



Internal Revenue Service

DEPARTMENT OF THE TREASURY

LB&I Concept Unit

Unit Name	IRC 958 Rules for Determining Stock Ownership	
Primary UIL Code	9460.03-00	Ownership Attribution Issues

Library Level	Title
Knowledge Base	International
Shelf	Cross-Over
Book	Information Gathering
Chapter	Information Gathering Activities

Document Control Number (DCN)	INT-C-252
Date of Last Update	08/08/22

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General Overview

IRC 958 Rules for Determining Stock Ownership

The objective of the subpart F provisions is to provide anti-deferral rules for certain foreign source income that is derived by certain foreign corporations by requiring certain U.S. persons to currently include the income as it is earned by the foreign corporation. The subpart F provisions cover passive income such as foreign base company income [IRC 954], investment in U.S. property [IRC 956], and global intangible low-taxed income (“GILTI”) [IRC 951A].

Internal Revenue Code (“IRC”) 958 provides rules for determining stock ownership of a corporation for purposes of IRC 951 through 965 (Subpart F), except for IRC 960. [IRC 958(a)] Such rules are used primarily to identify U.S. shareholders subject to subpart F income recognition [Treas. Reg. 1.958-1(a)] and to identify U.S. persons required to file the following international information returns under IRC 6038:

- Form 5471 - *Information Return of U.S. Persons with Respect to Certain Foreign Corporations*,
- Form 8865 - *Information Return of U.S. Persons With Respect to Certain Foreign Partnerships*, and
- Form 8858 - *Information Return of U.S. Person With Respect to Foreign Disregarded Entities (DEs) and Foreign Branches (FBs)*.

Other purposes of IRC 958 discussed in this unit involve treating: [Treas. Reg. 1.958-2(a)]

- A U.S. person as a U.S. shareholder of a foreign corporation, [IRC 951(b)]
- A foreign corporation as a controlled foreign corporation, (“CFC”) by reference to U.S. shareholder, [IRC 957(a)], and
- A person as a related person with respect to a CFC. [IRC 954(d)(3)]

General Overview (cont'd)

IRC 958 Rules for Determining Stock Ownership

Terminologies:

- Person: An individual, trust, estate, partnership, association, company or corporation. [IRC 7701(a)(1)]
- U.S. Person: A U.S. citizen, U.S. resident, domestic partnership, domestic corporation, domestic estate, or trust in which a U.S. court can exercise primary supervision. [IRC 7701(a)(30)]
- U.S. Shareholder: A U.S. person that directly, indirectly, or constructively owns at least 10% of either the combined voting power or total value of shares of all classes of stock of the foreign corporation.* [IRC 951(b)]
 - * Applicable for tax years of foreign corporations that begin after 2017, and for tax years of U.S. shareholders with or within which such tax years of the foreign corporations end. For prior tax years, a U.S. shareholder is any U.S. person owning at least 10% of the combined voting power of the foreign corporation.
- Controlled Foreign Corporation (“CFC”): A foreign corporation owned (directly, indirectly, or constructively) by U.S. shareholder(s), whose ownership is more than 50% of the combined voting power or value of the stock of the foreign corporation. [IRC 957(a)]
- Specified Foreign Corporation (“SFC”): A CFC or a foreign corporation in which one or more domestic corporations is a U.S. shareholder. An SFC does not include a corporation that is a passive foreign investment company (as defined in IRC 1297) with respect to the U.S shareholder and which is not a CFC. [IRC 965(e)]

Detailed Explanation of the Concept

IRC 958 Rules for Determining Stock Ownership	
Analysis	Resources
<p><u>Direct and Indirect Ownership Concepts</u></p> <p><u>Direct Ownership Under IRC 958(a)(1)(A)</u></p> <p>Pursuant to IRC 958, direct ownership of stock means stock directly owned by a shareholder.</p> <p><u>Indirect Ownership Under IRC 958(a)(2)</u></p> <p>Pursuant to IRC 958(a)(2), indirect ownership of stock means stock owned, directly or indirectly, by or for foreign corporations, foreign partnerships, foreign trusts or foreign estates that is considered to be owned proportionately by its shareholders, partners or beneficiaries, respectively. This indirect ownership rule creates a chain of ownership in which stock is deemed to be owned through successive tiers of foreign entities. Attribution generally stops with the first U.S. person in the chain of ownership.</p> <p>▪ See Ex. 1 – an example of direct and indirect ownership of foreign stock.</p>	<ul style="list-style-type: none"> ▪ IRC 958(a)(1)(A) ▪ IRC 958(a)(2) ▪ Treas. Reg. 1.958-1(b)

Detailed Explanation of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership	
Analysis	Resources
<p><u>Constructive Ownership</u></p> <p><u>Constructive Ownership Under IRC 958(b)</u></p> <p>IRC 958(b) provides rules for constructive ownership of stock. The rules of IRC 318, as modified by IRC 958(b), apply to treat:</p> <ul style="list-style-type: none">▪ A U.S. person as a U.S. shareholder;▪ A person as a related person within the meaning of IRC 954(d)(3);▪ The stock of a domestic corporation as owned by a U. S. shareholder of a CFC for purposes of IRC 956(c)(2); or▪ A foreign corporation as a CFC. <p>The constructive ownership of stock rules also apply for other provisions of the IRC which make express reference to IRC 958(b).</p> <ul style="list-style-type: none">▪ See Ex. 2 – an example of constructive ownership of foreign stock.	<ul style="list-style-type: none">▪ IRC 958(b); and Treas. Reg. 1.958-2(a)▪ IRC 951(b)▪ IRC 954(d)(3)▪ IRC 956(c)(2)▪ IRC 957

Detailed Explanation of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership

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Global Intangible Low-Taxed Income (“GILTI”) Exception to IRC 958(a)

Treatment of domestic partnerships – for purposes of IRC 951A and the regulations thereunder, and for purposes of any other provision that applies by reference to IRC 951A or the IRC 951A regulations, a domestic partnership is not treated as owning stock of a foreign corporation within the meaning of section 958(a) - direct ownership. When the preceding sentence applies, a domestic partnership is treated in the same manner as a foreign partnership under IRC 958(a)(2) for purposes of determining the persons that own stock of the foreign corporation within the meaning of section 958(a). This results in the partners of the domestic partnership being treated as the indirect shareholders of the stock of the foreign corporation.

- See [Ex. 3](#) – an example of the GILTI exception to the direct and indirect ownership.

- Treas. Reg. 1.951A-1(e)(1)

Detailed Explanation of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership	
Analysis	Resources
<p><u>Constructive Ownership – Members of Family</u></p> <p>An individual is treated as owning the stock owned, directly or indirectly, by or for his/her spouse, children (including legally adopted children), grandchildren, and parents. Stock so attributed to an individual may not be reattributed to make another family member the constructive owner.</p> <ul style="list-style-type: none"> ▪ IRC 958(b) modification – the stock owned by a nonresident alien individual is not treated as owned by a citizen or a resident alien individual. However, this modification does not apply for purposes of IRC 956(c)(2) to treat stock of a domestic corporation as not owned by a U.S. shareholder. ▪ See Ex. 4 and 5 – examples of the members of family attribution rule. 	<ul style="list-style-type: none"> ▪ IRC 318(a)(1)(A) ▪ IRC 318(a)(5)(B); Treas. Reg. 1.318-4(b); Treas. Reg. 1.958-2(b)(1) and (2) and -2(f)(1)(ii) ▪ IRC 958(b)(1); and Treas. Reg. 1.958-2(b)(3)

Detailed Explanation of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership

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Constructive Ownership – Attribution from Partnerships and Estates

Stock directly or indirectly owned by or for a partnership or an estate is treated as owned proportionately by the partners or beneficiaries.

S corporations and their shareholders are treated as partnerships and their partners except for purposes of determining whether stock in an S corporation is constructively owned by any person.

- IRC 958(b) modification – if a partnership or an estate owns, directly or indirectly, more than 50% of the voting power of all voting stock of a corporation, the partnership or estate is deemed to own all of the voting stock.
- See [Ex. 6](#) – an example of upward attribution from a partnership.

- IRC 318(a)(2)(A); and Treas. Reg. 1.958-2(c)(1)(i)
- IRC 318(a)(5)(E)
- IRC 958(b)(2); and Treas. Reg. 1.958-2(c)(2)

Detailed Explanation of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership

Analysis	Resources
<p data-bbox="87 382 772 415"><u>Constructive Ownership – Attribution from Trusts</u></p> <p data-bbox="87 458 1396 608">Stock directly or indirectly owned by or for a trust (other than a qualified trust under IRC 401(a)) is deemed to be owned by the trust beneficiaries in proportion to their actuarial interests in the trust. Stock owned, directly or indirectly, by or for a grantor trust is considered owned by the owner of the grantor trust.</p> <ul data-bbox="87 651 1396 722" style="list-style-type: none">▪ IRC 958(b) modification – if a trust owns, directly or indirectly, more than 50% of the voting power of the voting stock of a corporation, the trust is deemed to own all of the voting stock.	<ul data-bbox="1423 458 1893 722" style="list-style-type: none">▪ IRC 318(a)(2)(B)(i) and (ii)▪ IRC 958(b)(2); and Treas. Reg. 1.958-2(c)(2)

Detailed Explanation of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership	
Analysis	Resources
<p><u>Constructive Ownership – Attribution from Corporations</u></p> <p>Stock directly or indirectly owned by or for a corporation is treated as owned proportionately by a shareholder owning 50% or more of the value of the stock in such corporation.</p> <ul style="list-style-type: none"> ▪ IRC 958(b) modification – stock directly or indirectly owned by or for a corporation is treated as owned proportionately by a shareholder owning 10% or more of the value of the stock in such corporation. ▪ IRC 958(b) modification – if a corporation owns, directly or indirectly, more than 50% of the total combined voting power of all voting stock of another corporation, the former corporation is treated as owning all of the voting stock of the latter corporation. ▪ See Ex. 2, Ex. 7, Ex. 8 and Ex. 9 – examples of upward attribution from a corporations. 	<ul style="list-style-type: none"> ▪ IRC 318(a)(2)(C); and 958(b) ▪ IRC 958(b)(3); and Treas. Reg. 1.958-2(c)(1)(iii) ▪ IRC 958(b)(2); and Treas. Reg. 1.958-2(c)(2)

Detailed Explanation of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership

Analysis

Constructive Ownership - Attribution to Partnerships and Estates

Stock directly or indirectly owned by or for a partner or beneficiary of an estate is treated as owned by the partnership or the estate, respectively. Stock so attributed to a partnership or estate may not be reattributed to make another partner or beneficiary the constructive owner. S corporations and their shareholders are treated as partnerships and their partners, except for purposes of determining whether stock in an S corporation is constructively owned by any person.

