

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.204: Changes in accounting periods and in methods of accounting. (Also Part I, §§ 167, 168, 446, 481, 951A, 954, 964, 986; 1.446-1, 1.481-1, 1.951A-3, 1.952-2, 1.964-1.)

Rev. Proc. 2021-26

SECTION 1. PURPOSES

This revenue procedure modifies Rev. Proc. 2019-43, 2019-48 I.R.B. 1107, to provide procedures under section 446(e) of the Internal Revenue Code (“Code”) and §1.446-1(e) of the Income Tax Regulations for certain foreign corporations to obtain the automatic consent of the Commissioner of Internal Revenue (“Commissioner”) to change their methods of accounting for depreciation to the alternative depreciation system under section 168(g) (“ADS”). This revenue procedure also updates and revises Rev. Proc. 2015-13, 2015-5 I.R.B. 419, to provide additional terms and conditions applicable with respect to section 481(a) adjustments arising from accounting method changes of certain foreign corporations. Finally, this revenue procedure modifies Rev. Proc. 2015-13, 2015-5 I.R.B. 419, to clarify an existing rule that limits audit protection with respect to certain foreign corporations.

SECTION 2. BACKGROUND

.01 Section 951A and ADS.

(1) Section 951A requires a United States shareholder (as defined in section 951(b)) (“U.S. shareholder”) of any controlled foreign corporation (as defined in section 957(a)) (“CFC”) that owns the CFC’s stock within the meaning of section 958(a) for any taxable year to include the shareholder’s global intangible low-taxed income (“GILTI”) in gross income for such taxable year. Section 951A applies to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end. A U.S. shareholder’s GILTI is determined by a formula based on certain items of each CFC that the shareholder owns, including tested income, tested loss, and qualified business asset investment (“QBAI”), if any. See section 951A(b) and (c), and §1.951A-1(c).

(2) QBAI is the average of a tested income CFC’s aggregate adjusted bases, as of the close of each quarter of a CFC inclusion year, in specified tangible property that is used in the tested income CFC’s trade or business and of a type with respect to which a deduction is allowable under section 167. See section 951A(d)(1) and §1.951A-3(b). A tested income CFC is a CFC with tested income for a CFC inclusion year. See §1.951A-2(b)(1). A CFC inclusion year is any taxable year of a foreign corporation beginning after December 31, 2017, at any time during which the corporation is a CFC. See §1.951A-1(f)(1). Specified tangible property is, with respect to a tested income CFC and a CFC inclusion year, tangible property of the tested income CFC used in the production of gross tested income for the CFC inclusion year. See section 951A(d)(2) and §1.951A-3(c)(1). For purposes of section 951A, tangible property is property for which the depreciation deduction provided by section 167(a) is

eligible to be determined under section 168, without regard to section 168(f)(1), (2), or (5), section 168(k)(2)(A)(i)(II), (IV), or (V), and the date placed in service. See §1.951A-3(c)(2).

(3) Section 951A(d)(3)¹ provides that the adjusted basis in any property for purposes of calculating QBAI shall be determined by using ADS under section 168(g) and by allocating the depreciation deduction with respect to such property ratably to each day during the period in the taxable year to which such depreciation relates. Except as provided in §1.951A-3(e)(3)(ii),² ADS applies for purposes of determining QBAI irrespective of when the property was placed in service or whether the basis of the property is determined using another method for computing depreciation for other purposes of the Code. See §1.951A-3(e)(1) and (3).

(4) Section 168(g)(1)(A) generally requires the use of ADS to depreciate tangible property predominantly used outside of the United States during the taxable year. However, a foreign corporation (including a CFC) computing its income and earnings and profits (“E&P”) may instead apply a depreciation method used in keeping the books of account that it regularly maintains for accounting to its shareholders or a method consistent with U.S. generally accepted accounting principles (a “non-ADS method”), provided the adjustments required to conform to ADS are not material. See §§1.952-

¹ As enacted, section 951A(d) contains two paragraphs designated as paragraph (3). The section 951A(d)(3) discussed in this procedure relates to the determination of the adjusted basis in property for purposes of calculating QBAI.

² Under § 1.951A-3(e)(3)(ii), a CFC that is not required to use ADS for purposes of computing income and E&P may elect, for purposes of calculating QBAI, to use its non-ADS depreciation method to determine the adjusted basis in specified tangible property placed in service before the first taxable year beginning after December 22, 2017, subject to a special rule related to salvage value.

2(c)(2) and 1.964-1(a)(2). Whether an adjustment is material depends on the facts and circumstances of the particular case, including the amount of the adjustment, its size relative to the general level of the corporation's total assets and annual profit or loss, the consistency with which the practice has been applied, and whether the item to which the adjustment relates is of a recurring or merely a nonrecurring nature. See §1.964-1(a)(2). Given the requirement in section 951A(d)(3) that the adjusted basis in any property for purposes of calculating QBAI be determined by using ADS, CFCs not otherwise required to use ADS for purposes of computing their income and E&P may want to change to ADS with respect to such property to conform their income, E&P, and QBAI computations.

