INTERNAL REVENUE
BULLETIN

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HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

ADMINISTRATIVE

Rev. Proc. 2019-40, page 982.
The revenue procedure provides relief to taxpayers affected by the repeal of section 958(b)(4) by the Tax Cuts and Jobs Act.

INCOME TAX

REG-104223-18, page 989.
This document contains proposed regulations relating to the modification of section 958(b) of the Internal Revenue Code by the Tax Cuts and Jobs Act, which was enacted on December 22, 2017. The proposed regulations affect United States persons that have ownership interests in or that make or receive payments to or from certain foreign corporations.

Finding Lists begin on page ii.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

Part III

26 CFR § 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also: Part 1, §§ 951, 951A, 952, 957, 964, 965, 6038, 6662, 6664)

Rev. Proc. 2019-40

SECTION 1. PURPOSE

This revenue procedure generally provides guidance related to the repeal of section 958(b)(4) of the Internal Revenue Code ("Code") to certain United States persons within the meaning of section 7701(a)(30) ("U.S. persons") that own stock in certain foreign corporations. Section 2 of this revenue procedure provides background on section 958. Section 3 of this revenue procedure provides definitions of terms used in this revenue procedure. Section 4 of this revenue procedure provides a safe harbor for determining whether a foreign corporation is a controlled foreign corporation within the meaning of section 957 ("CFC"). Section 5 of this revenue procedure provides a safe harbor for determining certain items, including taxable income and earnings and profits ("E&P"), of a CFC based on alternative information (as defined in section 3.01 of this revenue procedure). Section 6 of this revenue procedure provides a safe harbor for determining certain items of a specified foreign corporation within the meaning of section 965(e) and §1.965-1(f)(45) ("SFC") based on alternative information. Section 7 of this revenue procedure addresses penalties under sections 6038 and 6662. Section 8 of this revenue procedure describes modifications to be made with respect to filing requirements for Form 5471, *Information Return of U.S. Persons with Respect to Certain Foreign Corporations*. Section 9 of this revenue procedure provides examples illustrating rules described in this revenue procedure. Section 10 of this revenue procedure provides applicability dates. Section 11 of this revenue procedure provides drafting information. The Department of the Treasury ("Treasury Department") and the Internal Revenue Service ("IRS") expect to issue other guidance related to certain other consequences of the repeal of section 958(b)(4) separately.

SECTION 2. BACKGROUND

Section 958 provides rules for determining direct, indirect, and constructive stock ownership. Under section 958(a)(1), stock is considered owned by a person if it is owned directly or is owned indirectly through certain entities under section 958(a)(2). Under section 958(b), section 318 (relating to constructive ownership of stock) applies, with certain modifications, to the extent that the effect is to treat any U.S. person as a United States shareholder within the meaning of section 951(b) ("U.S. shareholder") of a foreign corporation, to treat a person as a related person within the meaning of section 954(d)(3), to treat the stock of a domestic corporation as owned by a U.S. shareholder of a CFC for purposes of section 956(c)(2), or to treat a foreign corporation as a CFC.

As in effect before repeal, section 958(b)(4) provided that subparagraphs (A), (B), and (C) of section 318(a)(3) (providing for downward attribution) were not to be applied so as to consider a U.S. person as owning stock owned by a person who is not a U.S. person ("foreign person"). Effective for the last taxable year of foreign corporations beginning before January 1, 2018, and each subsequent year of the foreign corporations, and for the taxable years of U.S. shareholders in which or with which such taxable years of the foreign corporations end, section 958(b)(4) was repealed by section 14213 of the Tax Cuts and Jobs Act, Pub. L. 115-97 (2017). As a result of this repeal, stock of a foreign corporation owned by a foreign person can be attributed to a U.S. person under section 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, therefore, 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.

The Treasury Department and the IRS are aware that, in certain circumstances, taxpayers are required to include in gross income amounts under sections 951 ("subpart F inclusion amounts") and 951A ("GILTI inclusion amounts") attributable to, and report amounts with respect to, foreign corporations that are CFCs solely because of the repeal of section 958(b)(4), even though those taxpayers may have limited ability to determine whether such foreign corporations are CFCs and to obtain the information necessary to accurately determine these amounts.

SECTION 3. DEFINITIONS

For purposes of this revenue procedure, the following terms have the following meanings:

.01 Alternative information

(a) In general

The term "alternative information" means, with respect to a foreign corporation, information described in paragraph (i), (ii), (iii), (iv), (v), (vi), (vii), or (viii) of this section 3.01(a), as applicable, subject to the adjustments described in section 3.01(b) of this revenue procedure. Information described in a paragraph qualifies as alternative information only if information described in any preceding paragraph is not readily available. For example, information described in paragraph (iii) of this section 3.01(a) qualifies as alternative information only if information described in paragraph (i) or (ii) of this section 3.01(a) is not readily available.

(i) Audited separate-entity financial statements of the foreign corporation that are prepared in accordance with U.S. generally accepted accounting principles ("U.S. GAAP").

(ii) Audited separate-entity financial statements of the foreign corporation that are prepared on the basis of international financial reporting standards ("IFRS").

(iii) Audited separate-entity financial statements of the foreign corporation that are prepared on the basis of the generally accepted accounting principles of the jurisdiction in which the foreign corporation is organized ("local-country GAAP").

(iv) Unaudited separate-entity financial statements of the foreign corporation

that are prepared in accordance with U.S. GAAP.

(v) Unaudited separate-entity financial statements of the foreign corporation that are prepared on the basis of IFRS.

(vi) Unaudited separate-entity financial statements of the foreign corporation that are prepared on the basis of local-country GAAP.

(vii) Separate-entity records used by the foreign corporation for tax reporting.

(viii) Separate-entity records used by the foreign corporation for internal management controls or regulatory or other similar purposes.

(b) Adjustments when the basis of information changes from a prior taxable year

If an amount has been determined by a U.S. shareholder on the basis of information described in a paragraph in section 3.01(a) with respect to a foreign corporation for a taxable year of the foreign corporation, and another amount is subsequently determined by the U.S. shareholder on the basis of information described in a different paragraph in section 3.01(a) or on the basis of information satisfying the requirements of §1.952-2(a), (b), and (c)(2) and section 964 and the regulations thereunder with respect to a different taxable year of the foreign corporation, then as a condition of the IRS accepting the use of alternative information under this revenue procedure, the U.S. shareholder will use reasonable efforts to make any adjustments necessary in the subsequent taxable year to ensure that the change in type of information does not cause any material items to be duplicated or not included in any taxable year of the foreign corporation.