- See [Ex. 10](#) – an example of a downward attribution to a partnership.

Resources

- IRC 318(a)(3)(A)
- Treas. Reg. 1.958-2(d)(1)(i)
- IRC 318(a)(5)(C), and (E); and Treas. Reg. 1.958-2(f)(1)(iii)

[Go to IRC 958\(b\)\(4\) Repeal Discussion at Slides 20 and 21](#)

Detailed Explanation of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership

Analysis

Resources

Constructive Ownership – Attribution to Trusts

Stock directly or indirectly owned by or for a beneficiary of a trust is treated as owned by the trust, unless the beneficiary's interest is a remote contingent interest. A contingent interest of a beneficiary in a trust is considered remote if, under the maximum exercise of trustee discretion in favor of such beneficiary, the actuarial value of such interest is 5% or less of the trust property value. Stock so attributed to a trust may not be reattributed to make another beneficiary the constructive owner.

- IRC 318(a)(3)(B)
- Treas. Reg. 1.958-2(d)(1)(ii)

- IRC 318(a)(5)(C); and Treas. Reg. 1.958-2(f)(1)(iii)

Detailed Explanation of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership

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Constructive Ownership – Attribution to Corporations

If 50% or more in value of the stock in a corporation is owned, directly or indirectly, by or for any person, such corporation is treated as owning the stock owned, directly or indirectly, by or for such person. Stock so attributed to a corporation may not be reattributed to make another shareholder the constructive owner.

- See [Ex. 11](#) and [Ex. 12a](#) – examples of downward attribution to a corporation.

- IRC 318(a)(3)(C); IRC 318(a)(5)(C);
Treas. Reg. 1.958-2(d)(1)(iii) and
1.958-2(f)(1)(iii)

[Go to IRC 958\(b\)\(4\) Repeal Discussion at Slides 20 and 21](#)

Detailed Explanation of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership

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Constructive Ownership Operating Rules in General

- For purposes of any one determination, stock which may be owned under more than one rule of Treas. Regs. 1.958-1 and -2, or by one or more persons, shall be treated as owned under that attribution rule which imputes to the person(s) concerned the largest total percentage of such stock.
- Stock constructively owned by application of the rules under IRC 318(a) for members of family, attribution from (upward attribution) and to (downward attribution) partnerships, estates, trusts, and corporations are generally treated as actually owned by such person. However, stock constructively owned through:
 - Family attribution is not treated as owned for purposes making another the constructive owner through family attribution; and
 - Downward attribution is not treated as owned to make another the constructive owner of the stock through upward attribution.

- Treas. Reg. 1.958-2(f)(2)
- IRC 318(a)(5)(A), (B), and (C)
- Treas. Reg. 1.958-2(f)(1)

Detailed Explanation of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership	
Analysis	Resources
<p><u>IRC 6038 Filing Requirements for Category 1 Filer</u></p> <p>A U.S. person is required to report certain information about any foreign corporation that such U.S. person controls. Similar information is required to be furnished by a U.S. shareholder of a foreign corporation. The regulations under IRC 6038 describe some of the information required. Form 5471 and its instructions prescribe the manner in which all required information is reportable for each foreign corporation.</p> <p><u>Category 1 Filer</u></p> <p>A U.S. shareholder of a foreign corporation that is an SFC at any time during any tax year of the foreign corporation, and who owned that stock on the last day in that year on which it was an SFC. There are three subcategories of Category 1 filers:</p> <ol style="list-style-type: none"> 1. A category 1a filer is a filer who does not qualify as Category 1b or 1c filer; 2. A category 1b filer is an unrelated IRC 958(a) U.S. shareholder of an IRC 965 SFC; and 3. A category 1c filer a related constructive U.S. shareholder of an IRC 965 SFC. 	<ul style="list-style-type: none"> ▪ IRC 6038(a) ▪ IRC 6038(a)(4) ▪ Treas. Reg. 1.6038-2(f); and Form 5471 and its instructions ▪ Form 5471 Instructions Rev. 1/2021

Detailed Explanation of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership	
Analysis	Resources
<p><u>IRC 6038 Filing Requirements for Category 1 Filer (cont'd)</u></p> <ul style="list-style-type: none">▪ A Category 1 filer must continue to file all information required as long as:<ul style="list-style-type: none">- The SFC has accumulated Earnings & Profits (“E&P”) related to IRC 965 that is reportable on Form 5471, Schedule J, or- The U.S. shareholder has previously taxed E&P related to IRC 965 reportable on Form 965, Schedule P.▪ See Ex. 13 and Ex. 15 – examples of Category 1b filer of Form 5471.	<ul style="list-style-type: none">▪ Form 5471 Instructions Rev. 1/2021

Detailed Explanation of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership	
Analysis	Resources
<p><u>IRC 6038 Filing Requirements for Category 4 Filer</u></p> <p>Category 4 filer of Form 5471 is defined as a U.S. person, who has control of a foreign corporation during an annual accounting period of the foreign corporation. For purposes of category 4, a U.S. person also includes (1) a nonresident alien who elects to be treated as a U.S. resident per IRC 6013(g), and (2) an individual for whom an election to file a joint return is in effect under IRC 6013(h), relating to nonresident aliens who become residents of the U.S. during the tax year and are married at the close of the tax year to a citizen or resident of the U.S.</p> <p>A U.S. person controls a foreign corporation if such person owns more than 50% of (1) the total combined voting power of all classes of stock, or (2) the total value of the stock of such foreign corporation. In addition, the constructive ownership rules of IRC 318(a) apply for determining ownership of stock with the following modifications:</p> <ul style="list-style-type: none"> ▪ Modification of IRC 318(a)(2)(C) – stock directly or indirectly owned by or for a corporation is treated as owned proportionately by a shareholder owning 10% or more of the value of the stock in such corporation. ▪ Modification of IRC 318(a)(3)(A), (B) and (C) – a U.S. person is not treated as owning through downward attribution the stock owned by a person that is not a U.S. person. 	<ul style="list-style-type: none"> ▪ IRC 6038(a); Form 5471 Instructions Rev. 1/2021 ▪ IRC 6038(e)(2) ▪ IRC 6038(e)(2)(B) ▪ IRC 6038(e)(2)(A)

Detailed Explanation of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership	
Analysis	Resources
<p><u>IRC 6038 Filing Requirements for Category 5 Filer</u></p> <p>Category 5 filer of Form 5471 is defined as a U.S. shareholder who owns (directly, indirectly, or constructively) the stock in a foreign corporation that is a CFC at any time during any tax year of the foreign corporation, and who owned that stock on the last day in that year on which it was a CFC. There are three subcategories of Category 5 filers:</p> <ol style="list-style-type: none">1. A category 5a filer is a filer who does not qualify as Category 5b or 5c filer;2. A category 5b filer is an unrelated IRC 958(a) U.S. shareholder of a CFC; and3. A category 5c filer a related constructive U.S. shareholder of a CFC. <p>▪ See Ex. 12b, Ex. 14a, Ex. 15, and Ex. 16 – examples of Category 5 filer.</p>	<p>▪ Form 5471 Instructions Rev. 1/2021</p>

Detailed Explanation of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership	
Analysis	Resources
<p><u>The Repeal of IRC 958(b)(4) and the Unintended Consequences</u></p> <p>On December 22, 2017, Congress repealed IRC 958(b)(4) which had provided that the downward attribution rules of IRC 318(a)(3)(A), (B), and (C) did not apply to treat a U.S. person as owning the stock owned by a person who is not a U.S. person. The repeal was effective for the last taxable year of foreign corporations beginning before January 1, 2018, and each subsequent year of the foreign corporations.</p> <p>After repeal, stock of a foreign corporation owned by a foreign person can be attributed to a U. S. person under IRC 318(a)(3) for purposes of determining whether the U.S. person or another U.S. person is a U.S. shareholder of the foreign corporation and whether the foreign corporation is a CFC. As a result, U.S. persons that were not previously treated as U.S. shareholders may be treated as U.S. shareholders, and foreign corporations that were not previously treated as CFCs may be treated as CFCs.</p>	<ul style="list-style-type: none">▪ <i>Tax Cuts and Jobs Act (“TCJA”) of 2017</i>, Pub. L. No. 115-97 Sec. 14213(a)(1), Stat. 2217 (2017); and Rev. Proc. 2019-40 Sec.2

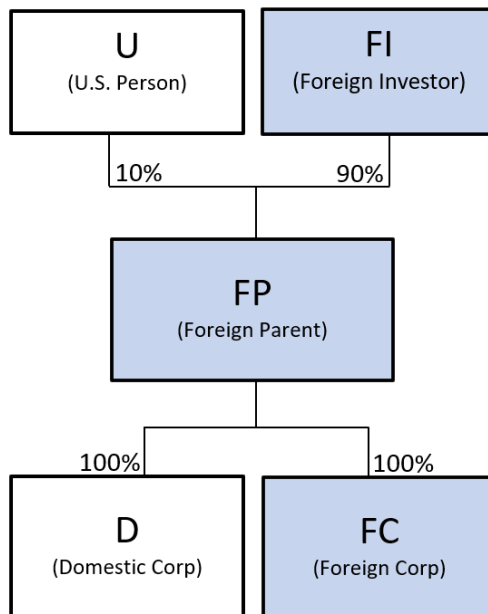
Detailed Explanation of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership

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The Repeal of IRC 958(b)(4) and the Unintended Consequences (cont'd)



FP owns 100% of both D and FC. Prior to its repeal, IRC 958(b)(4) prevented the downward attribution of stock from FP to D; however, D is now deemed to constructively own the FC stock owned by FP via downward attribution. Because D constructively owns 100% of FC, D is a U.S. shareholder of FC, and FC is a CFC. Without regard to exceptions provided in the instructions to Form 5471, D has Form 5471 Category 5 filing requirements with respect to FC.

