Passthrough Partner

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Code Sec. 336(e) Corporation to Partnership, Tax Alchemy? Important New Tool for Stock Acquisitions—27 Years in the Making

Section 336(e) of the Internal Revenue Code of 1986, as effectuated by the final regulations promulgated in May 2013, is obviously an important corporate tax provision. It permits, for the first time in 27 years, the acquisition of stock of a corporate subsidiary (meeting certain requirements detailed below) or an S corporation (“Target”) by one or more noncorporate purchasers/distributees, multiple corporations and/or other parties and obtaining a stepped-up basis in the Target’s assets with only one imposition of federal income tax. Code Sec. 336(e) is also of extraordinary importance to partnership tax professionals and their individual and noncorporate passthrough clients making acquisitions. In many situations, it will be possible to have the tax alchemy of transforming a newly acquired Target in a Code Sec. 336(e) electing transaction into a passthrough entity post-transaction without the acquiring party/parties incurring significant additional federal income tax! For a range of fairly common situations, the Code Sec. 336(e) election will become the paradigm template. The subsequent conversion of the Target (C or S corporation) into a noncorporate passthrough entity will be common.

In 1986, Code Sec. 336(e) was enacted for the stated purpose of providing taxpayers relief from the potential multiple taxation of the same economic gain that can result when a transfer of appreciated corporate stock is taxed to the corporate seller without providing a corresponding basis step up in the assets of the subsidiary target. Because Code Sec. 336(e) begins with “[u]nder regulations prescribed by the Secretary…,” the IRS’s position has been that the
section was not operative until final regulations were issued.\(^3\) It took almost 27 years, but in May 2013 the Treasury and the IRS at last issued final regulations under Code Sec. 336(e) (the “Regulations”). In general, the Regulations adopt principles and concepts found in Code Sec. 338(h)(10) and its regulations with modifications. Only in the tax world can a “new” provision be 27 years old!

**Introduction**

Code Sec. 336(e) permits a basis step-up of assets when an aggregate of 80 percent (by vote and value)\(^4\) of the stock of (1) a domestic corporation’s domestic subsidiary (at least 80 percent of the stock, by vote and value, of which is owned by such domestic corporation), (2) a member of a consolidated group of corporations (other than the parent thereof), or (3) an S corporation’s stock is sold, exchanged and/or distributed in a taxable transaction with unrelated parties\(^5\) within a 12-month period. The tax cost is or distributed in a taxable transaction with unrelated parties\(^5\) within a 12-month period. The tax cost is a single level of taxation which many, if not most, acquirers and sellers will find acceptable.\(^6\) Prior to these Regulations, the only mechanism by which a step-up in basis of assets in a stock purchase could be achieved at the cost of a single level of tax was by a Code Sec. 338(h)(10) election which, as discussed below, only applies to a narrow band of transactions and, since the purchaser must be a corporation, does not facilitate a path of operating the Target's business outside of corporate solution.

**Code Sec. 338(h)(10)**

**Background and Trumping of Code Sec. 336(e)**

Much of the Regulations were built off the Code Sec. 338(h)(10) chassis.\(^7\) A transaction that qualifies for a Code Sec. 338(h)(10) election (other than a transaction in which a subsidiary of the Target makes Code Sec. 336(e) election) will not qualify for a Code Sec. 336(e) election \(i.e.,\) Code Sec. 338(h)(10) trumps Code Sec. 336(e).\(^8\) Therefore, a brief overview of the requirements of Code Sec. 338(h)(10) is appropriate. The Code Sec. 338(h)(10) election requires (1) the Target to be a domestic corporation; (2) the seller to be (a) a domestic corporation (or a foreign corporation treated as a domestic corporation) owning at least 80 percent of the stock, by vote and value, of the Target, (b) a consolidated group of corporations, or (c) S corporation shareholders; (3) the purchaser to be a single corporation or corporations within an affiliated group; and (4) 80 percent or more, by vote and value, of the stock of the Target be purchased in a taxable transaction within a 12-month period of time.\(^11\) With respect to a C corporation Target, if the Target stock is purchased from a corporation within an affiliated group (but which does not file a consolidated return), then the requisite stock (80 percent vote and value)\(^12\) must be purchased from such single affiliated group corporation while it owns at least 80 percent in vote and value of Target.\(^13\) In contrast, if the stock is acquired from a consolidated group, while Target must still be a member of such consolidated group at the time the 80 percent vote and value ownership is actually acquired,\(^14\) the requisite Target stock can be acquired from any combination of the consolidated group corporations. The selling corporation or consolidated group must own the requisite stock on the acquisition date.\(^15\)