02 Constructive U.S. shareholder

The term "constructive U.S. shareholder" means, 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.

.03 Foreign-controlled CFC

The term "foreign-controlled CFC" means a foreign corporation that is a CFC but that would not be a CFC, if the determination were made without applying subparagraphs (A), (B), and (C) of section 318(a)(3) so as to consider a U.S. person as owning stock which is owned by a foreign person.

.04 Readily a*vailable*

The term "readily available" means, with respect to a person, information for a foreign corporation that, as of the due date (taking into account extensions, if any, or any additional time that would have been granted if the person had made an extension request) of the person's return:

(a) Is publicly available;

(b) In the case of a direct or indirect investment in the foreign corporation that is completed on or before October 1, 2019, or subject to a binding contract as of October 1, 2019, or an acquisition of stock of the foreign corporation from a person that is not the foreign corporation or a related person with respect to the foreign corporation, the person has the legal or contractual right to obtain and is able to obtain using reasonable efforts; or

(c) In the case of a direct or indirect investment in, or acquisition of stock of, the foreign corporation that is not described in paragraph (b) of this section 3.04, the foreign corporation is not prohibited from providing to the person under the laws of the jurisdiction(s) to which the foreign corporation is subject and the person is able to obtain using reasonable efforts. For purposes of this paragraph (c), reasonable efforts include a good faith attempt to obtain the right to receive relevant information as part of the acquisition or investment agreement(s).

.05 Related constructive U.S. shareholder

The term "related constructive U.S. shareholder" means, with respect to a foreign corporation, a constructive U.S. shareholder that is a related person with respect to the foreign corporation.

.06 Related person

The term "related person" means, 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.

.07 Related section 958(a) U.S. shareholder

The term "related section 958(a) U.S. shareholder" means, 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.

.08 Section 957 ownership requirements

The term "section 957 ownership requirements" means, with respect to a foreign corporation and any given day of a taxable year of the foreign corporation, stock ownership described in section 957 that would cause the foreign corporation to be a CFC on such day.

.09 Section 958(a) U.S. shareholder

The term "section 958(a) U.S. shareholder" means, with respect to a foreign corporation, a U.S. shareholder with respect to the foreign corporation that owns (within the meaning of section 958(a)) stock of the foreign corporation.

.10 Separate-entity financial statement and *separate-entity records*

The terms "separate-entity financial statements" and "separate-entity records" mean, with respect to a foreign corporation, financial statements or records, as applicable, reflecting the balance sheet or operations solely of the foreign corporation. Notwithstanding the prior sentence, financial statements or records of a foreign corporation qualify as separate-entity financial statements or separate-entity records, as applicable, if:

(a) In cases in which a foreign corporation owns an equity interest in an entity that is a partnership or any other entity (whether domestic or foreign) other than a corporation to the extent that the income or deductions of the entity are included in the income of one or more direct or indirect owners or beneficiaries of the entity

(such an entity, a "pass-through entity"), including through other pass-through entities, the information from the foreign corporation's financial statements or records is adjusted to take into account the foreign corporation's proportionate share of the balance sheet and operations of the pass-through entity (based on the separate-entity financial statements or separate-entity records of the entity, determined as if such entity were a foreign corporation) to the extent these items are not already reflected in the foreign corporation's financial statements or records, as applicable; and

(b) In cases in which a foreign corporation directly or indirectly owns an interest in an entity that is not a pass-through entity whose items are included in the information on the foreign corporation's financial statements or records (such as an equity interest in a reverse hybrid entity (as defined in §1.909-2(b)(1)(iv))), the information from the foreign corporation's financial statements or records is adjusted so that the information solely reflects the balance sheet and operations of the foreign corporation, subject to paragraph (a) of this section 3.10.

.11 Unrelated constructive U.S. shareholder

The term "unrelated constructive U.S. shareholder" means, 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.

.12 Unrelated section 958(a) U.S. shareholder

The term "unrelated section 958(a) U.S. shareholder" means, with respect to a foreign corporation, 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.

.13 U.S.-controlled CFC

The term "U.S.-controlled CFC" means a foreign corporation that is a CFC other than a foreign-controlled CFC.

SECTION 4. SAFE HARBOR FOR DETERMINING CFC STATUS

.01 Background

In certain circumstances, as a result of the repeal of section 958(b)(4), a U.S. shareholder with respect to a foreign corporation may not be able to determine that the foreign corporation is a CFC without knowledge regarding the investments of unrelated persons. In such a case, the Treasury Department and the IRS recognize that it may not be possible for the U.S. shareholder to obtain information necessary to determine whether the foreign corporation is a CFC.

.02 Safe harbor

(a) In general

For the reasons discussed in section 4.01 of this revenue procedure, the IRS will accept a U.S. person's determination that a foreign corporation does not meet the section 957 ownership requirements and, therefore, that the foreign corporation is not a CFC with respect to the U.S. person if the conditions described in section 4.02(b) of this revenue procedure are satisfied. For the avoidance of doubt, if a U.S. person directly or indirectly owns (within the meaning of section 958(a)) stock in a foreign corporation, and a foreign person that is not a related person with respect to the U.S. person also directly or indirectly owns (within the meaning of section 958(a)) stock in the foreign corporation, the U.S. person's failure to inquire of the foreign person whether the foreign person owns directly or indirectly (determined under the principles of section 958(a)(2)) or constructively owns (determined under the principles of section 958(b)) stock of, or an interest in, a domestic entity will not preclude reliance on the safe harbor described in this section 4.02. The safe harbor set forth in section 4.02 does not apply to a foreign corporation that is a U.S.-controlled CFC.

(b) Conditions

(i) The U.S. person does not have actual knowledge, statements received, and/or reliable publicly available information sufficient for the U.S. person to determine that the section 957 ownership requirements are met. For purposes of applying this condition, actual knowledge, statements received, and/or reliable publicly available information as of a given date shall be treated as true for all subsequent dates, unless subsequent information rebuts the original information.

(ii) If the U.S. person directly owns stock of, or an interest in, a foreign entity ("top-tier entity"), the U.S. person inquires of the top-tier entity whether it meets the section 957 ownership requirements, whether, how, and to what extent such top-tier entity directly or indirectly owns (within the meaning of section 958(a)) stock of one or more foreign corporations, and whether, how, and to what extent such top-tier entity owns directly or indirectly (determined under the principles of section 958(a)(2)) stock of, or an interest in, one or more domestic entities.