.02 Changes in methods of accounting for depreciation.

(1) Pursuant to section 168(g)(2), depreciation under ADS is determined by using the straight-line method of depreciation (without regard to salvage value), the applicable convention determined under section 168(d), and a recovery period determined under the table in section 168(g)(2)(C). Except as provided in §1.446-1(e)(2)(ii)(d)(3), the depreciation method, convention, and recovery period used by a taxpayer to determine the depreciation for each asset are methods of accounting under section 446; thus, a change in the depreciation method, convention, or recovery period of a depreciable asset is a change in method of accounting. See §1.446-1(e)(2)(ii)(d)(2)(i). A taxpayer must secure the consent of the Commissioner before changing the depreciation method, convention, or recovery period for any asset for federal income tax purposes, whether or not the taxpayer's present method of accounting is proper under the Code or the regulations thereunder. See section 446(e) and §1.446-1(e)(2)(i). The

determination of the adjusted basis in property for purposes of computing QBAI is not a method of accounting subject to the consent requirement of section 446(e). See §1.446-1(e)(2)(ii)(a) and (e)(2)(ii)(b).

(2) The Commissioner may prescribe the administrative procedures setting forth the limitations, terms, and conditions necessary to permit a taxpayer to obtain consent to change a method of accounting. See §1.446-1(e)(3)(ii). Except as otherwise provided in §1.446-1(e)(3)(ii), a taxpayer must file a Form 3115, Application for Change in Accounting Method, in order to request the Commissioner's consent to change a method of accounting. Rev. Proc. 2015-13, 2015-5 I.R.B. 419, as clarified and modified by Rev. Proc. 2015-33, 2015-24 I.R.B. 1067, and as modified by Rev. Proc. 2016-1, 2016-1 I.R.B. 1, and Rev. Proc. 2017-59, 2017-48 I.R.B. 543, sets forth the general procedures by which a taxpayer may obtain the automatic consent of the Commissioner to change a method of accounting described in the "List of Automatic Changes." Rev. Proc. 2019-43, as modified by Rev. Proc. 2020-13, 2020-11 I.R.B. 515, Rev. Proc. 2020-25, 2020-19 I.R.B. 785, and Rev. Proc. 2020-50, 2020-48 I.R.B. 1122, contains the current List of Automatic Changes.

(3) Pursuant to Rev. Proc. 2015-13 and Rev. Proc. 2019-43, subject to certain restrictions, a CFC on an impermissible non-ADS method of accounting for depreciation for purposes of computing its income and E&P may request to change its method to the straight-line method, the applicable convention, and the applicable recovery period under ADS using automatic change procedures. However, a CFC on a permissible non-ADS method of accounting is ineligible for an automatic change to use ADS. The Department of the Treasury ("Treasury Department") and the Internal Revenue Service

("IRS") announced their intention to expand the availability of automatic consent for depreciation changes in Treasury Decision 9866, 84 FR 29288, 29304 (June 21, 2019). To that end, section 3 of this revenue procedure modifies Rev. Proc. 2019-43 to provide procedures, for a limited period, for a CFC on an impermissible non-ADS method as well as a CFC on a permissible non-ADS method to obtain the automatic consent of the Commissioner to change its method of accounting for depreciation of property described in section 168(g)(1)(A) (except for property excluded from the application of section 168 as a result of section 168(f)) to ADS in determining the CFC's gross and taxable income under §1.952-2 as well as its E&P under sections 964 and 986(b) and the regulations thereunder. These procedures also temporarily waive certain eligibility restrictions set forth in section 5.01(1) of Rev. Proc. 2015-13 to make it easier for such CFCs to obtain automatic consent to change their methods of accounting for depreciation to ADS. Furthermore, since these procedures apply to CFCs on permissible and impermissible non-ADS methods, they will ease the burden on all such CFCs in conforming their income and E&P computations with their QBAI computations. However, this revenue procedure does not waive any of the limitations on audit protection in section 8 of Rev. Proc. 2015-13, as modified by Rev. Proc. 2015-33, 2015-24 I.R.B. 1067.

(4) The procedures in section 3 of this revenue procedure provide that a section 481(a) adjustment is required with respect to any change in method of accounting made thereunder. The imposition of a section 481(a) adjustment for all changes made under the procedures in section 3 of this revenue procedure is in accordance with §1.446-1(e)(2)(ii)(d)(5)(iii), which allows, with respect to a change from one permissible method

of computing depreciation to another permissible method of computing depreciation, the IRS to require a section 481(a) adjustment if expressly provided by guidance published in the Internal Revenue Bulletin, and states that a section 481(a) adjustment is required for a change from an impermissible method of computing depreciation to a permissible method of computing depreciation.

.03 Section 951A and treatment of a section 481(a) adjustment.