U is a 10% U.S. shareholder of FC via upward attribution of stock from FP. Because of the downward attribution of stock to D, FC is a CFC, and U has Form 5471 Category 5 filing requirements. Before the repeal of IRC 958(b)(4), FC was not a CFC and U would have Form 5471 Category 1 or 5 filing requirements.

- IRC 318(a)(3)(C); and IRC 6038(a)

- IRC 6038(a)(4)

[Go to Downward Attribution Discussion to Partnerships](#)

[Go to Downward Attribution Discussion to Corporations](#)

Detailed Explanation of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership

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Relief Provisions for Filing Form 5471 Under IRS Notices 2018-13 and 2018-26

The IRS revised the Instructions for Form 5471 (Rev. December 2018) to provide that a Category 1 or 5 filer does not have to file a Form 5471 if no U.S. shareholder (including the filer) owns, within the meaning of IRC 958(a), stock in the foreign corporation, and the foreign corporation is a SFC or CFC solely because one or more U.S. persons is considered to own the stock of the foreign corporation owned by a foreign person under IRC 318(a)(3).

- Notice 2018-13 Secs. 5.02 and 6; and Notice 2018-26 Sec. 7

Detailed Explanation of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership	
Analysis	Resources
<p><u>Relief Provisions for Filing Form 5471 Under Rev. Proc. 2019-40</u></p> <p>The Treasury Department and the IRS understood that, even as modified by the IRS Notices, the Form 5471 filing requirements may result in a significant undertaking for certain U.S. shareholders with limited access to information with respect to a foreign-controlled CFC. Accordingly, the Treasury Department and the IRS further modified the Form 5471 filing requirements for:</p> <ul style="list-style-type: none">▪ Unrelated section 958(a) U.S. shareholders, e.g., Category 1b and 5b filers (for more details, see slides 26 and 27 and examples 13 and 15a);▪ Related constructive U.S. shareholders, e.g., Category 1c and 5c filers (for more details, see slide 28 and example 12b); and▪ Unrelated constructive shareholders. (for more details, see slide 29 and examples 14a and 14b).	<ul style="list-style-type: none">▪ Rev. Proc. 2019-40 Sec. 8.01▪ Rev. Proc. 2019-40 Sec. 8.02▪ Rev. Proc. 2019-40 Sec. 8.03▪ Rev. Proc. 2019-40 Sec. 8.04

Detailed Explanation of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership	
Analysis	Resources
<p><u>Safe Harbor for Certain U.S. Shareholders Under Rev. Proc. 2019-40</u></p> <p>In situations when a U.S. person is unable to obtain information necessary to determine whether a foreign corporation is a CFC, the IRS provided a safe harbor for determining CFC status and will accept the U.S. person's determination that a foreign corporation is not a CFC if these conditions are met:</p> <ol style="list-style-type: none"> 1. The foreign corporation is a CFC that would not be a CFC if the CFC determination was made without applying the downward attribution rules of IRC 318(a)(3) so as to consider a U.S. person as owning stock owned by a foreign person; 2. The U.S. person does not have actual knowledge, statements received, and/or reliable publicly available information sufficient to determine pursuant to IRC 957 that the foreign corporation is a CFC; and 3. If the U.S. person directly owns stock of, or an interest in, a foreign top-tier entity, the U.S. person inquires of the top-tier entity: <ol style="list-style-type: none"> a. Whether the top-tier entity meets the IRC 957 ownership requirements; b. Whether, how, and to what extent the top-tier entity owns, directly or indirectly under IRC 958(a), stock of one or more foreign corporations; and c. Whether, how, and to what extent the top-tier entity owns, directly or indirectly under IRC 958(a)(2), an interest in one or more domestic entities. 	<ul style="list-style-type: none"> ▪ Rev. Proc. 2019-40 Sec. 4.02

Detailed Explanation of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership	
Analysis	Resources
<p><u>Safe Harbor for Certain U.S. Shareholders Under Rev. Proc. 2019-40 (cont'd)</u></p> <p><u>Applicable Dates</u></p> <p>The safe harbor is applicable to the last taxable year of a foreign corporation beginning before January 1, 2018, and each subsequent taxable year of such foreign corporation, and with respect to the taxable years of U.S. shareholders in which or with which such taxable years of such foreign corporation end.</p>	<ul style="list-style-type: none">▪ Rev. Proc. 2019-40 Sec. 10

Detailed Explanation of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership	
Analysis	Resources
<p data-bbox="84 382 1367 454"><u>Relief Provisions for Certain Unrelated Section 958(a) U.S. Shareholders Under Rev. Proc. 2019-40</u></p> <p data-bbox="84 496 1392 835">The IRS revised the Form 5471 Instructions (Rev. January 2021) to have new subcategories of Category 1 and 5 filers to provide relief for certain filers described in Rev. Proc. 2019-40. Category 5b filers are unrelated section 958(a) U.S. shareholders with respect to a foreign-controlled CFC and are generally only required to file the identifying information on page 1 of Form 5471 above Schedule A, as well as Schedule I, Schedule I-1, and Schedules P and R with respect to such foreign-controlled CFC. However, if the Category 5b filer claims under IRC 960 to be deemed to have paid foreign income taxes of the foreign-controlled CFC for the Category 5b filer's taxable year, Schedule E and Schedule E-1 are also required to be filed. The filing instructions extended this relief for similarly situated Category 1b filers.</p> <p data-bbox="84 878 1363 949">The safe harbor for determining CFC status provided at Rev. Proc. 2019-40 Sec. 4.02 also applies for unrelated section 958(a) U.S. shareholders.</p> <p data-bbox="84 992 642 1025"><u>Defined Terms from Rev Proc. 2019-40</u></p> <ul data-bbox="84 1068 1384 1225" style="list-style-type: none"> ▪ Foreign-Controlled CFC: A foreign corporation that is a CFC, but it would not be a CFC if the determination were made without applying IRC 318(a)(3)(A), (B), and (C) to consider a U.S. person as owning stock which is owned by a foreign person. <ul style="list-style-type: none"> - See Ex. 14b – an example of foreign-controlled CFC. 	<ul data-bbox="1425 496 1943 1099" style="list-style-type: none"> ▪ Rev. Proc. 2019-40 Sec. 8.02; and Form 5471 Instructions (Rev. January 2021) ▪ Rev. Proc. 2019-40 Sec. 3.03

Detailed Explanation of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership	
Analysis	Resources
<p><u>Relief Provisions for Certain Unrelated Section 958(a) U.S. Shareholders Under Rev. Proc. 2019-40 – Defined Terms from Rev Proc. 2019-40 (cont'd)</u></p> <ul style="list-style-type: none"> ▪ Related Person: Another person described in IRC 954(d)(3) substituting the first-mentioned person for “controlled foreign corporation” each place it appears. ▪ Related Section 958(a) U.S. Shareholder: A section 958(a) U.S. shareholder, if such section 958(a) U.S. shareholder is a related person (within the meaning of IRC 954(d)(3)) with respect to the foreign corporation. <ul style="list-style-type: none"> – See Ex. 16 – an example of a related section 958(a) U.S. shareholder. ▪ Section 958(a) U.S. Shareholder: A U.S. shareholder, who either directly or indirectly owns stock of the foreign corporation. ▪ Unrelated Section 958(a) U.S. Shareholder: A section 958(a) U.S. shareholder with respect to the foreign corporation that is not a related section 958(a) U.S. shareholder with respect to the foreign corporation. <ul style="list-style-type: none"> – See Ex. 13, Ex. 15 – examples of an unrelated section 958(a) U.S. shareholder – Category 1b filer. 	<ul style="list-style-type: none"> ▪ Rev. Proc. 2019-40 Sec. 3.06 ▪ Rev. Proc. 2019-40 Sec. 3.07 ▪ Rev. Proc. 2019-40 Sec. 3.09 ▪ Rev. Proc. 2019-40 Sec. 3.12

Detailed Explanation of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership	
Analysis	Resources
<p><u>Relief Provisions for Certain Related Constructive U.S. Shareholders Under Rev. Proc. 2019-40</u></p> <p>The IRS revised the Form 5471 Instructions (Rev. January 2021) to provide that a Category 5c filer is a related constructive U.S. shareholder with respect to a foreign-controlled CFC and is generally only required to file the identifying information on page 1 of Form 5471 above Schedule A, as well as Part II of Schedule B, Schedule E, Schedule G, and Schedule I-1 with respect to such foreign-controlled CFC. The filing instructions extended this relief for similarly situated Category 1 filers.</p> <p><u>Defined Terms from Rev. Proc. 2019-40</u></p> <ul style="list-style-type: none"> ▪ Constructive U.S. Shareholder: A U.S. shareholder with respect to the foreign corporation that is not a section 958(a) U.S. shareholder with respect to the foreign corporation. ▪ Related Constructive U.S. Shareholder: A constructive U.S. shareholder that is a related person with respect to the foreign corporation. <ul style="list-style-type: none"> – See Ex. 12b – an example of a related constructive U.S. shareholder. 	<ul style="list-style-type: none"> ▪ Rev. Proc. 2019-40 Sec. 8.03; and Form 5471 Instructions (Rev. February 2020) ▪ Rev. Proc. 2019-40 Sec. 3.02 ▪ Rev. Proc. 2019-40 Sec. 3.05

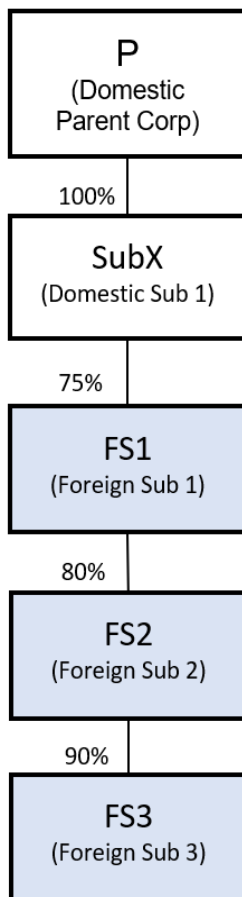
Detailed Explanation of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership	
Analysis	Resources
<p><u>Relief Provisions for Unrelated Constructive U.S. Shareholders Under Rev. Proc. 2019-40</u></p> <p>The IRS revised the Form 5471 Instructions (Rev. February 2020) to provide that a Category 5 filer that is an unrelated constructive U.S. shareholder with respect to the foreign-controlled CFC is not required to file a Form 5471 with respect to such foreign-controlled CFC.</p> <p>The safe harbor for determining CFC status, Sec. 4.02, also applies to Unrelated Constructive U.S. Shareholders.</p> <p><u>Defined Terms from Rev. Proc. 2019-40</u></p> <ul style="list-style-type: none">▪ Unrelated Constructive U.S. Shareholder: A constructive U.S. shareholder of the foreign corporation that is not a related person (within the meaning of IRC 954(d)(3)) with respect to the foreign corporation.<ul style="list-style-type: none">– See Ex. 14a and Ex. 14b – examples of an unrelated constructive U.S. shareholder.	<ul style="list-style-type: none">▪ Rev. Proc. 2019-40 Sec. 8.04▪ Rev. Proc. 2019-40 Sec. 3.11

Examples of the Concept

IRC 958 Rules for Determining Stock Ownership

Direct and Indirect Ownership of Stock in Foreign Corporation



Example 1: Assume all shares are voting class.