SECTION 5. GENERAL SAFE HARBOR FOR USING ALTERNATIVE INFORMATION

.01 Background

In order to determine a subpart F inclusion amount or GILTI inclusion amount of a U.S. shareholder with respect to a CFC, the U.S. shareholder needs to determine the gross and taxable income, as well as the qualified business asset investment (within the meaning of section 951A(d)) and specified interest expense (as defined in §1.951A-1(c)(3)(iii)), of the CFC. In addition, in order to determine whether the E&P limitation in section 952(c)(1)(A) on subpart F income applies, the U.S. shareholder needs to determine the E&P of the CFC. Under §1.952-2(a) and (b), the gross and taxable income of a foreign corporation are generally determined by treating the foreign corporation as a domestic corporation and by applying the principles of sections 61 and 63 and the regulations thereunder. Under section 964 and the regulations thereunder, the E&P of a foreign corporation are determined according to rules substantially similar to those applicable to domestic corporations. Under §§1.952-2(c)(2) and 1.964-1(a)(1), the determinations of income and E&P of a foreign corporation are made by first making adjustments to the foreign corporation's books of account to conform with U.S. GAAP, and then making further ad-

justments to conform such statements to U.S. tax accounting standards.

However, the Treasury Department and the IRS recognize that certain U.S. shareholders may be unable to obtain information necessary for the U.S. shareholder to calculate a subpart F inclusion amount or GILTI inclusion amount in the case of a foreign corporation that is a foreign-controlled CFC or report amounts on Form 5471 consistent with the requirements in §1.952-2 and section 964 and the regulations thereunder. Accordingly, the Treasury Department and the IRS believe that it is reasonable for taxpayers to choose to use alternative information for determining a subpart F inclusion amount and GILTI inclusion amount or related recordkeeping or reporting on a Form 5471 with respect to a foreign-controlled CFC in the circumstances described in this section 5. The IRS will accept the use of alternative information by a taxpayer in the circumstances described in section 5.02 of this revenue procedure. However, nothing in this revenue procedure affects the application of the requirements for determining the foreign income taxes paid or accrued by a foreign-controlled CFC for purposes of applying section 960 (relating to deemed paid foreign income taxes). Accordingly, a taxpayer that uses alternative information must determine if amounts paid or accrued are "foreign income taxes," as defined under §1.960-1(b)(5) and satisfy the evidentiary and other requirements of §1.905-2.

.02 Safe harbor

In the case of a foreign-controlled CFC with respect to which there is no related section 958(a) U.S. shareholder, if information satisfying the requirements of §1.952-2(a), (b), and (c)(2) and section 964 and the regulations thereunder is not readily available to an unrelated section 958(a) U.S. shareholder with respect to the foreign-controlled CFC, a subpart F inclusion amount or a GILTI inclusion amount or an amount in a record required to be maintained under section 964(c), §1.964-3, or §1.964-4 may be determined by the unrelated section 958(a) U.S. shareholder on the basis of alternative information (without adjustments other than those described in sections 3.01(b) and 3.10 of this revenue procedure) with respect to the foreign-controlled CFC. However, the preceding sentence does not apply for purposes of determining section 965 amounts (as defined in section 6.01 of this revenue procedure). See section 6 of this revenue procedure for a safe harbor for determining section 965 amounts.

In the case of a foreign-controlled CFC with respect to which there is no related section 958(a) U.S. shareholder, the Treasury Department and the IRS intend to revise the instructions for Form 5471 to provide that if information satisfying the requirements of §1.952-2(a), (b), and (c)(2) and section 964 and the regulations thereunder is not readily available to an unrelated section 958(a) U.S. shareholder or an unrelated constructive U.S. shareholder with respect to the foreign-controlled CFC, an amount reported on a Form 5471 may be determined by the unrelated section 958(a) U.S. shareholder or the unrelated constructive U.S. shareholder, as applicable, on the basis of alternative information (without adjustments other than those described in sections 3.01(b) and 3.10 of this revenue procedure) with respect to the foreign-controlled CFC.

SECTION 6. SAFE HARBOR FOR USING ALTERNATIVE INFORMATION FOR DETERMINING SECTION 965 AMOUNTS

.01 Background

The Treasury Department and the IRS recognize that certain U.S. shareholders may have been unable to obtain information necessary for the U.S. shareholder to calculate an amount included under section 951 by reason of section 965 or a deduction under section 965(c) (each a "section 965 amount") in the case of certain SFCs consistent with the requirements of section 964 and the regulations thereunder and thus may have used alternative information. Accordingly, the Treasury Department and the IRS believe that it is reasonable in such circumstances for such taxpayers to use an approach consistent with the approach outlined in section 5 of this revenue procedure for purposes of the determination of section 965 amounts. Thus, the IRS will accept the use of alternative information by a taxpayer in the circumstances described in section 6.02 of this revenue procedure. However, nothing in this revenue procedure affects the application of the requirements for determining the foreign income taxes paid or accrued by an SFC for purposes of applying sections 902 and 960 (as in effect on December 21, 2017) for taxable years of SFCs that begin before January 1, 2019. Accordingly, a taxpayer that uses alternative information must determine if amounts paid or accrued are "foreign income taxes," as provided under sections 902 and 960 (as in effect on December 21, 2017) and applicable regulations, and satisfy the evidentiary and other requirements of §1.905-2, and the extent to which a credit is disallowed for such amounts (see, for example, section 901(k)(1), (l), and (m)).

.02 Safe harbor

In the case of an SFC, other than either a foreign-controlled CFC with respect to which there is a related section 958(a) U.S. shareholder or a U.S.-controlled CFC, if information satisfying the requirements of §1.952-2(a), (b), and (c)(2) and section 964 and the regulations thereunder is not readily available to an unrelated section 958(a) U.S. shareholder with respect to the SFC, a section 965 amount may be determined by the section 958(a) U.S. shareholder on the basis of alternative information (without adjustments other than those described in sections 3.01(b) and 3.10 of this revenue procedure) with respect to the SFC, provided the section 958(a) U.S. shareholder reports such amount on a return both due and filed before October 1, 2019, or a return both due and filed after October 1, 2019.

In the case of an SFC, other than either a foreign-controlled CFC with respect to which there is a related section 958(a) U.S. shareholder or a U.S.-controlled CFC, the Treasury Department and the IRS intend to revise the instructions for Form 5471 to provide that if information satisfying the requirements of section 964 and the regulations thereunder is not readily available to an unrelated section 958(a) U.S. shareholder or an unrelated constructive U.S. shareholder with respect to the SFC, an amount reported on a Form 5471 may be determined by the unrelated section 958(a) U.S. shareholder or the unrelated constructive U.S. shareholder,

as applicable, on the basis of alternative information (without adjustments other than those described in sections 3.01(b) and 3.10 of this revenue procedure) with respect to the SFC.