(1) When there is a change in a CFC's method of accounting, to prevent amounts from being duplicated or omitted, the difference between the CFC's income and E&P pursuant to the old and the new methods must generally be taken into account as a section 481(a) adjustment. See section 481(a) and §1.481-1(d); see also section 2.06 of Rev. Proc. 2015-13 (or its successor). The section 481(a) adjustment must be taken into account for purposes of computing the CFC's income and E&P in accordance with the terms and conditions prescribed by the Commissioner. See section 481(c) and §§1.446-1(e)(3)(ii) and 1.481-4; see also section 2.06(1) of Rev. Proc. 2015-13 (or its successor).

(2) Section 7.07 of Rev. Proc. 2015-13, which predates the enactment of section 951A, sets forth the applicable terms and conditions for a change in method of accounting on behalf of a CFC. Section 7.07(2) of Rev. Proc. 2015-13 generally requires a section 481(a) adjustment (or a component thereof) to take, or be allocated to the class of gross income that has, the same source, separate limitation classification, character, and treatment for subpart F purposes as the CFC's income to which the adjustment or component relates had or would have had in the prior year or years.

(3) In Treasury Decision 9866, 84 FR at 29304, in addition to declaring their intent to expand automatic accounting method changes for depreciation, the Treasury Department and the IRS announced their intention to update the terms and conditions in section 7.07 of Rev. Proc. 2015-13 to take section 951A into account. Accordingly, section 4 of this revenue procedure updates and revises section 7.07 of that revenue procedure to account for both the enactment of section 951A and the repeal of section 954(g), which eliminated foreign base company oil related income as a category of foreign base company income, by the Tax Cuts and Jobs Act, Pub. Law 115-97, 131 Stat. 2054, 2208, 2216 (2017).

(4) Specifically, section 4 of this revenue procedure modifies section 7.07 of Rev. Proc. 2015-13 to clarify that a CFC's section 481(a) adjustment must be taken into account in determining the CFC's tested income or tested loss (either as gross tested income within the meaning of section 951A(c)(2)(A)(i) and §1.951A-2(c)(1), if the section 481(a) adjustment is positive, or as a deduction properly allocable to the CFC's gross tested income within the meaning of section 951A(c)(2)(A)(ii) and §1.951A-2(c)(3), if the section 481(a) adjustment is negative), except to the extent the adjustment prevents the duplication or omission of an item of gross income that is described in, or that is a deduction properly allocable to an item of gross income described in, section 951A(c)(2)(A)(i)(I) through (V). Section 4 of this revenue procedure further amends section 7.07 of Rev. Proc. 2015-13 to require that a CFC's section 481(a) adjustment relating to foreign base company oil related income be taken into account as an adjustment in determining the CFC's tested income or tested loss.

(5) Under section 481(a) and §1.481-1(d), section 481(a) adjustments must be properly taken into account for purposes of computing gross income, adjusted gross income, or taxable income. Section 951A(c)(2) and §1.951A-2(c)(1) require tested income and tested loss to be determined by excluding from gross tested income certain items of gross income enumerated in section 951A(c)(2)(A)(i)(I) through (V). Specifically, the determination of a CFC's tested income starts with the CFC's gross income and excludes the following items of income to determine "gross tested income": (I) any item of income described in section 952(b), (II) any gross income taken into account in determining the CFC's subpart F income (as defined in section 952(a)), (III) any gross income excluded from foreign base company income (as defined in section 954) or insurance income (as defined in section 953) of the CFC by reason of section 954(b)(4), (IV) any dividend received from a related person (as defined in section 954(d)(3), and (V) any foreign oil and gas extraction income (as defined in section 907(c)(1)) of the CFC. See section 951A(c)(2)(A)(i) and §1.951A-2(c)(1). The CFC has tested income if the gross tested income exceeds deductions properly allocable to it under rules similar to those set forth in section 954(b)(5). See section 951A(c)(2)(A). The CFC has a tested loss if the properly allocable deductions exceed the gross tested income, or if it does not have any gross tested income but has deductions that would be properly allocable to gross tested income. See section 951A(c)(2)(B)(i) and §1.951A-2(b)(1). Therefore, a CFC's section 481(a) adjustment will adjust its tested income or tested loss unless the adjustment constitutes one of the excluded items of gross income specified in section 951A(c)(2)(A)(i) or a deduction properly allocable to such an item of gross income. Furthermore, a section 481(a) adjustment of a CFC that relates to an

item of income or expense arising before the effective date of section 951A and does not relate to subpart F income generally prevents the duplication or omission of an item that affected the CFC's E&P relevant for purposes of the transition tax under section 965, which generally no longer applies. Therefore, excluding such a section 481(a) adjustment from the determination of a CFC's tested income or tested loss could, in the case of a positive section 481(a) adjustment, permit income to escape U.S. taxation because it would not be subject to tax under subpart F but could generate E&P that would obtain the benefit of tax-free repatriation by reason of section 245A. Similarly, excluding a positive section 481(a) adjustment that relates to foreign base company oil related income from determining a CFC's tested income is inappropriate because the income attributable to the adjustment would not be subject to tax under subpart F due to the repeal of section 954(g) but could generate E&P potentially eligible for tax-free repatriation by reason of section 245A, thereby escaping U.S. taxation. Furthermore, excluding negative section 481(a) adjustments that are attributable to amounts arising in years in which section 965 and repealed section 954(g) applied from the computation of a CFC's tested income or tested loss could result in double counting of income.