As stated above, the purchaser must be a corporation (or an affiliated group of corporations).\(^16\) The purchasing corporation also must be the true purchaser of the stock. For example, if a new transitory acquiring corporation is formed, acquires Target, and then liquidates, it will not be recognized as the purchaser.\(^17\) In such case, qualification for Code Sec. 338(h)(10) should be tested at the level of the shareholders receiving the deemed liquidation proceeds.\(^18\)

In short, the Code Sec. 338(h)(10) election is only available to certain corporate purchasers of 80 percent or more in vote and value of the stock of an S corporation or a corporate subsidiary (meeting the requirements detailed above) within a 12-month period. A C corporation Target must be a member of an affiliated or consolidated group at the time such amount of stock is purchased. Individuals, multiple corporations (other than within a consolidated group), noncorporate entities or any combination thereof are not eligible purchasers. Therefore, the ability for a transaction to qualify for a Code Sec. 338(h)(10) election is very limited.

**Expansion of Basis Step-up Opportunities in the Context of a Stock Purchase Under Code Sec. 336(e)**

For the first time since 1986, (1) one or more individuals, one or more partnerships or other non-
corporate entities, two or more corporations that are not affiliates or any combination of the above can acquire the requisite stock of a corporate subsidiary (or S corporation)19 and have a step-up in basis of the acquired assets, often without subjecting the purchaser(s) to significant additional tax, and (2) certain distributions of stock20 can permit the step-up in basis of the assets of the Target whose stock is distributed. Under Code Sec. 336(e), the requirement that the “seller” be a single domestic corporation (including a consolidated group)21 or S corporation shareholders22 remains, except the ability to have a creeping transaction (i.e., a transaction whereby the requisite stock of the Target is slowly acquired over the allotted 12-month period of time) is expanded because, unlike Code Sec. 338(h)(10), Code Sec. 336(e) does not require the selling corporation or consolidated group to own all of the requisite stock on the disposition date. However, as noted above, any one or more taxpayers (corporate, individual, partnership or other) unrelated to the “seller” may acquire the requisite stock by purchase and/or taxable distribution within a 12-month period. Therefore, the range of transactions to which Code Sec. 336(e) applies, as opposed to Code Sec. 338(h)(10), has been greatly broadened. If a transaction is described in both Code Secs. 338(h)(10) and 336(e), Code Sec. 338(h)(10) trumps and Code Sec. 336(e) is not available23 unless, as a result of the Code Sec. 336(e) election, there would be a qualified stock disposition of the stock of a subsidiary of Target that also makes a Code Sec. 336(e) election.24

The expansion of the opportunities to obtain the stepped-up basis in a stock acquisition context is very important. Often, it is not practical to purchase the assets of a Target because of business or legal impediments to the actual sale and transfer of the Target’s tangible and intangible assets. The transfer of at least some of the assets and contracts of the Target also frequently will require consents of third parties which may be difficult, time consuming and expensive to obtain. There may be nonassignable licenses or other contract rights. The length of time required to facilitate the sale of the assets and transaction costs of completing an asset purchase versus a stock purchase may be a business hurdle in some situations. For transactions with S corporations, the ability for virtually any party or parties that are unrelated to the selling shareholders to acquire sufficient stock over a 12-month period and obtain a stepped-up basis in the assets of the S corporation is a major benefit and likely will be the norm in the future. The tax benefits for the acquirer(s) of having a stepped-up basis are obvious and often economically compelling. Of course, the purchaser(s) acquire liabilities of Target that they would not be subject to if a true asset purchase had occurred.

Although the federal income tax results of a Code Sec. 336(e) election mirror the federal income tax results of a Code Sec. 338(h)(10) election, there may be occasions (such as transactions in which the state tax would be unfavorable) where a corporation or an affiliated group of corporations prefers to utilize Code Sec. 336(e) rather than Code Sec. 338(h)(10). In such case, there must be some planning and structuring in order to avoid the Code Sec. 338(h)(10) provisions trumping Code Sec. 336(e).