SECTION 7. INAPPLICABILITY OF PENALTIES UNDER SECTIONS 6038 AND 6662

.01 Background

Under section 6038(b) and (c), penalties can be imposed if any person fails to timely furnish information required under section 6038(a)(1), which information is required to be reported on Form 5471. Under section 6038(c)(4)(B), for purposes of determining such penalties, the time for furnishing such information is treated as not earlier than the last day on which reasonable cause existed for failure to furnish such information. Under section 6662, penalties can be imposed on any portion of an underpayment (as defined in section 6664(a)) of tax required to be shown on a return that is attributable to one of the items listed in section 6662(b), which include negligence or disregard of rules or regulations and a substantial understatement of income tax. Under section 6664(c)(1), penalties will generally not be imposed under section 6662 with respect to any portion of an underpayment if it is shown that there was reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

.02 Inapplicability

Taking into account that the IRS will accept taxpayers' positions based on sections 4.02, 5.02, and 6.02 of this revenue procedure and the availability of reasonable cause relief, penalties under sections 6038 and 6662 will not be applied to the extent such penalties would be attributable to:

(a) A U.S. person determining that a foreign corporation does not meet the section 957 ownership requirements consistent with section 4.02 of this revenue procedure,

(b) A U.S. person determining a subpart F inclusion amount or GILTI inclusion amount, an amount in a record required to be maintained under section 964(c), §1.964-3, or §1.964-4, or an amount reported on a Form 5471 on the basis of alternative information consistent with section 5.02 of this revenue procedure, or

(c) A U.S. person determining a section 965 amount on the basis of alternative information consistent with section 6.02 of this revenue procedure.

SECTION 8. FORM 5471 FILING REQUIREMENTS

.01 Background

Pursuant to section 6038(a)(4), the IRS may require any U.S. person treated as a U.S. shareholder of a CFC to file an information return on Form 5471 with respect to its ownership in such CFC. In section 5.02 of Notice 2018-13, 2018-6 I.R.B. 341, the Treasury Department and the IRS announced that the IRS intended to amend the instructions for Form 5471 to provide an exception from Category 5 filing for a U.S. person that is a U.S. shareholder with respect to a CFC if no U.S. shareholder (including such U.S. person) owns, within the meaning of section 958(a), stock in such CFC, and the foreign corporation is a CFC solely because such U.S. person is considered to own the stock of the CFC owned by a foreign person under section 318(a)(3). Section 6 of Notice 2018-13 and section 7 of Notice 2018-26, 2018-16 I.R.B. 480, provided that taxpayers may rely on this exception with respect to the last taxable year of a foreign corporation beginning before January 1, 2018, and each subsequent year of the foreign corporation, and for the taxable years of a U.S. shareholder in which or with which these taxable years of the foreign corporation end. Accordingly, the instructions for Form 5471 (rev. December 2018) 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 section 958(a), stock in the foreign corporation, and the foreign corporation is a specified foreign corporation 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 section 318(a)(3).

However, the Treasury Department and the IRS understand that, even as modified, 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 intend to further limit the Form 5471 filing requirements, as described in sections 8.02, 8.03, and 8.04 of this revenue procedure.

.02 Unrelated section 958(a) U.S. shareholders

The IRS intends to revise the instructions for Form 5471 to provide that a Category 5 filer is 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 Schedule P, with respect to a foreign-controlled CFC if the Category 5 filer is an unrelated section 958(a) U.S. shareholder with respect to the foreign-controlled CFC. If, however, the Category 5 filer claims under section 960 to be deemed to have paid foreign income taxes of the foreign-controlled CFC for the Category 5 filer's taxable year, Schedule E and Schedule E-1 are also required to be filed. Therefore, a Category 5 filer that is an unrelated section 958(a) U.S. shareholder with respect to a foreign-controlled CFC will no longer have to file Part II of Schedule B, Schedule G, Schedule H, or Schedule J with respect to the foreign-controlled CFC.

.03 Related constructive U.S. shareholders

The IRS intends to revise the instructions for Form 5471 to provide that a Category 5 filer 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 a foreign-controlled CFC if the Category 5 filer is a related constructive U.S. shareholder with respect to the foreign-controlled CFC. Therefore, a Category 5 filer that is a related constructive U.S. shareholder with respect to a foreign-controlled CFC will no longer have to file Schedule E-1, Schedule H, Schedule I, Schedule J, or Schedule P with respect to the foreign-controlled CFC.

.04 Unrelated constructive U.S. shareholders

The IRS intends to revise the instructions for Form 5471 to provide that a Category 5 filer is not required to file a Form 5471 with respect to a foreign-controlled CFC if it is an unrelated constructive U.S. shareholder with respect to the foreign-controlled CFC.

SECTION 9. EXAMPLES

Example 1: Definition of unrelated section 958(a) U.S. shareholder and related constructive U.S. shareholder—(i) *Facts*. USI, a citizen of the United States, owns 10% of the single class of stock of FP, a foreign corporation. The remaining 90% of the stock of FP is owned by a foreign individual that is unrelated to USI. FP owns 100% of the single class of stock of FS1, a foreign corporation. FS1 owns 100% of the single class of stock of USS, a domestic corporation, and 100% of the single class of stock of FS2, a foreign corporation

(ii) *Analysis*—(a) *USS as related constructive U.S. shareholder*. Because FS1 owns 50% or more in value of the stock in USS, USS is considered to own, pursuant to section 958(b) and section 318(a)(3)(C), the 100% of the single class of stock of FS2 owned by FS1. Accordingly, USS is a U.S. shareholder with respect to FS2. Because USS does not own (within the meaning of section 958(a)) any stock of FS2, USS is not a section 958(a) U.S. shareholder with respect to FS2 within the meaning of section 3.09 of this revenue procedure. Accordingly, USS is a constructive U.S. shareholder with respect to FS2 within the meaning of section 3.02 of this revenue procedure. Because USS is a related person with respect to FS2 within the meaning of section 3.06 of this revenue procedure, USS is a related constructive U.S. shareholder with respect to FS2 within the meaning of section 3.05 of this revenue procedure.

(b) *FS2 as a foreign-controlled CFC*. Because more than 50% of the single class of stock of FS2 is considered owned under section 958(b) by USS, a U.S. shareholder with respect to FS2, FS2 is a CFC. If, however, section 318(a)(3)(C) did not apply to treat USS as owning the FS2 stock owned by FS1, FS2 would not be a CFC, because the only stock of FS2 owned (within the meaning of section 958(a)) or considered owned under section 958(b) by U.S. shareholders would be the 10% of the FS2 stock owned (within the meaning of section 958(a)) by USI. Accordingly, FS2 is a foreign-controlled CFC within the meaning of section 3.03 of this revenue procedure.