(6) Section 4 of this revenue procedure retains the approach set forth in section 7.07 of Rev. Proc. 2015-13 of assigning source, character, separate limitation classification, and treatment to each component of a section 481(a) adjustment. This component-by-component approach ensures that, for example, a CFC's net positive section 481(a) adjustment that is composed of a positive component that prevents the duplication of an item of expense properly allocable to gross tested income and a positive component that prevents the duplication of an item of expense properly

allocable to gross foreign base company sales income is treated as such and allocated to the appropriate separate limitation categories. An example in section 4 of this revenue procedure illustrates the application of this approach and the new terms and conditions discussed in sections 2.03(4) and 2.03(5) of this revenue procedure.

.04 Audit protection exceptions.

(1) Section 8.01 of Rev. Proc. 2015-13 provides that, with certain exceptions, a taxpayer generally will receive audit protection with respect to an item that is subject to an accounting method change when it timely files a Form 3115 under the procedures of Rev. Proc. 2015-13. For an accounting method change made on behalf of a CFC or a 10/50 corporation, however, section 8.02(5) of Rev. Proc. 2015-13 denies audit protection for a taxable year before the requested year of change in which one or more of the CFC's or 10/50 corporation's domestic corporate shareholders computes an amount of foreign taxes deemed paid under sections 902 and 960 with respect to the CFC or 10/50 corporation that exceeds 150 percent of the average amount of foreign taxes deemed paid under sections 902 and 960 by the shareholder with respect to the CFC or 10/50 corporation in the shareholder's three prior taxable years ("150 percent threshold").

(2) The Treasury Department and the IRS are aware that questions have arisen whether the effect of various limitations on a domestic corporate shareholder's ability to claim a current tax benefit for foreign taxes deemed paid should affect the application of the 150 percent threshold. Under sections 960(a) and 960(d), foreign income taxes of a foreign corporation that are properly attributable to amounts included in a domestic corporate shareholder's income are deemed paid regardless of whether the shareholder

elects to deduct or credit foreign income taxes in the year of the inclusion, and regardless of the extent to which section 904(d) or other limitations limit the allowable amount of the foreign tax credit in the inclusion year or other years. The purpose of the 150 percent threshold is to deny audit protection for an improper method of accounting that affects the calculation of the foreign corporation's income for United States tax purposes and so may improperly inflate the amount of foreign taxes deemed paid with respect to an income inclusion from that corporation. Particularly in view of the fact that under sections 901(a) and 904(c) taxpayers are allowed ten years to elect to credit foreign income taxes, and to carry excess foreign tax credits with respect to subpart F income to other taxable years, the 150 percent threshold is appropriately applied on the basis of the amount of foreign taxes deemed paid and not on the allowable amount of the associated foreign tax credit. For the avoidance of doubt, section 5 of this revenue procedure modifies section 8.02(5) of Rev. Proc. 2015-13 to clarify that the 150 percent threshold is computed with respect to the amount of the foreign corporation's foreign taxes deemed paid, regardless of the extent to which a foreign tax credit is allowed.

SECTION 3. AUTOMATIC METHOD CHANGE

.01 Section 6.01(1)(c) of Rev. Proc. 2019-43, as modified by Rev. Proc. 2020-25 and Rev. Proc. 2020-50, is modified by:

- (1) At the end of section 6.01(1)(c)(xviii), deleting "or";
- (2) At the end of section 6.01(1)(c)(xix), deleting the period and adding "; or" in its place;
- (3) Adding new section 6.01(1)(c)(xx) to read as follows:

(xx) the change specified in section 6.22 of this revenue procedure.

However, an original Form 3115 for such change in method of accounting may be filed under this section 6.01 instead of section 6.22 of this revenue procedure if the duplicate Form 3115 was filed under this section 6.01 before May 11, 2021.

.02 Section 6 of Rev. Proc. 2019-43, as modified by Rev. Proc. 2020-25 and Rev. Proc. 2020-50, is modified to add new section 6.22 to read as follows:

.22 Depreciation of tangible property under section 168(g) by controlled foreign corporations.

