

as a section 351 transfer or as both a reverse triangular merger and a reorganization under section 368(a)(1)(B), *P* can—

(A) Determine the basis in its *T* stock as if paragraph (c)(2)(i) of this section applies; or

(B) Determine the basis in the *T* stock acquired as if *P* acquired such stock from the former *T* shareholders in a transaction in which *P*'s basis in the *T* stock was determined under section 362(b).

(3) *Triangular B reorganization.* In a triangular B reorganization, *P*'s basis in its *S* stock is adjusted as if—

(i) *P* acquired the *T* stock acquired by *S* in the reorganization directly from the *T* shareholders in a transaction in which *P*'s basis in the *T* stock was determined under section 362(b); and

(ii) *P* transferred the *T* stock to *S* in a transaction in which *P*'s basis in its *S* stock was determined under section 358.

(4) *Examples.* The rules of this paragraph (c) are illustrated by the following examples. For purposes of these examples, *P*, *S*, and *T* are domestic corporations, *P* and *S* do not 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, and the facts set forth the only corporate activity.

Example 1. Forward triangular merger. (a) *Facts.* *T* has assets with an aggregate basis of \$60 and fair market value of \$100 and no liabilities. Pursuant to a plan, *P* forms *S* with \$5 cash (which *S* retains), and *T* merges into *S*. In the merger, the *T* shareholders receive *P* stock worth \$100 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(c)(1), *P*'s \$5 basis in its *S* stock is adjusted as if *P* acquired the *T* assets acquired by *S* in the reorganization directly from *T* in a transaction in which *P*'s basis in the *T* assets was determined under section 362(b). Under section 362(b), *P* would have an aggregate basis of \$60 in the *T* assets. *P* is then treated as if it transferred the *T* assets to *S* in a transaction in which *P*'s basis in the *S* stock was determined under section 358. Under section 358, *P*'s \$5 basis in its *S* stock would be increased by the \$60 basis in the *T* assets deemed transferred. Consequently, *P* has a \$65 basis in its *S* stock as a result of the reorganization.

(c) *Use of pre-existing S.* The facts are the same as paragraph (a) of this *Example 1*, except that *S* is an operating company with substantial assets that has been in existence for several years. *P* has a \$110 basis in the *S* stock. Under § 1.358-6(c)(1), *P*'s \$110 basis in its *S* stock is increased by the \$60 basis in the *T* assets deemed transferred.

Consequently, *P* has a \$170 basis in its *S* stock as a result of the reorganization.

(d) *Mixed consideration.* The facts are the same as paragraph (a) of this *Example 1*, except that the *T* shareholders receive *P* stock worth \$80 and \$20 cash from *P*. Under section 358, *P*'s \$5 basis in its *S* stock is increased by the \$60 basis in the *T* assets deemed transferred. Consequently, *P* has a \$65 basis in its *S* stock as a result of the reorganization.

(e) *Liabilities.* The facts are the same as paragraph (a) of this *Example 1*, except that *T*'s assets are subject to \$50 of liabilities, and the *T* shareholders receive \$50 of *P* stock in exchange for their *T* stock. Under section 358, *P*'s basis in its *S* stock is increased by the \$60 basis in the *T* assets deemed transferred and decreased by the \$50 of liabilities to which the *T* assets acquired by *S* are subject. Consequently, *P* has a net basis adjustment of \$10, and a \$15 basis in its *S* stock as a result of the reorganization.

(f) *Liabilities in excess of basis.* The facts are the same as in paragraph (a) of this *Example 1*, except that *T*'s assets are subject to liabilities of \$90, and the *T* shareholders receive \$10 of *P* stock in exchange for their *T* stock in the reorganization. Under § 1.358-6(c)(1)(ii), the adjustment under § 1.358-6(c) is zero if the amount of the liabilities which *S* assumed or to which the *T* assets acquired by *S* are subject exceeds the aggregate adjusted basis in *T*'s assets. Consequently, *P* has no adjustment in its *S* stock, and *P* has a \$5 basis in its *S* stock as a result of the reorganization.

Example 2. Reverse triangular merger. (a) *Facts.* *T* has assets with an aggregate basis of \$60 and a fair market value of \$100 and no liabilities. *P* has a \$110 basis in its *S* stock. Pursuant to a plan, *S* merges into *T* with *T* surviving. In the merger, the *T* shareholders receive \$10 cash from *P* and *P* stock worth \$90 in exchange for their *T* stock. The transaction is a reorganization to which sections 368(a)(1)(A) and (a)(2)(E) apply.