(c) *USI as an unrelated section 958(a) U.S. shareholder*. Because USI owns (within the meaning of section 958(a)) 10% of the stock of FS2, USI is a section 958(a) U.S. shareholder with respect to FS2 within the meaning of section 3.09 of this revenue procedure. Because USI is not a related person with respect to FS2 within the meaning of section 3.06 of this revenue procedure, USI is an unrelated section 958(a) U.S. shareholder with respect to FS2 within the meaning of section 3.12 of this revenue procedure.

Example 2: Definition of related section 958(a) U.S. shareholder—(i) *Facts*. The facts are the same as in *Example 1* of this section 9, except that USS owns 1% of the single class of stock of FS2 and FS1 owns 99%.

(ii) *Analysis*. The analysis is the same as in *Example 1* of this section 9, except that because USS owns (within the meaning of section 958(a)) 1% of the single class of stock of FS2, it is a section 958(a) U.S. shareholder with respect to FS2 within the meaning of section 3.09 of this revenue procedure and not a constructive U.S. shareholder within the meaning of section 3.02 of this revenue procedure. Because USS is a related person with respect to FS2 within the meaning of section 3.06 of this revenue procedure, USS is a related section 958(a) U.S. shareholder with respect to FS2 within the meaning of section 3.07 of this revenue procedure.

Example 3: Definition of unrelated constructive U.S. shareholder—(i) *Facts*. In 2020, USP, a domestic corporation, and FP, a foreign corporation, invest in FJV, a newly formed foreign corporation. USP receives 10% of the single class of stock of FJV, and FP receives the remaining 90% of the stock of FJV. FP is not a related person with respect to USP. FP has no U.S. shareholders. FP owns 5% of the interests in a domestic partnership, DPS, the remainder of the interests in which are held by persons unrelated to USP and FP.

(ii) *Analysis*—(a) *DPS as an unrelated constructive U.S. shareholder*. Because FP is a partner in DPS, DPS is considered to own, pursuant to section 958(b) and section 318(a)(3)(A), the 90% of the single class of stock of FJV owned by FP. Accordingly, DPS is a U.S. shareholder with respect to FJV. Because DPS does not own (within the meaning of section 958(a)) any stock of FJV, DPS is not a section 958(a) U.S. shareholder with respect to FJV within the meaning of section 3.09 of this revenue procedure. Accordingly, DPS is a constructive U.S. shareholder with respect to FJV within the meaning of section 3.02 of this revenue procedure. Because DPS is not a related person with respect to FJV within the meaning of section 3.06 of this revenue procedure, relying on §1.954-1(f)(2)(iv), as proposed to be revised at 84 FR 22751, DPS is an unrelated constructive U.S. shareholder with respect to FJV within the meaning of section 3.11 of this revenue procedure.

(b) *FJV as a foreign-controlled CFC*. Because more than 50% of the single class of stock of FJV is considered owned under section 958(b) by DPS, a U.S. shareholder with respect to FJV, FJV is a CFC. If, however, section 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 (within the meaning of section 958(a)) or considered owned under section 958(b) by U.S. shareholders would be the 10% of the FJV stock owned by USP. Accordingly, FJV is a foreign-controlled CFC within the meaning of section 3.03 of this revenue procedure.

(c) *USP as an unrelated section 958(a) U.S. shareholder*. Because USP owns (within the meaning of section 958(a)) 10% of the stock of FJV, USP is a section 958(a) U.S. shareholder with respect to FJV within the meaning of section 3.09 of this revenue procedure. Because USP is not a related person with respect to FJV within the meaning of section 3.06 of this revenue procedure, USP is an unrelated section 958(a) U.S. shareholder with respect to FJV within the meaning of section 3.12 of this revenue procedure.

Example 4: U.S. shareholder relies on section 4.02 to determine whether foreign corporation meets the section 957 ownership requirements—(i) *Facts*. The facts are the same as in *Example 3* of this section 9. USP inquired of FJV whether FJV met the section 957 ownership requirements, and FJV did not report that it met the section 957 ownership requirements. There is no reliable publicly available information that would indicate that FJV is a CFC. USP has not received a statement indicating that FJV is a CFC. Furthermore, after making the inquiry of FJV, USP does not know that FJV is a CFC.

(ii) *Analysis*. Pursuant to section 4.02 of this revenue procedure, because FJV is not a U.S.-controlled CFC and FP is not a related person with respect to USP within the meaning of section 3.06 of this revenue procedure, for purposes of determining if FJV meets the section 957 ownership requirements, USP may rely on the safe harbor described in section 4.02 of this revenue procedure without inquiring of FP whether FP owns directly or indirectly (determined under the principles of section 958(a)(2)) or constructively owns (determined under the principles of section 958(b)) stock of, or an interest in, a domestic entity. Because there is no reliable publicly available information that would indicate that FJV is a CFC, USP has not received a statement indicating that FJV is a CFC, and, after making an inquiry of FJV, USP does not know that FJV is a CFC, USP may treat FJV as not meeting the section 957 ownership requirements.

SECTION 10. APPLICABILITY DATES

Unless otherwise provided in future guidance, taxpayers may apply sections 4, 5, 6, and 7 of this revenue procedure with respect 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 United States shareholders in which or with which such taxable years of such foreign corporation end.

Taxpayers may apply the rules described in sections 5, 6, and 8 of this revenue procedure, before the instructions to the Form 5471 are modified, for the last taxable year of a foreign corporation beginning before January 1, 2018, and each subsequent taxable year of the foreign corporation, and with respect to the taxable years of U.S. shareholders in which or with which such taxable years of the foreign corporation end.

The Treasury Department and the IRS may update the safe harbor for alternative information or the definition of "readily available" in future guidance as needed to ensure adequate tax compliance. Any such updates would be prospective.

SECTION 11. DRAFTING INFORMATION

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

Part III

Notice of Proposed Rulemaking

Ownership Attribution Under Section 958 Including For Purposes of Determining Status as Controlled Foreign Corporation or United States Shareholder

REG-104223-18

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the modification of section 958(b) of the Internal Revenue Code ("Code") by the Tax Cuts and Jobs Act, which was enacted on December 22, 2017. The proposed regulations affect United States persons that have ownership interests in or that make or receive payments to or from certain foreign corporations.

DATES: Written or electronic comments and requests for a public hearing must be received by December 2, 2019.