(1) Description of change. This change is applicable to a controlled foreign corporation (as defined in section 957(a)) (“CFC”) that seeks to change its method of accounting for depreciation for an item of property that is described in section 168(g)(1)(A) (except for property excluded from the application of section 168 as a result of section 168(f)) and owned by the CFC at the beginning of the year of change to the permissible depreciation method, convention, and recovery period prescribed under the alternative depreciation system (“ADS”) in section 168(g) for such property in determining the CFC’s gross and taxable income under §1.952-2 as well as its earnings and profits (“E&P”) under sections 964 and 986(b) and the regulations thereunder. This change applies regardless of whether the method of accounting for depreciation that the CFC wants to change pursuant to this section 6.22 is impermissible or permissible under the Internal Revenue Code and the regulations thereunder.

(2) CFC has not adopted a method of accounting for the item of property. If a CFC placed in service an item of property described in section 6.22(1) of this revenue procedure in the taxable year immediately preceding the year of change (“1-year

property”), the CFC may change its method of determining depreciation for the 1-year property to ADS if the designated shareholder files a Form 3115 for this change, provided the section 481(a) adjustment attributable to the 1-year property is included on the Form 3115. Alternatively, the CFC may change its impermissible method of determining depreciation for the 1-year property to ADS if each U.S. shareholder of the CFC (or the agent described in §1.1502-77(a), if applicable) files an amended federal income tax return for the taxable year in which or with which the property’s placed-in-service year ends prior to the date the shareholder files its federal income tax return for the taxable year in which or with which the CFC’s taxable year succeeding the placed-in-service year ends.

(3) Applicability. This change is effective for a Form 3115 filed on or after May 11, 2021 for a taxable year of a CFC ending before January 1, 2024.

(4) Limited period to convert a Form 3115 filed under the non-automatic change procedures in Rev. Proc. 2015-13.

(a) Eligibility. The designated shareholder may convert a Form 3115 that was properly filed on behalf of a CFC under the non-automatic change procedures in Rev. Proc. 2015-13 requesting the Commissioner’s consent for a change in method of accounting described in this section 6.22 if:

(i) the CFC is otherwise eligible to use the automatic change procedures in this section 6.22 and Rev. Proc. 2015-13 (to the extent the eligibility requirements in Rev. Proc. 2015-13 are not waived by this section 6.22), and

(ii) the Form 3115 was filed before May 11, 2021 and is pending with the national office on May 11, 2021.

(b) Notification procedures. The designated shareholder must notify the national office contact person for the Form 3115 (if contact person is unknown, fax the notification to 855-576-2341 or send the notification to the address specified in section 9.08(6) of Rev. Proc. 2021-1, 2021-1 I.R.B. 1 (or its successor)) of the CFC's intent to make the change in method of accounting under the automatic change procedures in this section 6.22 and Rev. Proc. 2015-13 before the later of (i) June 10, 2021, or (ii) the issuance of a letter ruling granting or denying consent for the change. The notification must indicate that the designated shareholder chooses on behalf of the CFC to convert the Form 3115 to the automatic change procedures in this section 6.22 and Rev. Proc. 2015-13. If the national office is timely and properly notified in accordance with the requirements in this paragraph, the national office will send a letter to the designated shareholder acknowledging its request and will return the user fee submitted with the Form 3115.

(c) Resubmission procedures. A designated shareholder converting a Form 3115 to the automatic change procedures in this section 6.22 and Rev. Proc. 2015-13 for a change in method of accounting described in this section 6.22 must resubmit a Form 3115 that conforms to the automatic change procedures, with a copy of the national office letter sent acknowledging the request to convert attached, by the earlier of (i) the 30th calendar day after the date of the national office's letter acknowledging the request to convert, or (ii) the date the designated shareholder is required to file the original Form 3115 under section 6.03(1)(a) of Rev. Proc. 2015-13. See section 6.22(7)(b) of this revenue procedure and section 6.03(3) of Rev. Proc. 2015-13 regarding required copies of Form 3115.

For purposes of the eligibility rules in section 5 of Rev. Proc. 2015-13, the duplicate copy of the timely resubmitted Form 3115 will be considered filed as of the date the designated shareholder originally filed the converted Form 3115 under the non-automatic change procedures in Rev. Proc. 2015-13. This paragraph (4) does not extend the date the designated shareholder must file the original (converted) Form 3115 under section 6.03(1)(a) of Rev. Proc. 2015-13.

(d) Agent treated as designated shareholder. For purposes of this section 6.22, in the case of a designated shareholder that is a member of a consolidated group, a reference to a designated shareholder refers to the agent described in §1.1502-77(a) with respect to the consolidated group of which the designated shareholder is a member.

(5) Section 481(a) adjustment. A section 481(a) adjustment is required with respect to a change made under this section 6.22 for any CFC.

(6) Certain eligibility rules inapplicable. The eligibility rules in section 5.01(1)(c), (d), (e), and (f) of Rev. Proc. 2015-13, 2015-5 I.R.B. 419, as clarified and modified by Rev. Proc. 2015-33, 2015-24 I.R.B. 1067, do not apply to this change.

(7) Manner of making change.