As discussed under “Corporation to Partnership, Tax Alchemy?” below, after the disposition date and the conclusion of the “deemed transactions” under Code Sec. 336(e), often the acquiring shareholder(s) and C corporation Target unilaterally can take steps to cause the Target to become an entity taxable as a disregarded entity or a noncorporate passthrough entity without significant additional tax cost to the purchaser/distributor. Likewise, completing the stock acquisition and making the Code Sec. 336(e) election gives acquirer(s) of an S corporation the ability to purchase the S corporation stock, obtain the step-up in basis and cause the S corporation (or former S corporation) to become an LLC taxable as a partnership or disregarded entity and operate free of the restrictions placed on S corporations.25

However, all S corporation shareholders, not simply those selling the stock, must participate in the Code Sec. 336(e) election. In the current environment of various forms of investment partnerships and other noncorporate entities, this is a major development as it gives the acquirer(s), including those who acquired stock in a permitted taxable distribution, the

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**Code Sec. 336(e) is also of extraordinary importance to partnership tax professionals and their individual and noncorporate passthrough clients making acquisitions.**

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The seller of Target stock will disregard the sale of stock, or (e)(2), the loss is allowed subject to the normal loss. In the context of a purchase or distribution of the stock other than pursuant to Code Sec. 355(d)(2) or (e)(2), the loss is allowed subject to the normal tax rules that may limit the utilization of such loss. The seller of Target stock will disregard the sale of the stock, and/or the distributing corporation will disregard the distribution of the stock. Any stock retained by the selling/distributing corporation will be deemed to be purchased at fair market value on the day after the disposition date.

The corporate owner of the distributed or sold stock will not recognize gain on the actual sale or distribution of the Target's stock by such corporate owner as the Target is deemed to have sold all of its assets and liquidated into such corporate owner without creating a tax liability to the owner. From the perspective of the selling/distributing corporation, the aggregate tax cost must be considered. What is the Target's inside basis (i.e., the Target's basis in its assets), and what is the selling/distributing corporation's basis in Target's stock that is being distributed or sold? A selling/distributing corporation may find it tax-advantageous for the Target to be deemed to have sold its assets and liquidate if it has a higher inside basis for the assets than outside basis for the stock. A selling/distributing corporation may find it tax-disadvantageous if the basis of stock is greater than the basis of Target's assets. The benefit and burden should be quantified before undertaking such a transaction.

In the event there are further transactions following the Code Sec. 336(e) transaction(s) involving the Target or its assets, generally the normal tax rules will apply to such additional transactions. Since the identity of the ultimate domestic purchaser(s)/distributee(s) is irrelevant in the context of a Code Sec. 336(e) election, the issue of whether the purchaser is the true purchaser of the stock that is applicable to Code Sec. 338(h)(10) elections is not present.

### Corporation to Partnership, Tax Alchemy?

The purchaser(s)/distributee(s) of 80 percent or more in vote and value of Target stock in a transaction in which a Code Sec. 336(e) election is made now have the ability to move the assets into a noncorporate passsthrough entity generally without significant additional tax except to the historic shareholders who are not affiliated with the purchaser(s)/distributee(s). This is partnership alchemy in which C corporation lead (double taxation and inflexibility of stock) can be turned to partnership gold (single level of federal taxation, special allocations and distributions, and the availability of profits interests)! The S corporation silver (single level of federal taxation but restriction on classes of stock and on the nature and number of shareholders) can be turned into partnership gold and free from the S restrictions.

The mechanics of accomplishing this alchemy can vary. The corporation may avail itself of a statute in its state of incorporation permitting the corporation to convert into a limited liability company or another form of passthrough business entity. A conversion is generally the simplest and most direct method of achieving this change, does not require the actual transfer of title, and minimizes any issues of consent or other restrictions on the transfer of assets. While there does not appear to be direct authority as to the deemed tax mechanics of such a conversion, the IRS has ruled that when a partnership converts to a corporation under a state law formless conversion...
The purpose of the Code Sec. 336(e) election is to achieve new basis in the assets as if old Target sold the assets and liquidated; therefore, the subsequent liquidation of New Target should be irrelevant to the Code Sec. 336(e) analysis as there is economic substance, no abuse, and is conceptually the same as if the ultimate purchaser(s)/distributee(s) purchased the assets.47