ADDRESSES: Send electronic submissions via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-104223-18) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (the "Treasury Department") and the IRS will publish for public availability any comment received to its public docket, whether submitted electronically or in hard copy. Send hard copy submissions to: CC:PA:LPD:PR (REG-104223-18), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-104223-18), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jorge M. Oben, (202) 317-6934; concerning submissions of comments and requests for a public hearing, Regina Johnson at (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 958 provides rules for determining direct, indirect, and constructive stock ownership. Under section 958(a)(1), stock is considered owned by a person if it is owned directly or is owned indirectly through certain foreign entities under section 958(a)(2). Under section 958(b), section 318 applies, with certain modifications, to the extent that the effect is to treat any United States person as a United States shareholder within the meaning of section 951(b) ("U.S. shareholder") of a foreign corporation, to treat a person as a related person within the meaning of section 954(d)(3), to treat the stock of a domestic corporation as owned by a U.S. shareholder of a controlled foreign corporation ("CFC") for purposes of section 956(c)(2), or to treat a foreign corporation as a CFC under section 957.

Section 318 provides rules that attribute the ownership of stock to certain family members, between certain entities and their owners, and to holders of options to acquire stock. Section 318(a)(1) provides rules attributing stock ownership among members of a family. Section 318(a)(2) provides rules attributing stock ownership from partnerships, estates, trusts, and corporations to partners, beneficiaries, owners, and shareholders (so-called "upward attribution"). Section 318(a)(3) generally attributes stock owned by a person to a partnership, estate, trust, or corporation in which the person has an interest (so-called "downward attribution"). In particular, section 318(a)(3)(A) provides that stock owned, directly or indirectly, by or for a partner or a beneficiary of an estate is considered as owned by the partnership or estate. This provision applies to all partners and beneficiaries without regard to the size of their interest in the partnership or estate. Section 318(a)(3)(B) similarly provides, subject to certain exceptions, that stock owned, directly or indirectly, by or for a beneficiary of a trust (or a person who is considered an owner of a trust) is considered owned by the trust. Section 318(a)(3)(C) provides that stock in one corporation owned, directly or indirectly, by or for a shareholder in a second corporation is considered owned by the second corporation if 50 percent or more in value of the stock in the second corporation is owned, directly or indirectly, by such shareholder.

As in effect before repeal, section 958(b)(4) provided that subparagraphs (A), (B), and (C) of section 318(a)(3) (providing for downward attribution) were not to be applied so as to consider a United States person as owning stock owned by a person who is not a United States person (a "foreign person"). Effective for the last taxable year of foreign corporations beginning before January 1, 2018, and each subsequent year of the foreign corporations, and for the taxable years of U.S. shareholders in which or with which such taxable years of the foreign corporations end, section 958(b)(4) was repealed by section 14213 of the Tax Cuts and Jobs Act, Pub. L. 115-97 (2017) (the "Act"). As a result of this repeal, stock of a foreign corporation owned by a foreign person can be attributed to a United States person under section 318(a)(3) for purposes of determining whether a United States person is a U.S. shareholder of the foreign corporation and, therefore, whether the foreign corporation is a CFC. In other words, as a result of the repeal of section 958(b)(4), section 958(b) now provides for downward attribution from a foreign person to a United States person in circumstances in which section 958(b), before the Act, did not so provide. As a result, United States 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.

The legislative history to the Act indicates that the repeal of section 958(b)(4) was intended "to render ineffective certain transactions that are used to [sic] as a means of avoiding the subpart F provisions." *See* H.R. Rep. No. 115-466, at 633 (2017) (Conf. Rep.). It further provides:

> One such transaction involves effectuating "de-control" of a foreign subsidiary, by taking advantage of the section 958(b)(4) rule that effectively turns off the constructive stock ownership rules of 318(a)(3) when to do otherwise would result in a U.S. person being treated as owning stock owned by a foreign person. Such a transaction converts former CFCs to non-CFCs, despite continuous ownership by U.S. shareholders.
>
> *Id.* at 633-34.

Explanation of Provisions

I. Changes in Connection with Repeal of Section 958(b)(4)

This notice of proposed rulemaking proposes changes that are generally intended to ensure that the operation of certain rules is consistent with their application before the Act's repeal of section 958(b)(4), as further explained in this Part I. Other guidance that provides relief concerning the effect of the repeal of section 958(b)(4) on the application of subpart F more generally is provided separately.

A. *Section 267: Deduction for certain payments to foreign related persons*

Section 267(a)(2) provides a matching rule that governs the time at which an otherwise deductible amount owed to a related person may be deducted. Specifically, section 267(a)(2) provides that, in the case of certain interest and expenses paid by the taxpayer to a related person, if an amount is not includible in the payee's gross income until it is paid, the amount generally is not allowable as a deduction to the taxpayer until the amount is includible in the gross income of the payee.

Section 267(a)(3)(A) provides that the Secretary shall by regulations apply the matching principle in section 267(a)(2) in cases in which the payee is a foreign person. Section 1.267(a)-3(b) generally requires a taxpayer to use the cash method of accounting for deductions of amounts owed to a related foreign person. An exemption is provided in §1.267(a)-3(c)(2) for any amount, other than interest, that is income of a related foreign person with respect to which the related foreign person is exempt from U.S. tax on the amount owed pursuant to a treaty obligation of the United States.

Section 841(b) of Pub. L. 108-357 (2004) added section 267(a)(3)(B) to the Code, effective for payments accrued on or after October 22, 2004. Section 267(a)(3)(B)(i) provides that, notwithstanding section 267(a)(3)(A), in the case of any item payable to a CFC, a deduction is allowable to the payor with respect to the amount for any taxable year before the year in which paid only to the extent that an amount attributable to the item is includible during such prior taxable year in the gross income of a United States person who owns (within the meaning of section 958(a)) stock in such corporation. Section 267(a)(3)(B)(ii) grants the Secretary the authority to issue regulations exempting transactions from section 267(a)(3)(B)(i).

For amounts accrued on or after October 22, 2004, a taxpayer that owes an amount to a CFC cannot rely on the exemption in §1.267(a)-3(c)(2) to generally deduct the amount when accrued, and instead can deduct the amount prior to the year the amount is paid only to the extent that an amount attributable to the item is includible in gross income of a U.S. shareholder that owns (within the meaning of section 958(a)) stock in the CFC. After the repeal of section 958(b)(4), a CFC may not have any U.S. shareholders that own stock within the meaning of section 958(a) ("section 958(a) U.S. shareholders"). Because the repeal of section 958(b)(4) is effective for the last taxable year of foreign corporations beginning before January 1, 2018, and each subsequent taxable year of the foreign corporations, and for the taxable year of U.S. shareholders in which or with which such taxable year of the foreign corporations end, a taxpayer may have, in 2017, deducted an amount accrued in 2017 that, due to the repeal of section 958(b)(4), would no longer be allowable in 2017.