(a) Short Form 3115 in lieu of standard Form 3115. In accordance with §1.446-1(e)(3)(ii), the requirement in §1.446-1(e)(3)(i) to file a standard Form 3115 is waived and, pursuant to section 6.02(2) of Rev. Proc. 2015-13, a short Form 3115 is authorized with respect to any CFC making a change under this section 6.22. The short Form 3115 must include the following information:

(i) The identification section of page 1 (above Part I);

- (ii) The signature section at the bottom of page 1;
- (iii) Part I;
- (iv) Part II, all lines except lines 10, 13, 16, and 19;
- (v) Part IV; and
- (vi) Schedule E.

(b) Duplicate copy. In accordance with section 6.03(1)(a) of Rev. Proc.

2015-13, a signed copy of the original completed short Form 3115 must be filed with the IRS in Ogden, UT, at the applicable address set forth in section 9.06 of Rev. Proc.

2021-1, 2021-1 I.R.B. 1 (or its successor), no earlier than the first day of the requested year of change and no later than the date the designated shareholder files the original short Form 3115 with its federal income tax return for its taxable year in which or with which the CFC's requested year of change ends. In lieu of being mailed to Ogden, UT, the duplicate copy may be transmitted by fax in accordance with the temporary procedure at <http://www.irs.gov/newsroom/temporary-procedure-to-fax-automatic-consent-forms-3115-due-to-covid-19>, if applicable.

(8) Concurrent automatic changes. A designated shareholder making an accounting method change on behalf of a CFC under this section 6.22 with respect to more than one item of property for the same year of change may file a single short Form 3115 for the change with respect to all such items of property. Notwithstanding this rule, the filer must separately provide the section 481(a) adjustment required for the change with respect to each item of property. Therefore, the filer may not provide a single net section 481(a) adjustment for the change with respect to all of the items of

property on the short Form 3115. See section 6.03(1)(b) of Rev. Proc. 2015-13 for further information on and requirements for making concurrent changes.

(9) Designated automatic accounting method change number. The designated automatic accounting method change number for a change under this section 6.22 is “248.”

(10) Contact information. For further information regarding a change under this section, contact Natalie Punchak at (202) 317-6934 (not a toll-free call).

SECTION 4. TERMS AND CONDITIONS OF CHANGE FOR CERTAIN FOREIGN CORPORATIONS

Section 7.07 of Rev. Proc. 2015-13 is updated and revised to read as follows:

.07 Certain foreign corporations. If the change in method of accounting is on behalf of a controlled foreign corporation (as defined in section 957(a)) (“CFC”) or a noncontrolled 10-percent owned foreign corporation (as defined in section 904(d)(2)(E)) (“10/50 corporation”), the following additional terms and conditions apply:

(1) If the functional currency of the foreign corporation is not the U.S. dollar, the section 481(a) adjustment must be stated in the functional currency of the foreign corporation and not in U.S. dollars.

(2) Section 954(b)(3)(A) (de minimis rule) or section 954(b)(3)(B) (full inclusion rule) applies after the characterization of positive or negative section 481(a) adjustments described under this section 7.07(2). Thus, for example, the de minimis rule in section 954(b)(3)(A) may (if applicable) cause a positive section 481(a) adjustment to not be treated as gross foreign base company income or gross insurance income, and the full inclusion rule in section 954(b)(3)(B) may (if applicable) cause a

positive section 481(a) adjustment to not be treated as gross tested income. Subject to the preceding two sentences, for the taxable year in the section 481(a) adjustment period, a section 481(a) adjustment (or any component thereof) shall be taken into account as follows:

(a) A positive section 481(a) adjustment (or any positive component of a section 481(a) adjustment) necessary to prevent the duplication of amounts of an expense item must take the same source, separate limitation classification, character, and treatment for purposes of subpart F as the foreign corporation's gross income that was offset by the expense in the prior year or years. Notwithstanding the preceding sentence, to the extent the section 481(a) adjustment (or the component) of a CFC prevents the duplication of an expense item that is not properly allocable to an item of income described in section 951A(c)(2)(A)(i)(I) through (V), the section 481(a) adjustment (or the component) must be treated as gross tested income of the CFC (as defined in section 951A(c)(2)(A)(i) and §1.951A-2(c)(1)) and take the corresponding separate limitation classification.

(b) A positive section 481(a) adjustment (or any positive component of a section 481(a) adjustment) necessary to prevent the omission of amounts of an income item must take the same source, separate limitation classification, character, and treatment for purposes of subpart F as the foreign corporation's income would have had in the prior year or years. Notwithstanding the preceding sentence, to the extent the section 481(a) adjustment (or the component) of a CFC prevents the omission of an income item that would not be described in section 951A(c)(2)(A)(i)(I) through (V), the section 481(a) adjustment (or the component) must be treated as gross tested income

of the CFC (as defined in section 951A(c)(2)(A)(i) and §1.951A-2(c)(1)) and take the corresponding separate limitation classification.

