

Treatment Under Section 956(c) of Certain Receivables Following Hurricane Irma or Hurricane Maria

Notice 2017-68

SECTION 1. OVERVIEW

Under section 956(c)(1)(C), United States property generally includes obligations of a United States person. However, section 956(c)(2)(C) provides an exception from United States property for an obligation of a United States person arising in connection with the sale or processing of property if the amount of such obligation outstanding at no time during the taxable year exceeds the amount which would be ordinary and necessary to carry on the trade or business of both the other party to the sale or processing transaction and the United States person had the sale or processing transaction been made between unrelated persons. See also Treas. Reg. §1.956-2(b)(1)(v). In response to the damage caused by Hurricane Irma and Hurricane Maria, including in the Commonwealth of Puerto Rico and the U.S. Virgin Islands, certain controlled foreign corporations (within the meaning of section 957(a)) (“CFCs”) may need to sell (or may have sold) substantial amounts of property located in affected areas to related United States persons and may do so (or have done so) in exchange for obligations of such persons.

SECTION 2. TREATMENT OF CERTAIN OBLIGATIONS UNDER SECTION 956(c)

The damage caused by Hurricane Irma and Hurricane Maria has imperiled property located in affected areas. To facilitate necessary safekeeping of certain such property, Notice 2017-55, 2017-42 IRB 324 (October 16, 2017), announced that a CFC would not be treated as holding United States property as a result of temporarily storing such property in the United States. Treas. Reg. §1.956-2(b)(1)(v) indicates that whether an obligation of a United States person received in exchange for a sale of such property would be excluded from United States property under section 956(c)(2)(C) and Treas. Reg. §1.956-2(b)(1)(v) is determined based on all of the facts and circumstances. However, to provide certainty and thus further facilitate the safekeeping and ongoing distribution of such property, this notice announces that, for purposes of section 956, if a CFC holds an obligation of a United States person, such obligation will be considered to satisfy the requirements of section 956(c)(2)(C) and Treas. Reg. §1.956-2(b)(1)(v) to be excluded from United States property, if (1) the obligation was received in exchange for property that, if transported to the United States for temporary storage for safekeeping in anticipation of, or as a result of, Hurricane Irma or Hurricane Maria, would not cause a CFC to be treated as holding United States property pursuant to Notice 2017-55, and (2) the obligation ceases to be outstanding on or before March 31, 2018. An obligation of a United States person that does not meet the conditions in the preceding sentence may nevertheless be excludable from United States property under 956(c)(2)(C) and Treas. Reg. §1.956-2(b)(1)(v) depending on all of the facts and circumstances.

SECTION 3. DRAFTING INFORMATION

The principal author of this notice is Rose E. Jenkins of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Ms. Jenkins at (202) 317-6934 (not a toll free call).