(b) *Basis adjustment.* Under § 1.358-6(c)(2)(i)(A), *P*'s basis in the *T* stock acquired is *P*'s \$110 basis in its *S* stock before the transaction, adjusted as if *T* had merged into *S* in a forward triangular merger to which § 1.358-6(c)(1) applies. In such a case, *P*'s \$110 basis in its *S* stock before the transaction would have been increased by the \$60 basis of the *T* assets deemed transferred. Consequently, *P* has a \$170 basis in its *T* stock immediately after the transaction.

(c) *Reverse triangular merger that also qualifies under section 368(a)(1)(B).* The facts relating to *T* are the same as in paragraph (a) of this *Example 2*. *P*, however, forms *S* pursuant to the plan of reorganization. The *T* shareholders receive \$100 worth of *P* stock (and no cash) in exchange for their *T* stock. The *T* shareholders have an aggregate basis in their *T* stock of \$85 immediately before the reorganization. The reorganization qualifies as both a reverse triangular merger and a reorganization under section 368(a)(1)(B). Under § 1.358-6(c)(2)(ii), *P* may determine its basis in its *T* stock either as if § 1.358-6(c)(2)(i) applied to the *T* stock acquired, or as if *P* acquired the *T* stock from the former *T* shareholders in a transaction in which *P*'s basis in the *T* stock was determined under

section 362(b). Accordingly, *P* may determine a basis in its *T* stock of \$60 (*T*'s net asset basis) or \$85 (the *T* shareholders' aggregate basis in the *T* stock immediately before the reorganization).

(d) *Allocable share in a reverse triangular merger.* The facts are the same as in paragraph (a) of this *Example 2*, except that *X*, a 10% shareholder of *T*, does not participate in the transaction. The remaining *T* shareholders receive \$10 cash from *P* and *P* stock worth \$80 for their *T* stock. *P* owns 90% of the *T* stock after the transaction. Under 1.358-6(c)(2)(i)(A), *P*'s basis in its *T* stock is *P*'s \$110 basis in its *S* stock before the reorganization, adjusted as if *T* had merged into *S* in a forward triangular merger. In such a case, *P*'s basis would have been adjusted by the \$60 basis in the *T* assets deemed transferred. Under § 1.358-6(c)(2)(i)(B), however, the basis adjustment determined under § 1.358-6(c)(2)(i)(A) is reduced in proportion to the percentage of *T* stock not acquired by *P* in the transaction. The percentage of *T* stock not acquired in the transaction is 10%. Therefore, *P* reduces its \$60 basis adjustment by 10%, resulting in a net basis adjustment of \$54. Consequently, *P* has a \$164 basis in its *T* stock as a result of the transaction.

(e) *P's ownership of T stock.* The facts are the same as in paragraph (a) of this *Example 2*, except that *P* owns 10% of the *T* stock before the transaction. *P*'s basis in that *T* stock is \$8. All the *T* shareholders other than *P* surrender their *T* stock for \$10 cash from *P* and *P* stock worth \$80. *P* does not surrender the stock in the transaction. Under § 1.358-6(c)(2)(i)(C), *P* may treat its *T* stock owned before the transaction as acquired in the transaction or not. If *P* treats that *T* stock as acquired in the transaction, *P*'s basis in that *T* stock and the *T* stock actually acquired in the transaction equals *P*'s \$110 basis in its *S* stock before the transaction, adjusted by the \$60 basis of the *T* assets deemed transferred, for a total basis of \$170. If *P* treats its *T* stock as not acquired, *P* retains its \$8 pre-transaction basis in that stock. *P*'s basis in its other *T* shares equals *P*'s \$110 basis in its *S* stock before the transaction, adjusted by \$54 (the \$60 basis in the *T* assets deemed transferred, reduced by 10%), for a total basis of \$164 in those shares. See § 1.358-6(c)(2)(i)(A) and (B). Consequently, if *P* treats its *T* shares as not acquired, *P*'s total basis in all of its *T* shares is \$172.

Example 3. Triangular B reorganization. (a) *Facts.* *T* has assets with a fair market value of \$100 and no liabilities. The *T* shareholders have an aggregate basis in their *T* stock of \$85 immediately before the reorganization. Pursuant to a plan, *P* forms *S* with \$5 cash and *S* acquires all of the *T* stock in exchange for \$100 of *P* stock. The transaction is a reorganization to which section 368(a)(1)(B) applies.

(b) *Basis adjustment.* Under § 1.358-6(c)(3), *P* adjusts its \$5 basis in its *S* stock by treating *P* as if it acquired the *T* stock acquired by *S* in the reorganization directly from the *T* shareholders in exchange for the *P* stock in a transaction in which *P*'s basis in the *T* stock was determined under section 362(b). Under section 362(b), *P* would have an aggregate basis of \$85 in the *T* stock