(c) A negative section 481(a) adjustment (or any negative component of a section 481(a) adjustment) necessary to prevent the omission of amounts of an expense item is allocated to the class of gross income that has the same source, separate limitation classification, character, and treatment for purposes of subpart F as the foreign corporation's income that would have been offset by the expense in the prior year or years. Notwithstanding the preceding sentence, to the extent the section 481(a) adjustment (or the component) of a CFC prevents the omission of an expense item that would not be properly allocable to an item of income described in section 951A(c)(2)(A)(i)(I) through (V), the section 481(a) adjustment (or the component) must be treated as a deduction properly allocable to the CFC's gross tested income (as defined in section 951A(c)(2)(A)(ii) and §1.951A-2(c)(3)) and take the corresponding separate limitation classification.

(d) A negative section 481(a) adjustment (or any negative component of a section 481(a) adjustment) necessary to prevent the duplication of amounts of an income item offsets gross income that has the same source, separate limitation classification, character, and treatment for purposes of subpart F as the foreign corporation's income had in the prior year or years. Notwithstanding the preceding sentence, to the extent the section 481(a) adjustment (or the component) of a CFC prevents the duplication of an income item that is not described in section 951A(c)(2)(A)(i)(I) through (V), the section 481(a) adjustment (or the component) must be treated as a deduction properly allocable to the CFC's gross tested income (as

defined in section 951A(c)(2)(A)(ii) and §1.951A-2(c)(3)) and take the corresponding separate limitation classification.

(e) For purposes of separate classification limitation and treatment, to the extent a section 481(a) adjustment (or a component thereof) relates to a CFC's foreign base company oil related income (as defined in section 954(g) before its repeal by section 14211 of the Tax Cuts and Jobs Act, Pub. Law 115-97, 131 Stat. 2054, 2216 (2017)) in the CFC's taxable year beginning before January 1, 2018, the section 481(a) adjustment (or the component) must be taken into account as an adjustment in determining the CFC's tested income or tested loss (either as gross tested income within the meaning of section 951A(c)(2)(A)(i) and §1.951A-2(c)(1), if the section 481(a) adjustment (or the component) is positive, or as a deduction properly allocable to the CFC's gross tested income within the meaning of section 951A(c)(2)(A)(ii) and §1.951A-2(c)(3), if the section 481(a) adjustment or the component is negative).

(3) For each taxable year of the section 481(a) adjustment period beginning with the year of change, the appropriate amount of the section 481(a) adjustment must be taken into account in computing the foreign corporation's gross and taxable income under §1.952-2 as well as its E&P under sections 964 and 986(b) and the regulations thereunder, subject to the requirements in section 7.07(2) of this revenue procedure.

(4) The following example illustrates the application of sections 7.07(1), 7.07(2), and 7.07(3) of this revenue procedure where a change in a CFC's method of accounting results in a section 481(a) adjustment with multiple components.

Example. (i) Facts. CFC, a foreign corporation organized in Country X, is wholly owned by USP, a domestic corporation and the controlling domestic shareholder of CFC as described in §1.964-1(c)(5). USP and CFC use the calendar year as their

taxable year and are not under examination. CFC maintains a “u” functional currency. CFC purchases Product manufactured in Country Y for resale and owns a machine that packages only Product. The machine is placed in service by CFC on January 1, 2015. CFC sells Product to related persons located in Country Z, giving rise to gross foreign base company sales income. CFC also sells Product to unrelated persons, giving rise to gross tested income. Although CFC is required to depreciate the machine pursuant to the alternative depreciation system (“ADS”) of section 168(g), under its present method of accounting, CFC depreciates the machine pursuant to the general depreciation system of section 168(a). Assume all depreciation on the machine is capitalized under section 263A to Product. USP files a Form 3115 under the automatic change procedures in section 6.22 of the List of Automatic Changes and section 6 of this revenue procedure to change CFC’s method of accounting for depreciation for the machine to the depreciation method, convention, and recovery period prescribed under ADS in section 168(g), beginning with CFC’s taxable year ended December 31, 2021 (the year of change). The net positive section 481(a) adjustment for this change is 5,000u, and the section 481(a) adjustment period is four taxable years. The net positive section 481(a) adjustment is composed of two components: (1) a positive component of 2,000u that prevents the omission of CFC’s gross foreign base company sales income in the prior years, and (2) a positive component of 3,000u that prevents the omission of an income item in the prior years that would not be described in section 951A(c)(2)(A)(i)(I) through (V). Neither section 954(b)(3)(A) nor (B) applies for any taxable year in the section 481(a) adjustment period.

(ii) Analysis. Pursuant to section 7.07(2)(b) of this revenue procedure, the positive component of 2,000u is foreign source income from the sale of personal property, must be treated as CFC’s gross foreign base company sales income, and is required to be allocated to the income group for the foreign base company sales income within the general category. Under this same section, the positive component of 3,000u is foreign source income from the sale of personal property, must be treated as CFC’s gross tested income, and is required to be allocated to the tested income group within the general category. Pursuant to sections 7.03(1) and 7.07(3) of this revenue procedure, the CFC must take each component of the adjustment into account ratably over four taxable years, beginning with CFC’s 2021 taxable year, as follows: (1) with respect to the positive component of 2,000u, 500u in 2021, 500u in 2022, 500u in 2023, and 500u in 2024, and (2) with respect to the positive component of 3,000u, 750u in 2021, 750u in 2022, 750u in 2023, and 750u in 2024.