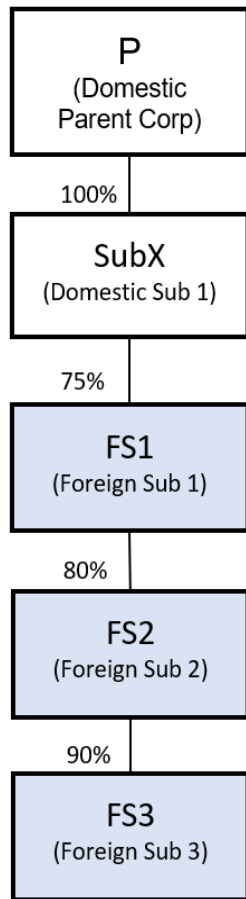
- SubX directly owns 75% of FS1 via direct ownership rules of IRC 958(a)(1).
- SubX indirectly owns 60% of FS2 (75% times 80%) and 54% of FS3 (75% times 80% times 90%) via indirect ownership rules of IRC 958(a)(2).
- P does not have indirect ownership of FS1, FS2, or FS3 because indirect stock attribution from foreign entities up the chain of the ownership generally stops at the first U.S. person, SubX, pursuant to Treas. Reg. 1.958-1(b).
- FS1, FS2, and FS3 are CFCs because SubX owns, directly or indirectly, more than 50% of the combined voting power of all classes of voting stock or the total value of the stock of each the foreign entities. [IRC 957(a)]

[Back to Direct and Indirect Stock Ownerships Discussion](#)

Examples of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership

Constructive Ownership of Stock in Foreign Corporation



Example 2: Assume all shares are voting class.

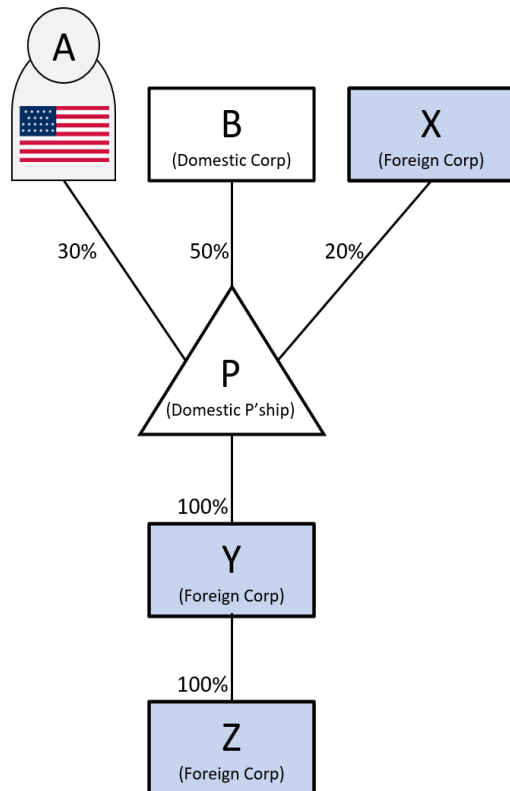
- SubX indirectly owns 60% of FS2 (75% times 80%), and 54% of FS3 (75% times 80% times 90%). [IRC 958(a)(2); see Ex. 1]
- Under IRC 958(b)(2) (which applies a modification to the IRC 318(a)(2) rules) and Treas. Reg. 1.958-2(c)(1)(iii) and (2), SubX is considered as owning 100% of FS1; FS1 is considered as owning 100% of FS2; and FS2 is considered as owning 100% of FS3. SubX is considered as actually owning 100% of FS1, FS2, and FS3 for purposes of applying the attribution rules. [Treas. Reg. 1.958-2(f)(1) and (2)]
- P constructively owns 100% of FS1, FS2, and FS3 via the constructive ownership rules of IRC 958(b)(2) which uses modified attribution rules of IRC 318(a)(2)(C). [Treas. Reg. 1.958-2(c)(1)(iii) and (f)]
- FS1, FS2, and FS3 are CFCs because U.S. shareholders own, directly, indirectly, or constructively, more than 50% of the combined voting power of all classes of voting stock or the total value of stock of the foreign entities. [IRC 957(a)]

[Back to Constructive Ownership Discussion](#)
[Back to Upward Attribution from Corporations Discussion](#)

Examples of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership

Section 958(a) Exception for Purposes of IRC 951A GILTI Inclusions



Example 3: Assume all shares are voting class.

- P, domestic partnership, is treated as an indirect U.S. shareholder of Z, a foreign corporation. [IRC 958(a)(2)]
- B, domestic corporation, is treated as a constructive U.S. shareholder of Y and Z. [IRC 958(b)(2), 318(a)(2)(A), Treas. Reg. 1.958-2(f)(1) and (2)]
- However, for purposes of IRC 951A and the regulations thereunder, a domestic partnership, P, is not treated as owning stock of a foreign corporation within the meaning of section 958(a). [Treas. Reg. 1.951A-1(e)(1)] Therefore, P does not have an inclusion under IRC 951A.
- For purposes of IRC 951A and the regulations thereunder, P is treated in the same manner as a foreign partnership under IRC 958(a)(2) for purposes of determining the persons that own stock of the foreign corporation within the meaning of section 958(a).
- Hence, A, a U.S. citizen or a U.S. resident, and B are treated as the indirect U.S. shareholders of Y and Z for purposes of GILTI inclusions.
 - A is considered as owning 30% of each foreign corporation, Y and Z; and
 - B is considered as owning 50% of each foreign corporation, Y and Z.

[Back to Direct and Indirect Stock Ownerships Discussion](#)

[Back to Constructive Ownership Discussion](#)

[Back to GILTI Exception Discussion](#)

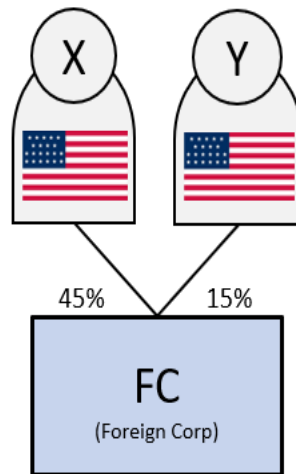
Examples of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership

Members of Family Attribution Rule

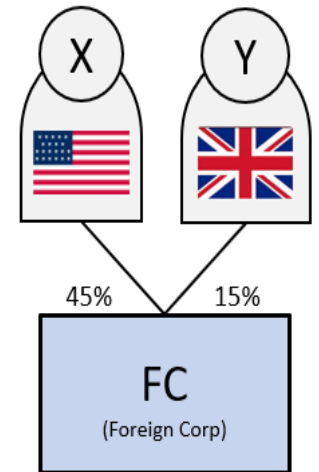
Example 4: Assume all shares are voting class and the remaining shares of FC are owned by an unrelated foreign person. X is the parent of Y and both are U.S. citizens.

- X and Y each constructively own 60% of FC via the members of family attribution rules. [IRC 318(a)(1)(A) and 958(b)]
- X and Y are U.S. shareholders of FC because they each own more than 10% of the vote (or value) of FC. [IRC 951(b)]
- FC is a CFC because U.S. shareholder X (or Y) constructively owns more than 50% of the combined voting power (or total value) of all classes of stock of FC. [IRC 957(a)]
- Both X and Y are U.S. shareholders of FC and are required to filed Forms 5471 as Category 4 filers because they each are considered to control FC. [IRC 6038(e)(2)]



Example 5: Assume all shares are voting class and the remaining shares of FC are owned by an unrelated foreign person. X, a U. S. citizen, is the parent of Y. Y is neither a citizen nor a resident of the U.S.

- The FC stock owned by Y cannot be attributed to X via the family attribution rules because Y is neither a citizen or resident of the U.S. [IRC 958(b)(1)]
- X is a U.S. shareholder of FC because X owns more than 10% of the vote (or value) of FC. [IRC 951(b)]
- However, FC is not a CFC because no U.S. shareholder owns more than 50% of voting power or value of the stock of FC. [IRC 957(a)]
- X is a U.S. shareholder of FC and does not have a Form 5471 filing requirement as a Category 4 or 5 filer because X does not control FC and FC is not a CFC. [See IRC 6038(a)(4) and (e)(2)]

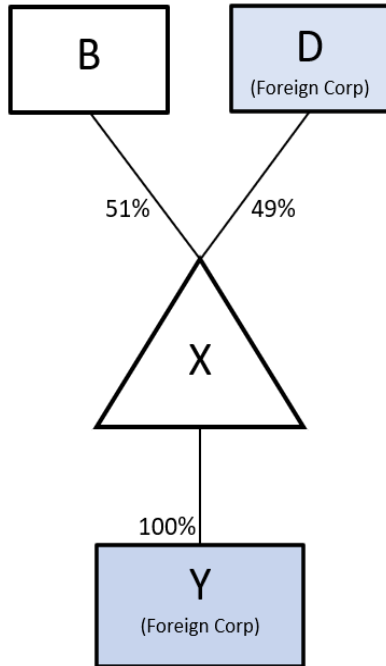


[Back to Members of Family Attribution Discussion](#)

Examples of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership

Upward Attribution of Stock in Foreign Corporation from Domestic Partnership to its Domestic Partner



Example 6: Assume all shares of Y stock are voting class.

