1)(ii) does not apply. Consequently, *P* has an excess loss account of \$5 in its *T* stock as a result of the transaction.

(c) *Effective date.* This section applies to reorganizations occurring on or after December 21, 1995.

[T.D. 8648, 60 FR 66082, Dec. 21, 1995]

§ 1.1502-31 Stock basis after a group structure change.

(a) *In general—(1) Overview.* If one corporation (P) succeeds another corporation (T) under the principles of § 1.1502-75(d) (2) or (3) as the common parent of a consolidated group in a group structure change, the basis of members in the stock of the former common parent (or the stock of a successor) is adjusted or determined under this section. See § 1.1502-33(f)(1) for the definition of group structure change. For example, if P owns all of the stock of another corporation (S), and T merges into S in a group structure change that is a reorganization described in section 368(a)(2)(D) in which P becomes the common parent of the T group, P's basis in S's stock must be adjusted to reflect the change in S's assets and liabilities. The rules of this section coordinate with the earnings and profits adjustments required under § 1.1502-33(f)(1), generally conforming the results of transactions in which the T group continues under § 1.1502-75 with P as the common parent. By preserving in P the relationship between T's earnings and profits and asset basis, these adjustments limit possible distortions under section 1502 (e.g., in the deconsolidation rules for earnings and profits under § 1.1502-33(e), and the continued filing requirements under § 1.1502-75(a)). This section applies whether or not T continues to exist after the group structure change.

(2) *Application of other rules of law.* The rules of this section are in addition to other rules of law. The provisions of this section and other rules of law must not have the effect of duplicating an amount in P's basis in S's stock.

(b) *General rules.* Except as otherwise provided in this section—

(1) *Asset acquisitions.* If a corporation acquires the former common parent's assets (and any liabilities assumed or to which the assets are subject) in a group structure change, the basis of members in the stock of the acquiring corporation is adjusted immediately after the group structure change to re-

fect the acquiring corporation's allocable share of the former common parent's net asset basis as determined under paragraph (c) of this section. For example, if S acquires all of T's assets in a group structure change that is a reorganization described in section 368(a)(2)(D), P's basis in S's stock is adjusted to reflect T's net asset basis. If P owned some of T's stock before the group structure change, the results would be the same because P's basis in the T stock is not taken into account in determining P's basis in S's stock. If T's net asset basis is a negative amount, it reduces P's basis in S's stock and, if the reduction exceeds P's basis in S's stock, the excess is P's excess loss account in S's stock. See § 1.1502-19 for rules treating P's excess loss account as negative basis, and treating a reference to P's basis in S's stock as including an excess loss account.

(2) *Stock acquisitions.* If a corporation acquires stock of the former common parent in a group structure change, the basis of the members in the former common parent's stock immediately after the group structure change (including any stock of the former common parent owned before the group structure change) is redetermined in accordance with the results for an asset acquisition described in paragraph (b)(1) of this section. For example, if all of T's stock is contributed to P in a group structure change to which section 351 applies, P's basis in T's stock is T's net asset basis, rather than the amount determined under section 362. Similarly, if S merges into T in a group structure change described in section 368(a)(2)(E), P's basis in T's stock is the basis that P would have in S's stock under paragraph (b)(1) of this section if T had merged into S in a group structure change described in section 368(a)(2)(D).

(c) *Net asset basis.* The former common parent's net asset basis is the basis it would have in the stock of a newly formed subsidiary, if—

(1) The former common parent transferred its assets (and any liabilities assumed or to which the assets are subject) to the subsidiary in a transaction to which section 351 applies;