(5) The written statement required by §1.964-1(c)(3)(i) and (ii) must be filed by each controlling domestic shareholder (as defined in §1.964-1(c)(5), or, if applicable, the agent described in §1.1502-77(a) with respect to the consolidated group of which the

controlling domestic shareholder is a member) with its federal income tax return for its taxable year with or within which ends the foreign corporation's year of change.

(6) The shareholders of the foreign corporation must maintain records and accounts with respect to the foreign corporation for the year of change and for subsequent taxable years, in conformity with the requirements of sections 905(b) and 964(c). This condition is satisfied if the shareholders reconcile the results obtained under the method used in keeping the foreign corporation's books and records and the method used for federal income tax purposes and maintain sufficient records to support such reconciliation.

(7) If a foreign corporation loses its status as a CFC or 10/50 corporation, as applicable, at any time before the expiration of the section 481(a) adjustment period, then the foreign corporation must, subject to the requirements in section 7.07(2) of this revenue procedure, take into account the balance of the section 481(a) adjustment not previously taken into account in computing its gross and taxable income under §1.952-2 as well as its E&P under sections 964 and 986(b) and the regulations thereunder, on the final day on which it is a CFC or 10/50 corporation, as applicable.

(8) Each U.S. shareholder of a CFC (or the agent described in §1.1502-77(a), if applicable) must comply with its obligations to report changes in the ownership of the CFC on Form 5471, Information Return of U.S. Persons With Respect To Certain Foreign Corporations, during the section 481(a) adjustment period.

(9) In the case of any disposition of stock of the foreign corporation that is owned directly or indirectly by a United States person, if the disposition (a) represents ten percent or more of the total value of the stock of the foreign corporation, or (b) results in

the person no longer meeting the stock ownership requirements of section 6046(a)(2) with respect to the foreign corporation, then the foreign corporation must, subject to the requirements in section 7.07(2) of this revenue procedure, take into account before the disposition the remaining balance of the section 481(a) adjustment in computing its gross and taxable income under §1.952-2 as well as its E&P under sections 964 and 986(b) and the regulations thereunder. This condition also applies if the foreign corporation issues stock, or the United States person's ownership is otherwise diluted, so that either of the situations described in the preceding sentence applies to the United States person. This condition does not apply to any change in ownership of the foreign corporation if the stock disposed of continues to be owned, directly or indirectly, by the shareholder or a member of the U.S. consolidated group of which the shareholder is a member.

SECTION 5. AUDIT PROTECTION FOR TAXABLE YEARS OF CERTAIN FOREIGN CORPORATIONS BEFORE THE YEAR OF CHANGE

Section 8.02(5) of Rev. Proc. 2015-13 is modified to read as follows:

(5) CFC or 10/50 corporation. In the case of a change in method of accounting made on behalf of a CFC or 10/50 corporation, the IRS may change the method of accounting for the same item that is the subject of a Form 3115 filed under this revenue procedure for taxable years prior to the requested year of change in which any of the CFC's or 10/50 corporation's domestic corporate shareholders computed an amount of foreign taxes deemed paid under sections 902 and 960 with respect to the CFC or 10/50 corporation that exceeds 150 percent of the average amount of foreign taxes deemed paid under sections 902 and 960 by the domestic corporate shareholder with

respect to the CFC or 10/50 corporation in the shareholder's three prior taxable years. This determination is made without regard to the amount of the domestic corporate shareholder's allowable foreign tax credit in the taxable year the foreign taxes are deemed paid or in any other taxable year.

SECTION 6. EFFECTIVE DATES

.01 Section 3 of this revenue procedure is effective for a Form 3115 filed on or after May 11, 2021 for a taxable year of a CFC ending before January 1, 2024. See section 3 of this revenue procedure for procedures to convert certain Forms 3115 filed before May 11, 2021 that are pending with the national office on May 11, 2021.

.02 Sections 4 and 5 of this revenue procedure are effective for a Form 3115 filed on or after May 11, 2021.

SECTION 7. EFFECT ON OTHER DOCUMENTS

.01 Section 6 of Rev. Proc. 2019-43 is modified to include the modifications described in section 3.01 of this revenue procedure and the accounting method change set forth in section 3.02 of this revenue procedure.

.02 Section 7.07 of Rev. Proc. 2015-13 is updated and revised as provided in section 4 of this revenue procedure.

.03 Section 8.02(5) of Rev. Proc. 2015-13 is modified as provided in section 5 of this revenue procedure.

SECTION 8. DRAFTING INFORMATION

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