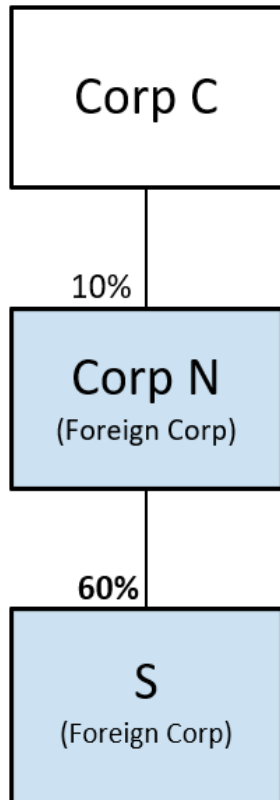
- B constructively owns 51% of the stock that X owns in Y via upward attribution from X. [IRC 318(a)(2)(A)]
 - X directly owns 100% of Y stock. [IRC 958(a)(1)(A)]
 - B, a partner, constructively owns its *proportionate* share of the stock that X directly or indirectly owns in Y. [IRC 318(a)(2)(A) and 958(b)]
- B and X are U.S. shareholders of Y because they each directly, indirectly or constructively own 10% or more of the combined voting power or value of all shares of Y stock. [IRC 951(b)]
- Y is a CFC because more than 50% of the combined voting power or total value of Y stock is owned by U.S. shareholders. [IRC 957(a)]

[Back to Upward Attribution from Partnerships Discussion](#)

Examples of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership

Upward Attribution of Foreign Corporation Stock from Foreign Corporation to its U.S. Shareholder



Example 7: Assume all shares are voting class. [See Treas. Reg. 1.958-2(f)(2) Ex. 2]

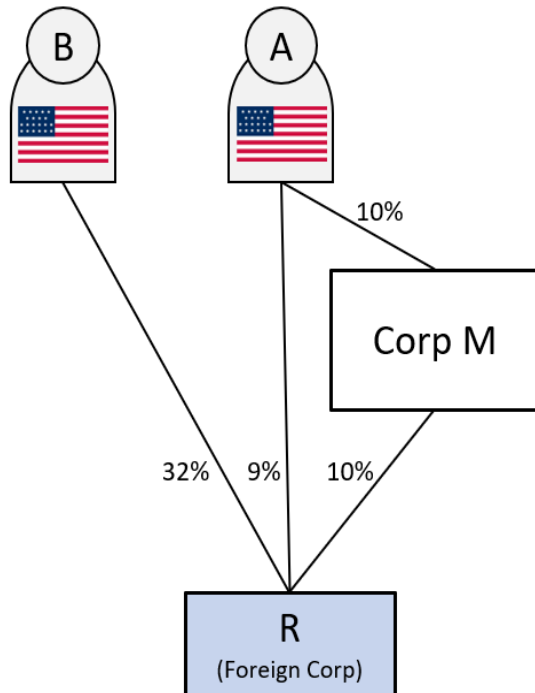
- Corp C is treated as indirectly owning 6% (10% times 60%) of the value of S stock because Corp C is treated as proportionately owning the value of S stock that Corp N owns. [IRC 958(a)(2) and Treas. Reg. 1.958-1(a)(2) and (b)]
- Under IRC 958(b) and Treas. Reg. 1.958-2(c)(1)(iii) and (2), Corp C is treated as constructively owning 10% (10% times 100%) of the value of S stock via the constructive ownership rule of IRC 958(b)(2) that reference and modify the attribution rules of IRC 318(a)(2)(C).
 - Because Corp N directly owns more than 50% of the voting stock of S, N Corporation is considered as owning 100% of the voting stock in foreign corporation S. [IRC 958(b)(2) and Treas. Reg. 1.958-2(c)(2)]
 - Because Corp C owns 10% or more of the value of Corp N stock, Corp C proportionally owns the value of stock that Corp N owns in S (which we just determined was 100%). [IRC 958(b)(3) and Treas. Reg. 1.958-2(c)(1)(iii) and (f)(1)]
 - Stock is owned under the attribution rule that results in the largest percentage of stock ownership. [Treas. Reg. 1.958-2(f)(2)]
- Corp C is a U.S. shareholder of S because Corp C constructively owns 10% of the total value of shares of all classes of S stock. [IRC 951(b)]

[Back to Upward Attribution from Corporations Discussion](#)

Examples of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership

Upward Attribution of Stock in Foreign Corporation from Domestic Corporation to its Domestic Shareholder



Example 8: Assume M and R have only one class of stock. A and B are unrelated U.S. citizens and the remainder of the stock of R is owned by an unrelated foreign person. [See Treas. Reg. 1.958-2(f)(2) Ex. 1]

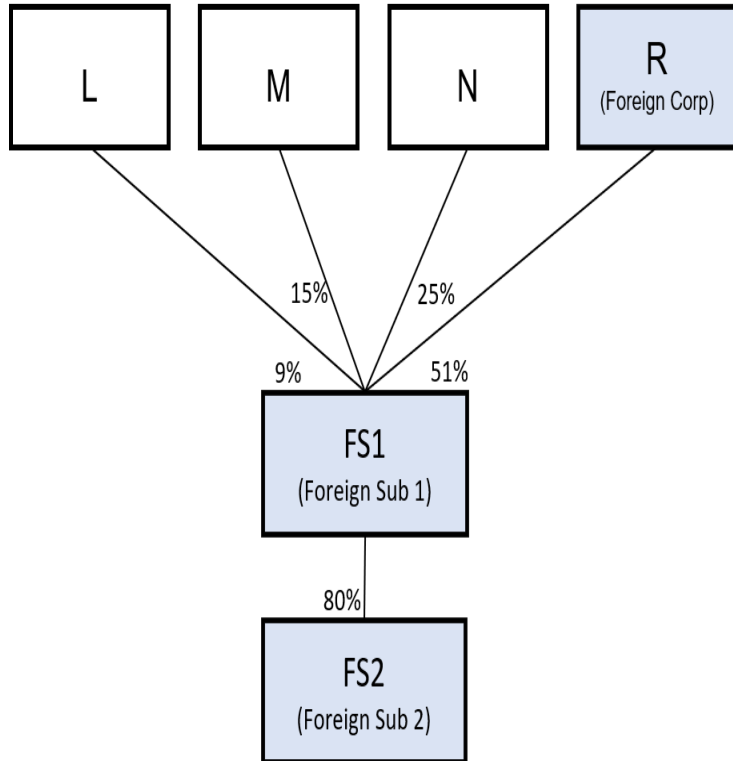
- A directly owns 9% of R stock. [IRC 958(a)(1)]
- Because A owns 10% or more of the value of Corp M stock, A proportionally owns the value of stock that Corp M owns in R. [IRC 958(b)(3) and Treas. Reg. 1.958-2(c)(1)(iii)] Therefore, A constructively owns 1% (10% times 10%) of R stock by reason of the upward attribution rule from Corp M. [IRC 318(a)(2)(C) as modified by IRC 958(b)(3)]
 - Thus, A is considered to own 10% of R (the 9% direct ownership plus 1% constructive ownership).
- A, B, and Corp M are U.S. shareholders of R because they each own directly, indirectly, or constructively 10% or more of the combined voting power or value of all shares of R stock. [IRC 951(b)]
- R is a CFC because A, B, and Corp M collectively own 51% (9% plus 32% plus 10%) of the combined voting power or total value of R stock. [IRC 957(a)]
 - A's 1% ownership in R by reason of the upward attribution from Corp M cannot be counted twice. [Treas. Reg. 1.958-2(f)(2) Ex. 1]

[Back to Upward Attribution from Corporations Discussion](#)

Examples of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership

Upward Attribution of Stock in Foreign Corporation from Foreign Corporation to its Domestic Shareholders



Example 9: Assume all entities have one class of stock, and first tier shareholders are unrelated to one another.

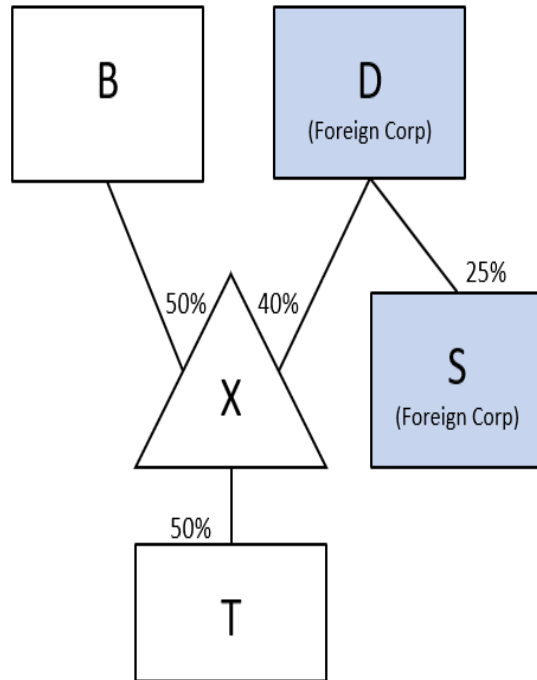
- L is not U.S. shareholder of FS1 because it owns less than 10% of FS1, but M and N are because they each directly own 10% or more of the combined voting power or value of all shares of FS1 stock. [IRC 951(b)]
- M, as a shareholder, proportionally owns the value of stock that FS1 owns directly or indirectly in FS2. [IRC 958(a)(2) and Treas. Reg. 1.958-1(b)] Therefore, M indirectly owns 12% (15% times 80%) of the stock FS1 owns in FS2 via upward attribution from FS1.
- By the same reasons as those for M above, N indirectly owns 20% (25% times 80%) of the stock FS1 owns in FS2. [Id.]
- Neither FS1 nor FS2 is a CFC because the U.S. shareholders do not own more than 50% of the combined voting power or total value of the stock of FS1 (15% plus 25% directly owned) or of FS2 (12% plus 20% indirectly owned). [IRC 957(a)]

[Back to Upward Attribution from Corporations Discussion](#)

Examples of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership

Downward Attribution of Stock in Foreign Corporation from Domestic Partner to its Domestic Partnership



Example 10: Assume there is only one class of shares in the domestic and foreign corporation stock and the partners' capital contributions and the allocations of profits, losses, and deductions are relative to the partners' ownership interests in X.