It is nevertheless possible that there may be some gain or loss to New Target as a result of the actual or deemed liquidation of New Target. The Code Sec. 336(e) election results in a deemed sale of the assets to a third party and the reacquisition of such assets by New Target. This deemed sale provides a basis in the assets to New Target equal to the adjusted grossed-up basis (AGUB), as computed in accordance with the Regulations.48 The sales price of the Target stock in the purchaser step(s) of the transfer of shares constituting the 80 percent or more of vote and value is deemed to be fair market value at the time such deemed sale takes place. However, when stock is acquired at different times and different prices, it is unlikely that the deemed fair market value always will be conclusive with respect to the subsequent actions resulting in the liquidation of New Target for federal income tax purposes. The distribution of Target stock in the distribution step(s) of the transfer of Target shares constituting all or a portion of the 80 percent or more of vote and value is at fair market value at the date of the actual distribution. Whether there is a difference between the aggregate amount of such values and the fair market value of the underlying assets is a factual question.49 It is possible there may be some difference in those values versus the subsequent liquidation value. Generally, barring unusual circumstances, the amount of gain or loss, if any, would be expected to be relatively small, but whatever gain or loss is recognized will be short-term capital gain or ordinary income depending on the assets as the holding period will have just started over.50 The expectation of minimal gain should be tested in the specific factual situations, and perhaps valuations obtained to minimize surprises and any tax exposure.

The allocation of AGUB in the deemed purchase of assets by New Target is formulaic and based on the residual method set forth in Reg. §§1.338-6 and -7.51 However, the allocation of value across each asset that triggers the gain and loss on the exchange of stock for assets in the subsequent liquidation of New Target under Code Sec. 331 also
uses Reg. §§1.338-6 and -7 with an adjustment for specific costs incurred in transferring the assets as the method of allocating consideration.\textsuperscript{52} If the liquidation of New Target is a deemed liquidation not involving the actual transfer of assets among parties with the complications such actual transfers entail, there should be almost no costs incurred in transferring the assets; therefore, there should be little, if any, gain or loss generated by virtue of the method of allocating value as opposed to the actual amount of value for New Target.

Code Sec. 336(a) provides that gain or loss is recognized to the liquidating corporation except as otherwise provided in Code Sec. 336 or 337. Code Sec. 337 only exempts from gain and loss recognition liquidating distributions to corporations (or consolidated corporate groups) holding 80 percent or more in vote or value of the distributing corporation. This condition would generally require Code Sec. 338(h)(10) election and not a Code Sec. 336(e) election in the original transaction.\textsuperscript{53} As discussed above, from New Target’s perspective, generally there should be little gain or loss on the liquidation, as distributions are at fair market value and the stock purchase is between unrelated parties and should approximate fair market value. In the unlikely event there is a loss, the disallowance provision of Code Sec. 336(d) applicable to liquidation distributions to a related person\textsuperscript{54} should not apply.\textsuperscript{55} The deemed or actual liquidating distribution of property should be pro rata to the shareholder(s), and the property should not be “disqualified property” as New Target is deemed to have acquired such property by purchase.\textsuperscript{56} The loss disallowance rules of Code Sec. 267 do not apply with respect to a complete liquidation.\textsuperscript{57} Nevertheless, in absence of a Code Sec. 355(d)(2) or (e)(2) transaction\textsuperscript{58} initiating the Code Sec. 336(e) election, if a loss is generated by the prompt subsequent liquidation,\textsuperscript{59} it is unlikely that New Target will have significant income or gain against which to utilize the loss.

With respect to the purchasing shareholders who are deemed to have acquired New Target stock on the date of actual purchase or distribution receipt of Target stock,\textsuperscript{60} the difference, if any, between the price paid for such stock and fair market value of the deemed undivided interest in the assets received could trigger a gain or loss. This is particularly true if the Target stock was acquired at different times over the 12-month disposition period at different prices. Generally, if a majority or more of Target stock was acquired in one transaction, in absence of unusual circumstances, that should establish the maximum per-share value to compute the value of the whole. This gain or loss would be measured by the value of the undivided interest in the property received over the basis of the shareholder’s stock in New Target.\textsuperscript{61} If the seller/distributor retained any of Target’s stock, the seller/distributor is deemed to purchase the New Target stock on the day after the disposition date for fair market value.\textsuperscript{62} Therefore, any additional gain or loss as a result of a prompt action to convert New Target to a partnership or disregarded entity following a Code Sec. 336(e) election would be short term for the seller/distributor. In the event a shareholder is related to New Target at the time of such subsequent liquidation, there is an exception to the Code Sec. 267 disallowance rules for losses on the complete liquidation of a corporation.\textsuperscript{63} Historic unrelated shareholders who did not participate in the Code Sec. 336(e) transaction will have taxable gain or loss under the normal tax rules upon the actual or deemed liquidation occurring when the corporation becomes a noncorporate passthrough entity following the disposition date.