The purpose of the matching principle in section 267(a)(2) is to align the timing of a deduction with the inclusion of the item in income. If an amount is owed to a CFC that has no section 958(a) U.S. shareholders that would include an amount attributable to the item in income, and the CFC is exempt from U.S. tax on the amount owed due to a treaty, it is unnecessary to not allow a taxpayer to take the deduction when the amount is accrued. Accordingly, the proposed regulations provide that an amount (other than interest) that is income of a related foreign person with respect to which the related foreign person is exempt from U.S. taxation on the amount owed pursuant to a treaty obligation of the United States is exempt from the application of section 267(a)(3)(B)(i) if the related foreign person is a CFC that does not have any section 958(a) U.S. shareholders. Proposed §1.267(a)-3(c)(4).

These proposed regulations also amend §1.267(a)-3(c)(2) and remove the rules currently in §1.267(a)-3(c)(4), in order to reflect the changes to section 267 in Pub. L. 108-357. The Treasury Department and the IRS intend to update other provisions in §1.267(a)-3 to take into account the changes made to section 267(a)(3) by Pub. L. 108-357 in future guidance.

B. *Section 332: Liquidation of applicable holding company*

Section 332(a) provides a general rule that no gain or loss is recognized on the receipt by a corporation of property distributed in complete liquidation of another corporation. Section 332(d) was enacted to disallow the nonrecognition of gain to a foreign corporation through the complete liquidation of certain domestic holding companies, which could avoid the imposition of withholding tax that would otherwise apply to a section 301 distribution from these holding companies. *See* H.R. Rep. No. 108-755, at 761-62 (2004) (Conf. Rep.). Section 332(d)(1) provides an exception to sections 332(a) and 331 for certain distributions by domestic corporations to foreign corporations. Section 332(d)(1) results in the recognition by a foreign corporation of income from the liquidation of certain domestic hold-

ing companies by treating the liquidating distribution as a distribution under section 301. Specifically, section 332(d)(1) provides that section 301, and not section 332(a) nor 331, applies to a distribution to a foreign corporation in complete liquidation of an applicable holding company (as defined in section 332(d)(2)). Section 332(d)(3) provides that, notwithstanding section 332(d)(1), exchange treatment under section 331 applies if the distributee of a distribution in complete liquidation of an applicable holding company is a CFC. In such a case, the gain on the distribution could be foreign personal holding company income ("FPHCI") under section 954(c)(1)(B), and before the Act, CFCs generally had U.S. shareholders that would be subject to tax on their pro rata share of such gain under section 951(a).

Section 332(d)(4) grants the Secretary the authority to issue regulations as appropriate to prevent the abuse of section 332(d). The repeal of section 958(b)(4) broadened the application of section 332(d)(3) to foreign corporations that are CFCs because of downward attribution from a foreign person. This result could lead to inappropriate results because any gain recognized on an exchange of stock of an applicable holding company under section 331 by a foreign corporation that is a CFC due to downward attribution from a foreign person could avoid U.S. tax if the CFC does not have U.S. shareholders that have current income inclusions under section 951(a). Therefore, in accordance with the regulatory authority provided in section 332(d)(4), the proposed regulations modify the definition of a CFC (so as to use the definition of a CFC in effect immediately before the repeal of section 958(b)(4)) for purposes of applying section 332(d)(3). *See* proposed §1.332-8(a). The Treasury Department and the IRS request comments on these proposed changes to the definition of a CFC for the purposes of applying section 332(d)(3).

C. *Section 367(a): Triggering events exception for other dispositions or events under §1.367(a)-8(k)(14)*

Section 367(a)(1) provides that if, in connection with an exchange described in section 332, 351, 354, 356, or 361, a United States person transfers property to a foreign corporation, the foreign corporation is not treated as a corporation for purposes of determining the extent to which gain is recognized on the transfer. Section 367(a)(1) does not apply, however, to certain transfers of stock or securities of a foreign corporation (including an indirect stock transfer) by a United States person ("U.S. transferor") if the U.S. transferor enters into a gain recognition agreement ("GRA") with respect to the transferred stock or securities. *See* §1.367(a)-3(b)(1). In general, a U.S. transferor subject to a GRA must recognize gain if a triggering event (as defined in §1.367(a)-8(j)) occurs during the term of a GRA. *See* §1.367(a)-8(j). Section 1.367(a)-8(k) provides several exceptions for certain dispositions that constitute nonrecognition transactions if, immediately after the disposition, the U.S. transferor meets certain requirements. In particular, §1.367(a)-8(k)(14) generally provides that a disposition or other event is not a triggering event if the disposition or other event qualifies as a nonrecognition transaction, and, immediately after the disposition or other event, the U.S. transferor retains a direct or indirect interest in the transferred stock or securities or, as applicable, in substantially all of the assets of the transferred corporation. The rule further provides that if a foreign corporation acquires the transferred stock or securities or, as applicable, substantially all the assets of the transferred corporation, the exception applies only if the U.S. transferor owns at least five percent (applying the attribution rules of section 318, as modified by section 958(b)) of the total voting power and the total value of the outstanding stock of such foreign corporation. This five-percent ownership condition is intended to limit the application of the general exception to transactions in which the U.S. transferor retains at least a minimal interest in the transferred stock or securities (or substantially all the assets of the transferred corporation). *See* TD 9446, 74 FR 6952, 6953 (February 11, 2009).

The exception described in the preceding paragraph was added when section 958(b)(4) did not allow for downward attribution from foreign persons. A U.S. transferor that would not have been eligible for the exception because it held a less than five percent interest in the transferred stock or securities (or substantially all the assets of the transferred corporation) could now be eligible for the exception if the U.S. transferor holds at least five percent due to downward attribution of stock owned by a foreign person. A U.S. transferor's constructive ownership interest should not include an interest that is treated as owned as a result of downward attribution from a foreign person as it would inappropriately treat the U.S. transferor as owning an interest it would not have owned under the rules in effect when §1.367(a)-8(k)(14) was added. Therefore, in accordance with the regulatory authority provided in section 367(a), the proposed regulations revise §1.367(a)-8(k)(14) to apply section 958(b) without regard to the repeal of section 958(b)(4). *See* proposed §1.367(a)-8(k)(14)(ii). The Treasury Department and the IRS request comments on these proposed revisions to §1.367(a)-8(k)(14).