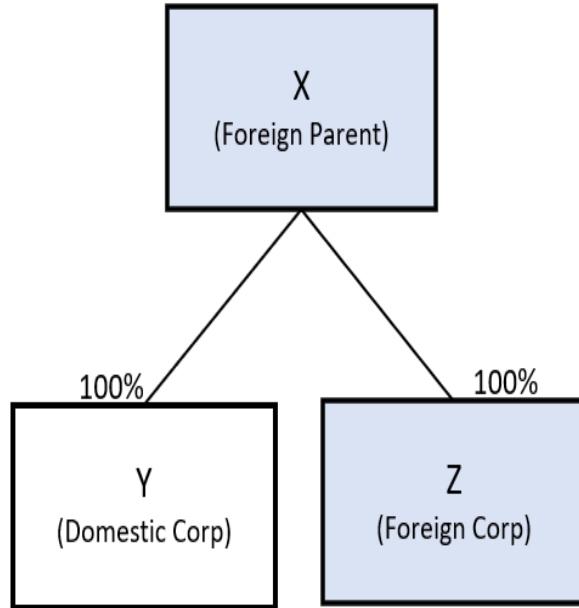
- X constructively owns the stock that its partner directly or indirectly owns. [IRC 318(a)(3)(A) and Treas. Reg. 1.958-2(d)(1)(i)] Therefore, X constructively owns 25% of the stock in S via downward attribution from D.
- Stock attributed to a partnership from a partner under IRC 318(a)(3)(A) may not be attributed to another partner under IRC 318(a)(2)(A). [IRC 318(a)(5)(C), Treas. Reg. 1.958-2(c)(1)(i) and 1.958-2(f)(1)(iii)] Thus, B does not have any constructive ownership in S.
- T constructively owns 25% of S stock via downward attribution from X. [IRC 318(a)(3)(C) and 958(b)]
 - X's 25% constructive ownership of stock in S via downward attribution from D under IRC 318(a)(3)(A) is treated as actually owned for purposes of a subsequent downward attribution under IRC 318(a)(3)(C). [IRC 318(a)(5) and Treas. Reg. 1.958-2(d)(1)(iii)]
 - Stock owned directly or indirectly by X is attributed to T because X owns 50% or more in value or voting power of the stock in T. [IRC 318(a)(3)(C) and Treas. Reg. 1.958-2(d)(1)(iii)]

[Back to Downward Attribution to Partnerships Discussion](#)

Examples of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership

Constructive Ownership via Downward Attribution from Corporations – IRC 318(a)(3)



Example 11: Assume one class of shares for all stock.

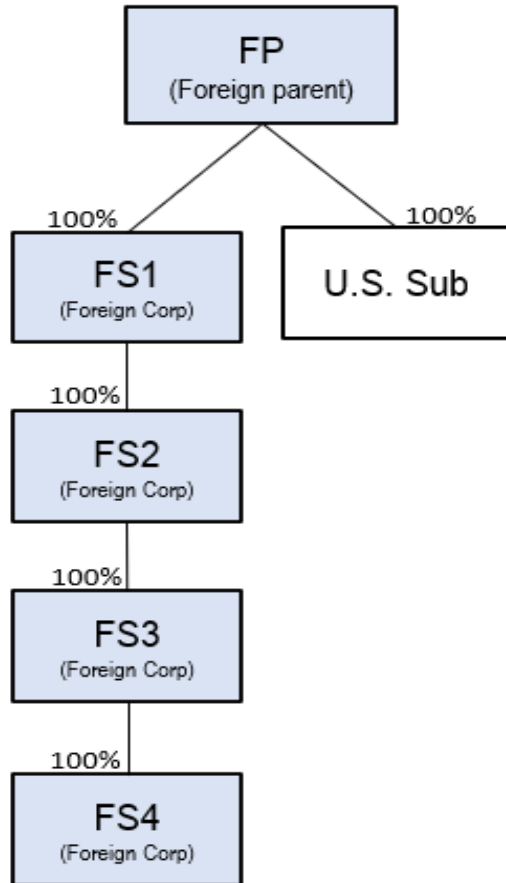
- Pursuant to IRC 318(a)(3)(C) and Treas. Reg. 1.958-2(d)(1)(iii), Y constructively owns the stock that X directly or indirectly owns in Z because X directly or indirectly owns 50% or more in the value of the stock in Y. Therefore, Y constructively owns 100% of the stock in Z via downward attribution from X.
- Y is a U.S. shareholder of Z because Y owns, directly, indirectly, or constructively, 10% or more of the combined voting power or value of all shares of Z stock. [IRC 951(b)]
- Z is a CFC because U.S. shareholders own, directly, indirectly or constructively, more than 50% of the combined voting power or total value of the stock of Z. [IRC 957(a)]

[Back to Downward Attribution to Corporations Discussion](#)

Examples of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership

Constructive Ownership via Downward Attribution from Corporations – IRC 318(a)(3)



Example 12a: The Concept of Constructive Ownership Assume all shares are voting class.

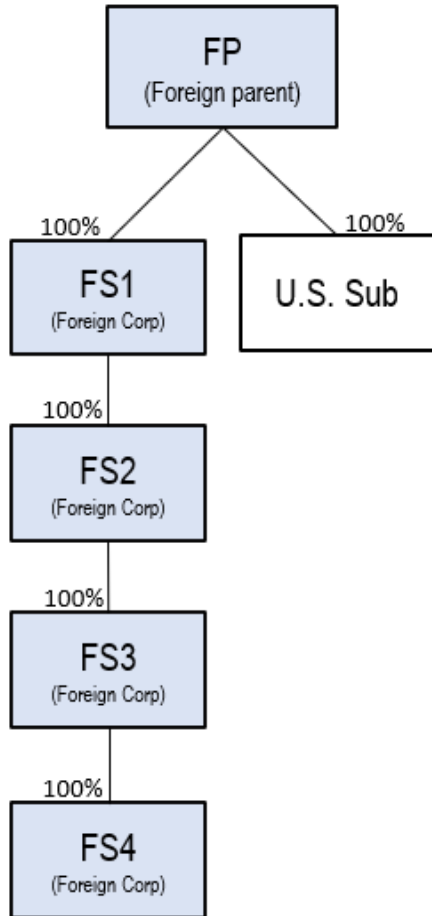
- Shareholders proportionately own the stock owned, directly or indirectly, by or for, foreign corporations. Such indirect ownership of stock creates a chain of ownership in which stock is deemed to be owned through successive tiers of foreign entities. [Treas. Reg. 1.958-1(b)] Therefore, FP indirectly owns 100% of the stock in each of the 3 foreign subsidiaries under FS1 via indirect ownership rules of IRC 958(a)(2).
- U.S. Sub constructively owns the stock that FP directly or indirectly owns in each of the 4 foreign subsidiaries because FP directly or indirectly owns 50% or more of the value of the stock in each of the 4 foreign subsidiaries. [IRC 318(a)(3)(C) and Treas. Reg. 1.958-2(d)(1)(iii)] Thus, U.S. Sub is a 100% constructive U.S. shareholder of the four foreign subsidiaries of FP.
- All four foreign subsidiaries are CFCs because U.S. Sub, a U.S. shareholder, constructively owns more than 50% of the combined voting power or total value of the stock of such foreign subsidiaries. [IRC 957(a)]

[Back to Downward Attribution to Corporations Discussion](#)

Examples of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership

Form 5471 Filing by A Related Constructive U.S. Shareholder



Example 12b: The Safe Harbor of Rev. Proc. 2019-40

- U.S. Sub as a related constructive U.S. shareholder. Because U.S. Sub is considered to own the stock that FP owned in the four foreign subsidiaries, U.S. Sub is a constructive U.S. shareholder of the four foreign entities. [IRC 958(b), 318(a) (3)(C), and Rev. Proc. 2019-40 Sec. 3.02] Because U.S. Sub is a related person with respect to the four foreign entities within the meaning of Rev. Proc. 2019-40 Sec 3.06, U.S. Sub is a related constructive U.S. shareholder of the four foreign entities. [IRC 954(d)(3)(B) and Rev. Proc. 2019-40 Sec.3.05] Each foreign subsidiary is a foreign-controlled CFC because each foreign subsidiary would not be a CFC without applying downward attribution of stock ownership under IRC 318(a)(3). [Rev. Proc. 2019-40 Sec. 3.03]
- U.S. Sub would be required to file Form 5471 for each of the 4 foreign subsidiaries as a Category 5c filer because U.S. Sub is a related constructive U.S. shareholder of the four CFCs. [Form 5471 Instructions]
- However, U.S. Sub is only required to file the identifying information on page 1 of Form 5471 (above Schedule A), Part II of Schedule B, Schedules E, G, and I-1* with respect to Form 5471 as a Category 5 filer for each of the 4 foreign subsidiaries because (1) no U.S. shareholder directly owns stock in either of such foreign subsidiaries and (2) such foreign subsidiaries are CFCs solely because of U.S. Sub's constructive ownership under IRC 318(a)(3). [Rev. Proc. 2019-40, Sec. 8.03 & Form 5471 Instructions. *Schedule I-1 is only required for related constructive U.S. shareholders that are Category 5 filers.]