**Conclusion**

Persons acquiring the stock of Target will generally desire the step-up in basis that Code Sec. 336(e) affords. To the seller/distributor, there may or may not be a tax cost to utilize Code Sec. 336(e). In many cases, the tax cost will be minimal compared to the purchaser(s)/distributee(s)’ tax benefit and the decision to make a Code Sec. 336(e) election generally will boil down to a business issue that can be resolved. Noncorporate passthrough purchaser(s)/distributee(s) such as LLCs will often strongly prefer to have the business operations of Target undertaken in the passthrough format. Code Sec. 336(e) will often provide the ability to acquire a Target and to achieve the alchemy of Target changing from a corporate to noncorporate form with an acceptable tax cost while obtaining a stepped-up basis for the assets.
ENDNOTES

1 Unless otherwise indicated, all section references are to the Internal Revenue Code or 1986, as amended or the final Treasury Regulations promulgated thereunder.

2 See T.D. 9619.

3 See CCA 201009013 (Nov. 24, 2009).

4 Stock meeting the requirements of Code Sec. 1504(a)(2). However, nonparticipating preferred stock described in Code Sec. 1504(a)(4) is excluded from determining whether the 80-per cent test has been satisfied.

5 Reg. §1.336-1(b)(12) utilizes Code Sec. 318(a) (other than Code Sec. 518(a)(4)) to determine if parties are related. However, if a partner directly or indirectly owns less than five percent of the value of a partnership, ownership will not be attributed to or from the partnership or the partners.

6 Seller(s) needs to consider differences between Target’s inside (asset) basis and Sellers’ basis in the stock of Target. A Code Sec. 336(e) election may be favorable to the Seller or unfavorable to the Seller. However, in many cases, the Purchaser’s benefit to be derived from a step-up in basis will more than offset any additional tax cost. The parties should be able to negotiate a mutually beneficial arrangement.

7 Reg. §1.336-1(a) provides that except to the extent inconsistent with Code Sec. 336(e) or the Regulations, the principles of Code Sec. 338 and its regulations apply for purposes of the Regulations.

8 Reg. §1.336-1(b)(6)(ii).

9 Reg. §1.336-2(b)(10)-1(c)(1).

10 Reg. §1.336-2(b)(10)-1(c)(1) and LTR 200414001 (Dec. 30, 2003).

11 Reg. §1.336-2(b)(10)-1(c)(1).

12 Reg. §1.336-1(b)(6) requires stock meeting the requirements of Code Sec. 1502(a)(2) (80 percent vote and value) be transferred. Code Sec. 1504(a)(4) provides certain preferred stock is excluded from Code Sec. 1502(a)(4) calculation. Preferred stock is excluded from the determination of value and value if it (1) is nonvoting; (2) is limited and preferred as to dividends and does not participate in the growth to any significant extent; (3) has redemption and liquidation rights that do not exceed the issue price of the stock (except for reasonable liquidation or redemption premium); and (4) is nonconvertible.

13 Reg. §1.336-2(b)(10)-1(b)(3).

14 Code Sec. 338(h)(10)(A). Reg. §1.338(h)(10)-1(b)(1) and (2).

15 Reg. §1.338(h)(10)-1(b)(2) and (3).

16 Code Sec. 338(h)(8); Reg. §1.338-2(c)(1).

17 See also LTR 200414001 (Dec. 30, 2003) providing an affiliated group includes all entities in the consolidated return context plus corporations excluded under Code Sec. 1504(b) such as foreign corporations and insurance companies.

18 See Reg. §1.338-3(b)(1).

19 See Reg. §1.338(b)-1(c)(2).

20 The proposed regulations did not permit S corporations to participate in a Code Sec. 336(e) transactions. While the addition of S corporations is certainly welcome and most useful, some commentators have questioned the authority of the IRS to so permit. Code Sec. 336(e) gives the Commissioner authority to issue regulations if “... a corporation owns stock in another corporation ...” Since S corporations cannot have corporate shareholders, this additon does not appear to be supported by the statute. The IRS has defended the expansion to include S corporations in T.D. 9619, Summary of Proposed Regulations, Section 6 on the grounds the principles of the regulations applying to a Code Sec. 336(h)(10) transaction should apply to the regulations applicable to Code Sec. 336(e).

21 See Reg. §1.336-1(b)(5).

22 Reg. §1.336-2(g)(2).

23 Reg. §1.338(h)(10)-1(c)(2) provides that a Code Sec. 338(h)(10) election may be made with respect to an acquisition of target stock if the stock acquisition, viewed independently, constitutes a qualified stock purchase, even if the target immediately liquidates or merges into the acquirer. This principle should also apply to a Code Sec. 336(e) election. Reg. §1.336-1(a).


25 Any stock retained by the “seller” or members of the affiliated group is deemed to be purchased from a third party on the day following the disposition date for its “grossed-up amount realized” on the sale, exchange or distribution. The holding period for such stock begins on the day after the disposition date. Reg. §1.336-2(b)(1)(iv).

26 If the Target is a member of a consolidated group (i.e., corporations filing a consolidated federal income tax return), any member or members of the consolidated group may sell or distribute the stock.

27 See Code Secs. 332, 336 and 337.

28 Reg. §1.338-3(b)(1).

29 In the context of S corporations, if New Target was 100 percent acquired by an S corporation, Q Sub status could be elected and pass-through taxation achieved.

30 Reg. §1.338(h)-1(c)(2) deems the purchasers/distributees and all persons related to such to have automatically elected to recognize the gain as if they purchased their stock and participated in the Code Sec. 336(e) transaction with respect to the nonrecently disposed stock (i.e., stock not acquired in the disposition period).


32 See §301.7701-3(g)(1)(ii) and (iii). Reg. §301.7701-3(g)(2)(ii) and (iii) permits change of entity classification following a Code Sec. 338 election.

33 Reg. §1.336-1(b)(3) defines the term “new target,” for purposes of all Code Sec. 336(e) transactions (other than those involving Code Sec. 336(d)(2) and (e)(2)), as the target for periods subsequent to the disposition date (the date 80-percent ownership is acquired in a qualified stock disposition). The term “New Target” herein has such meaning.

34 Reg. §1.336-1(b)(5)(ii)(C).

35 Reg. §1.336-1(b)(5)(ii)(C).

36 Reg. §1.336-2(c).

37 In the Code Sec. 338(h)(10) context, the prompt disposition of the acquired stock to more than a single corporation could cause the new recipients to be deemed to be the purchaser and disqualify the election. Since Code Sec. 336(e) is permissive as to the composition of the acquirers so long as the requisite Target stock is acquired, disqualification of an election under Code Sec. 336(e) when tested at the distributee/shareholder level generally should yield the same favorable result in absence of a foreign owner.


39 Spreadsheets and analysis developed for the allocation of the AGUB across the assets will not necessarily be proof that no net gain exists at the time of the liquidation of New Target. However, those materials demonstrating a higher value than the...
AGUB will presumably be evidence that additional gain should be recognized upon the liquidation of New Target.

50 Reg. §1.336-2(b).
51 Reg. §1.336-4(a).
52 Reg. §1.1060-1(c).
53 Reg. §1.336-1(b)(6)(ii).
54 For this purpose, related person is defined under Code Sec. 267 and may be different from the definition applicable to Code Sec. 336(e) transactions.

55 If a portion of the stock was acquired at a much higher price than the final acquisition triggering the disposition date, it would indicate that the value of the company had decreased and the formula for determining AGUB may well reflect a value above actual fair market value.

56 Code Sec. 336(d).
57 Code Sec. 267(a)(1).
58 If the Code Sec. 336(e) transaction is a distribution under Code Sec. 335(e)(2) or (d)(2), the historic corporation remains in existence with its past earnings history and, therefore, any such loss is more likely to be able to be utilized.

59 New Target is not deemed to have come into existence until the disposition date. Reg. §1.336-1(b)(3).
60 Reg. §1.336-2(c).
61 See Code Secs. 331(a) and 1001.
63 Code Sec. 267(a)(1).