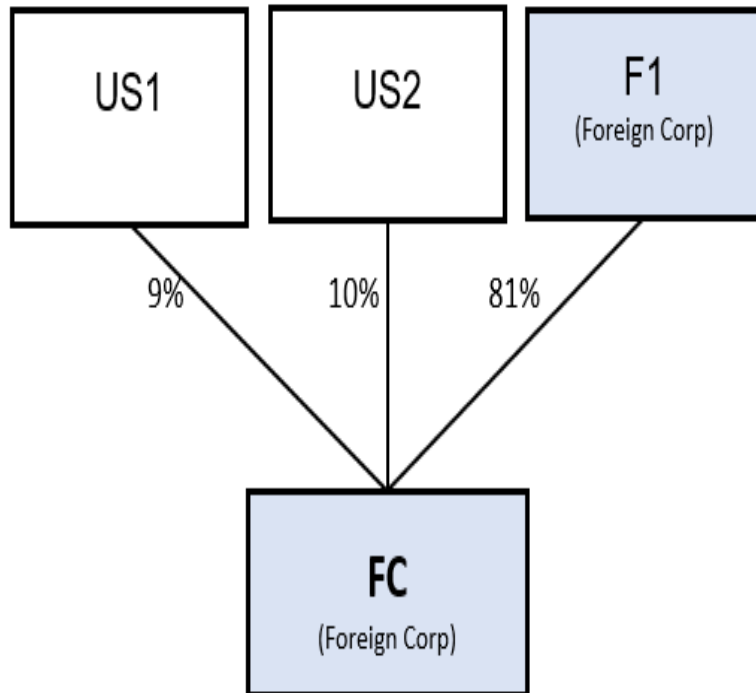
[Back to Category 5 Filing Discussion](#)

[Back to Related Constructive U.S. Shareholder Discussion](#)

Examples of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership

Form 5471 Category 1b Filer Filing by An Unrelated Section 958(a) Shareholder



Example 13: Assume all U.S. persons are unrelated to one another, and all shares of FC stock are voting class.

- FC is an SFC (assuming this structure was in place for the application of IRC 965) because FC has a 10% domestic corporate shareholder.
- US2 is a Category 1b filer of Form 5471 with respect to FC because US2 owns (directly, indirectly, or constructively, within the meaning of sections 958(a) and (b)), 10% or more of the total combined voting power or value of shares of all classes of stock of an SFC for its tax year beginning after December 31, 2017.
- US2 is an unrelated section 958(a) shareholder with respect to FC. [IRC 954(d)(3)] However, since FC would still be a SFC without the application of downward attribution, the relief provisions for filing Form 5471 do not apply. US2 must continue to file all information required as long as:
 - FC has accumulated E&P related to IRC 965 that is reportable on Schedule J of Form 5471 or
 - US2 has previously taxed E&P related to IRC 965 reportable on Schedule P of Form 5471.

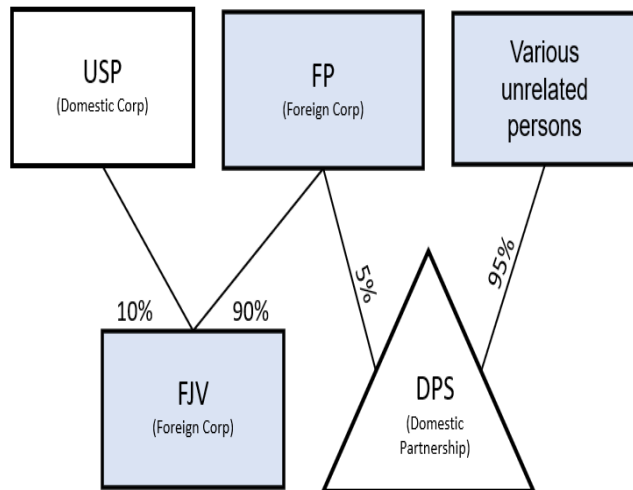
[Back to Category 1 Filing Discussion](#)

[Back to Unrelated Section 958\(a\) Shareholder Discussion](#)

Examples of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership

Form 5471 Category 5 Filer Filing by an Unrelated Constructive U.S. Shareholder



Example 14a: Rev. Proc. 2019-40 Sec. 9 Ex. 3 Assume all shares of FJV stock are voting class.

- DPS constructively owns 90% of FJV stock because stock directly or indirectly owned by or for a partner is treated as owned by the partnership. [IRC 318(a)(3)(A) and Treas. Reg. 1.958-2(d)(1)(i)]
- DPS is not considered to control FJV and is therefore not a Category 4 filer of Form 5471 with respect to FJV because IRC 318(a)(3)(A) (downward attribution) may not be applied to treat a U.S. person as owning stock owned by a foreign person. [IRC 6038(e)(2)(A)]
- Determining stock ownership for purposes of control for IRC 6038 purposes does not consider the constructive ownership rules of IRC 958(b); rather the provisions of IRC 6038(e)(2) apply.

- Without taking into account any exceptions, DPS is a Category 5a filer of Form 5471 with respect to FJV because DPS is a U.S. shareholder of FJV (DPS constructively owns 90% of FJV) and FJV is a CFC. [IRC 958(b) and 318(a)(3)(A)] Downward attribution under IRC 318(a)(3)(A) may be applied post-repeal of IRC 958(b)(4) to determine whether a foreign corporation is a CFC pursuant to IRC 957.
- DPS is an unrelated constructive U.S. shareholder with respect to FJV because DPS, a constructive U.S. shareholder of FJV, is not a related person with respect to FJV. DPS is not related to FJV because DPS is not controlled by FP, the person that controls FJV. [Rev. Proc. 2019-40 Sec. 3.06, and IRC 954(d)(3)(B)]

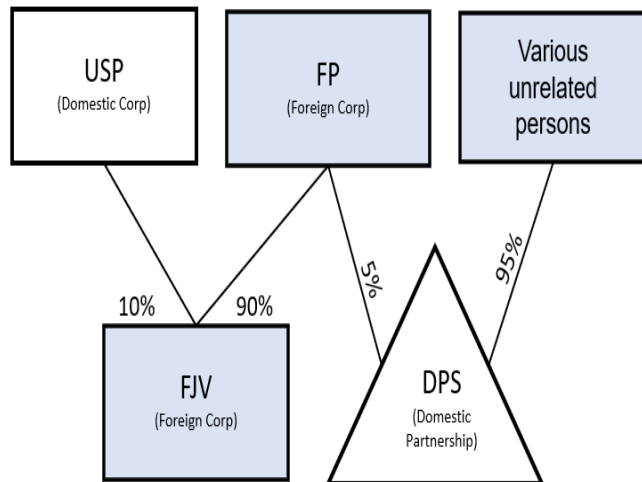
[Back to Category 5 Filing Discussion](#)

[Back to Unrelated Constructive U.S. Shareholder Discussion](#)

Examples of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership

Form 5471 Filing by an Unrelated Constructive U.S. Shareholder



Example 14b: Rev. Proc. 2019-40 Sec. 9 Ex. 3 (cont'd)

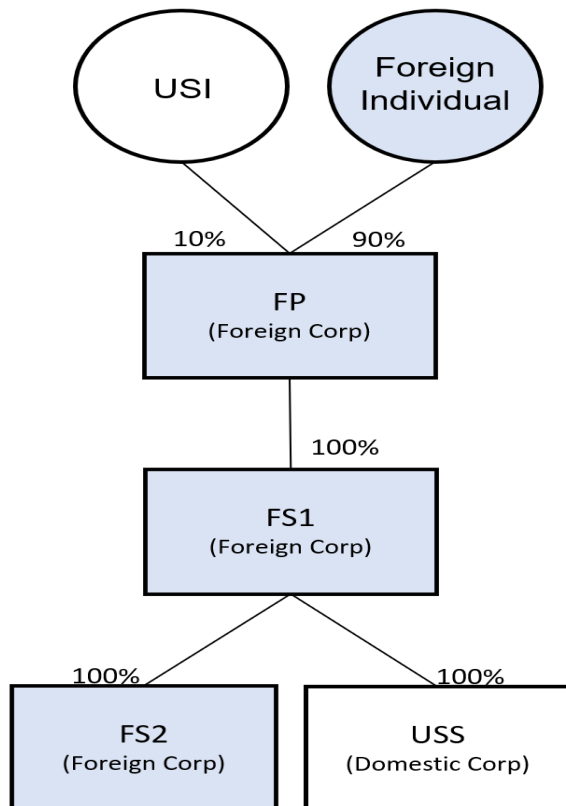
- A Category 5a filer that is an unrelated constructive U.S. shareholder with respect to the foreign-controlled CFC is not required to file a Form 5471 with respect to such foreign-controlled CFC. [Rev. Proc. 2019-40 Sec 8.04]
- The safe harbor for determining CFC status provided at Rev. Proc. 2019-40 Sec. 4.02 also applies for Unrelated Constructive U.S. Shareholders.
- FJV as a foreign-controlled CFC. Because more than 50% of the stock of FJV is considered owned by DPS, a U.S. shareholder, FJV is a CFC. [IRC 958(b) and 957(a)] If, however, IRC 318(a)(3)(A) did not apply to treat DPS as owning the FJV stock owned by FP, FJV would not be a CFC, because the only stock of FJV owned under IRC 958(a) by U.S. shareholders would be the 10% of the FJV stock owned by USP. Accordingly, FJV is a foreign-controlled CFC. [Rev. Proc. 2019-40 Sec. 3.03]

[Back to Foreign-Controlled CFC Discussion](#)
[Back to Unrelated Constructive U.S. Shareholders Discussion](#)

Examples of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership

Form 5471 Filing by An Unrelated Section 958(a) Shareholder



Example 15: Rev. Proc. 2019-40 Sec. 9 Ex 1 Assume all shares of foreign corporations' stocks are voting class.

- **USI as an *unrelated* section 958(a) U.S. shareholder.** Because USI indirectly owns 10% of the stock of FS2, USI is a section 958(a) U.S. shareholder with respect to FS2. [IRC 958(a)(2) and Rev. Proc. 2019-40 Sec. 3.09] Because USI is not a related person with respect to FS2, USI is an unrelated section 958(a) U.S. shareholder with respect to FS2. [Rev. Proc. Secs. 3.06, 3.09, and 3.12]
- USI has filing requirement as an unrelated section 958(a) filer as described under Rev. Proc. 2019-40 Sec. 8.02. USI has reduced filing requirements as a Category 1b filer (provided no other Category 1 exceptions apply to USI) or Category 5b filer. [Form 5471 Instructions]
 - A Category 1b filer because USI is an unrelated section 958(a) U.S. shareholder of an SFC that is a foreign-controlled corporation. [Form 5471 Instructions] FS2 is a foreign-controlled corporation because it would not be a SFC were it not for downward attribution. [Form 5471 Instructions]; or
 - A Category 5b filer because USI is an unrelated section 958(a) U.S. shareholder of a CFC that is a foreign-controlled corporation. [Form 5471 Instructions] FS2 is a foreign-controlled corporation because it would not be a CFC were it not for downward attribution. [Form 5471 Instructions]

[Back to Category 1 Filing Discussion](#)

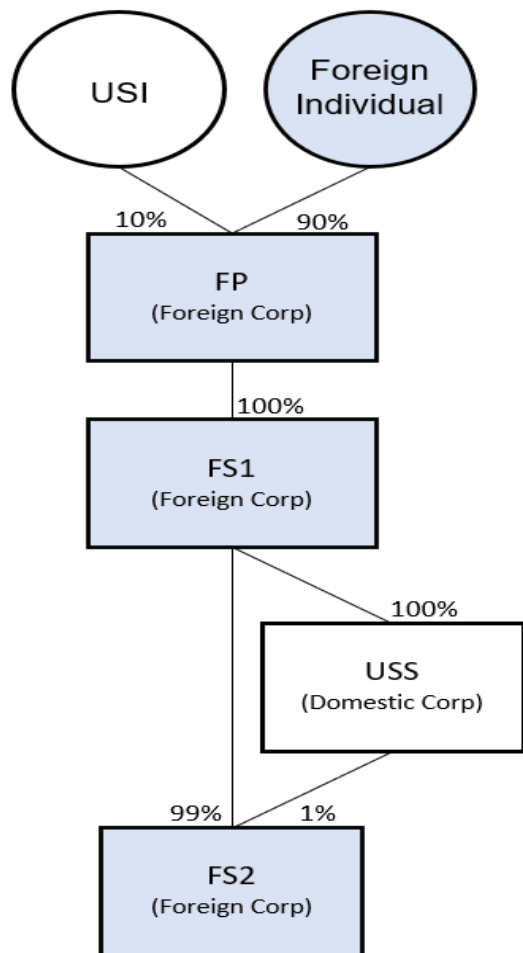
[Back to Category 5 Filing Discussion](#)

[Back to Unrelated Section 958\(a\) Shareholder Discussion](#)

Examples of the Concept (cont'd)

IRC 958 Rules for Determining Stock Ownership

Form 5471 Filing by A Related Section 958(a) Shareholder



Example 16: Rev. Proc. 2019-40 Sec. 9 Ex 2 Assume all shares of foreign corporations' stocks are voting class.

- USS as a related section 958(a) U.S. shareholder. Because USS directly owns 1% of stock of FS2, it is a section 958(a) U.S. shareholder of FS2 and not a constructive U.S. shareholder as defined in Rev. Proc. 2019-40. [Rev. Proc. 2019-40 Sec. 3.09 and 3.02] Because USS is a related person with respect to FS2, (USS and FS2 are controlled by FS1), USS is a related § 958(a) U.S. shareholder with respect to FS2. [Rev. Proc. 2019-40 Sec. 3.06 and 3.07]
- USS is a Category 5a filer of Form 5471 with respect to FS2 because USS is a U.S. shareholder of FS2, a CFC. [IRC 958(b) and 318(a)(3)(C)]. FS2 is a CFC because of the more than 50% ownership by USS (directly 1% and constructively 99%).

[Back to Category 5 Filing Discussion](#)

[Back to Related Section 958\(a\) Shareholders Discussion](#)

Index of Referenced Resources

IRC 958 Rules for Determining Stock Ownership

IRC 318 - Constructive Ownership of Stock

IRC 401 - Qualified Pension, Profit-Sharing, and Stock Bonus Plans

IRC 951 - Amounts Included in Gross Income of U.S. Shareholder

IRC 951A - Global Intangible Low-Taxed Income ("GILTI")

IRC 954 - Foreign Base Company Income

IRC 956 - Investment Earnings in U.S. Property

IRC 957 - Controlled Foreign Corporations; U.S. Persons

IRC 958 - Rules for Determining Stock Ownership

IRC 960 - Deemed Paid Credit for Subpart F Inclusions

IRC 965(e) - Specified Foreign Corporation

IRC 1297 - Passive Foreign Investment Company

IRC 6013 - Joint Returns of Income Tax by Husband and Wife

IRC 6038 - Information Reporting with Respect to Certain Foreign Corporations and Partnerships

IRC 7701 - Definitions

Treas. Reg. 1.318-4 - Constructive Ownership as Actual Ownership; Exceptions

Index of Referenced Resources (cont'd)

IRC 958 Rules for Determining Stock Ownership

Treas. Reg. 1.958-1 - Direct and Indirect Ownership of Stock

Treas. Reg. 1.958-2 - Constructive Ownership of Stock

Treas. Reg. 1.6038-2 - Information Returns Required of United States Persons with Respect to Annual Accounting Periods of Certain Foreign Corporations

Rev. Proc. 2019-40 - Provides Relief to Taxpayers Affected by the Repeal of IRC 958(b)(4) by the Tax Cuts and Jobs Act, ("TCJA")

IRS Notice 2018-13 - Provides Additional Guidance Under IRC 965 and Guidance Under IRC 863 and 6038 in Connection with the Repeal of IRC 958(b)(4)

IRS Notice 2018-26 - Additional Guidance Under IRC 965; Guidance Under IRC 62, 962, and 6081 in Connection with IRC 965; and Penalty Relief Under IRC 6654 and 6655 in Connection with IRC 965 and Repeal of IRC 958(b)(4)

Form 5471 Instructions (Rev. 12/2018, Rev. 2/2020, and Rev. 1/2021)

Section 14213 of TCJA, Pub. L. 115-97

Training and Additional Resources

IRC 958 Rules for Determining Stock Ownership

Type of Resource	Description(s)
Saba Meeting Sessions	▪ <i>IRC 958(b)(4) and Ownership Attribution</i> - ITM Course 77987r

Glossary of Terms and Acronyms

Term/Acronym	Definition
Constructive U.S. Shareholder	With respect to a foreign corporation, a U.S. shareholder with respect to the foreign corporation that is not a section 958(a) U.S. shareholder with respect to the foreign corporation. [Rev. Proc. 2019-40 Sec. 3.02]
Controlled Foreign Corporation (“CFC”)	A foreign corporation owned by U.S. shareholder(s) whose ownership is more than 50% of the voting power or value of the stock of the foreign corporation. [IRC 957(a)]
E&P	Earnings and Profits
Foreign-Controlled CFC	A foreign corporation that is a CFC but that would not be a CFC, if the determination were made without applying IRC 318(a)(3)(A), (B) and (C) to consider a U.S. person as owning stock which is owned by a foreign person. [Rev. Proc. 2019-40 Sec. 3.03]
GILTI	Global Intangible Low-Taxed Income
Person	An individual, a trust, an estate, a partnership, an association, a company or a corporation. [IRC 7701(a)(1)]
Related Constructive U.S. Shareholder	With respect to a foreign corporation, a constructive U.S. shareholder that is a related person with respect to the foreign corporation. [Rev. Proc. 2019-40 Sec. 3.05]
Related Person	With respect to a person, another person described in section 954(d)(3), substituting the first-mentioned person for “controlled foreign corporation” each place it appears. [Rev. Proc. 2019-40 Sec. 3.06]
Related Section 958(a) U.S. Shareholder	With respect to a foreign corporation, a section 958(a) U.S. shareholder with respect to the foreign corporation, if such section 958(a) U.S. shareholder is a related person with respect to the foreign corporation. [Rev. Proc. 2019-40 Sec. 3.07]

Glossary of Terms and Acronyms (cont'd)

Term/Acronym	Definition
Section 957 Ownership Requirements	With respect to a foreign corporation and any given day of a taxable year of the foreign corporation, stock ownership described in § 957 that would cause the foreign corporation to be a CFC on such day. [Rev. Proc. 2019-40 Sec. 3.08]
Section 958(a) U.S. Shareholder	With respect to a foreign corporation, a U.S. shareholder with respect to the foreign corporation that owns (within the meaning of § 958(a)) stock of the foreign corporation. [Rev. Proc. 2019-40 Sec. 3.09]
Specified Foreign Corporation (“SFC”)	Any CFC and any foreign corporation in which one or more domestic corporations is a U.S. shareholder. [IRC 965(e)]
Unrelated constructive U.S. shareholder	With respect to a foreign corporation, a constructive U.S. shareholder with respect to the foreign corporation that is not a related constructive U.S. shareholder with respect to the foreign corporation. [Rev. Proc. 2019-40 Sec. 3.11]
Unrelated Section 958(a) U.S. Shareholder	With respect to a foreign corporation, an IRC 958(a) U.S. shareholder with respect to the foreign corporation that is not a related IRC 958(a) U.S. shareholder with respect to the foreign corporation. [Rev. Proc. 2019-40 Sec. 3.12]
U.S.-Controlled CFC	A foreign corporation that is a CFC other than a foreign-controlled CFC. [Rev. Proc. 2019-40 Sec. 3.13]
U.S. Person	A U.S. citizen, U.S. resident, domestic partnership, domestic corporation, domestic estate, or trust in which a U.S. court can exercise primary supervision. [IRC 7701(a)(30)]

Glossary of Terms and Acronyms (cont'd)

Term/Acronym	Definition
U.S. Shareholder	<p>Any U.S. person owning at least 10% by combined voting power or by the total value of shares of all classes of stock of the foreign corporation.* [IRC 951(b)]</p> <p>* Applicable for tax years of foreign corporations that begin after 2017, and for tax years of U.S. shareholders with or within which such tax years of the foreign corporations end.</p>

Index of Related Practice Units

Associated UIL(s)	Related Practice Unit
9412	<i>Concepts of Foreign Base Company Sales Income</i>
9414	<i>IRC 965 Transition Tax Overview</i>
9432	<i>Creditable Foreign Taxes</i>
9433	<i>Definition of Foreign Personal Holding Company Income and the Common Exceptions</i>