D. *Section 672: CFC's ownership of a trust*

Section 672(f)(1) generally provides that the grantor trust rules in sections 671 through 679 apply only to the extent they result in income being currently taken into account (either directly or through one or more entities) by a citizen or resident of the United States or a domestic corporation. To the extent that a trust or a portion thereof is not taxed as a grantor trust, the trust and its beneficiaries are taxable in accordance with the rules of sections 641 through 669. In the case of a foreign nongrantor trust, accumulation distributions are not only taxable to U.S. beneficiaries, but also subject to the "throwback rules" of sections 665 through 668.

Section 672(f)(3)(A) provides special rules, however, for a trust that is treated as owned by a CFC. Except as otherwise provided by regulations, CFCs are treated as domestic corporations for purposes of section 672(f)(1). Section 672(f)(3)(A). Before the repeal of section 958(b)(4), the portion of a trust's income that was treated as owned by a CFC would generally have been taxable currently to the U.S. shareholders to the extent the trust's income constituted subpart F income of the CFC.

After the repeal of section 958(b)(4), however, a CFC may have no U.S. shareholders that would be subject to tax on their pro rata share of its subpart F in-

come under section 951(a). A CFC could be formed to facilitate tax-free accumulation of income in a trust for the benefit of United States persons and result in tax-free distributions from the trust to the U.S. beneficiaries. In such a case, none of the income or gain of the grantor trust would be taken into account by U.S. shareholders, despite constituting subpart F income, while distributions of income from the trust to its U.S. beneficiaries would not be subject to tax, and the throwback rules would be avoided entirely.

Therefore, the proposed regulations, in accordance with the regulatory authority provided in section 672(f)(3), provide that the only CFCs taken into account for purposes of section 672(f) are those that are CFCs without regard to downward attribution from foreign persons. *See* proposed §1.672(f)-2(a). A reference to foreign personal holding companies in §1.672(f)-2(a) is also deleted, consistent with the repeal of the foreign personal holding company regime by section 413(a) of the American Jobs Creation Act of 2004, Pub. L. 108-357. *Id*. The Treasury Department and the IRS request comments on these proposed revisions to §1.672(f)-2(a).

E. *Section 706: Taxable year of partnership*

Section 706 provides rules for determining the taxable year of a partnership and its partners. Section 1.706-1(b)(6)(i) provides that in determining the taxable year of a partnership under section 706(b) and the regulations thereunder, any interest held by a disregarded foreign partner is not taken into account. A foreign partner is a disregarded foreign partner unless the foreign partner is allocated any gross income of the partnership that was effectively connected (or treated as effectively connected) with the conduct of a trade or business within the United States ("effectively connected income") during the partnership's taxable year immediately preceding the current taxable year (or, if such partner was not a partner during the partnership's immediately preceding taxable year, the partnership reasonably believes that the partner will be allocated any such income during the current taxable year) and taxation of that income is not otherwise precluded under any U.S. income tax treaty. For purposes of these rules, §1.706-1(b)(6)(ii) defines a foreign partner as a partner that is not a United States person (as defined in section 7701(a)(30)), but provides that CFCs are not treated as foreign partners. When §1.706-1(b)(6)(ii) was added, CFCs were not treated as foreign partners for purposes of determining a partnership's taxable year under section 706 because the U.S. owners of such entities were subject to U.S. federal income taxation on a current basis with respect to certain income earned by these entities. *See* 66 FR 3920, 3921 (January 17, 2001). As a result of the repeal of section 958(b)(4), a foreign corporation that is a CFC solely by reason of downward attribution from a foreign person may now be taken into account for purposes of determining the taxable year of such partnership. This would include a foreign corporation that is a CFC even if the CFC does not have a U.S. shareholder who owns stock of the foreign corporation within the meaning of section 958(a) and is required to include amounts in income under section 951(a). Accordingly, the proposed regulations exclude from the definition of foreign partner only CFCs with respect to which a U.S. shareholder owns stock within the meaning of section 958(a) for purposes of determining a partnership taxable year. *See* proposed §1.706-1(b)(6)(ii). As in proposed §1.672(f)-2(a), discussed in Part I.D of this Explanation of Provisions, the reference to foreign personal holding companies is also deleted. *See id.* The Treasury Department and the IRS request comments on these proposed revisions to §1.706-1(b)(6)(ii).

F. *Section 863: Space and ocean income and international communications income of a CFC*

Section 863 and the regulations thereunder provide rules for determining the source of certain items of gross income, including gross income from space and ocean activities and international communications income. Section 863(d)(1) provides that, except as provided in regulations, any income derived from a space or ocean activity ("space and ocean income") by a United States person is sourced in the United States ("U.S. source income") and that any space and ocean income derived by a foreign person is sourced outside the United States ("foreign source income"). Regulations under section 863(d) include an exception from the statutory provision regarding space and ocean income derived by a foreign person if the foreign person is a CFC. Specifically, space and ocean income derived by a CFC is treated as U.S. source income, except to the extent that the income, based on all the facts and circumstances, is attributable to functions performed, resources employed, or risks assumed in a foreign country. *See* §1.863-8(b)(2)(ii).

In the case of any United States person, 50 percent of any international communications income (as defined in section 863(e)(2)) is treated as U.S. source income and 50 percent of such income is treated as foreign source income. Section 863(e)(1)(A). Subject to certain exceptions, including exceptions set forth in regulations, international communications income derived by a foreign person is treated as foreign source income. Section 863(e)(1)(B)(i). Regulations under section 863(e) provide that international communications income derived by a CFC is treated as one-half U.S. source income and one-half foreign source income. *See* §1.863-9(b)(2)(ii).

The status of the recipient of space and ocean income and international communications income as a CFC solely by reason of the repeal of section 958(b)(4) should not cause all or part of such income to be U.S. source income if it would not have been treated as such otherwise. Accordingly, in accordance with the regulatory authority provided in section 863(d)(1) and (e)(1)(B)(i), and consistent with the temporary relief announced in section 5.01 of Notice 2018-13, 2018-6 I.R.B. 341, these proposed regulations provide that whether a foreign corporation is a CFC for purposes of the rules under sections 863(d) and (e) treating space and ocean income and international communications income as U.S. source income in whole or in part is determined without regard to downward attribution from a foreign person. *See* proposed §§1.863-8(b)(2)(ii) and 1.863-9(b)(2)(ii).

G. *Section 904: Look-through rules and active rents and royalties exception to categorization as passive category income*

In general, section 904(a) limits the amount of foreign income taxes that a tax-

payer, including a U.S. shareholder, may claim as a credit against its U.S. income tax based on the taxpayer's foreign source income. Section 904(d) further limits the credit by category of foreign source income, with general category and passive category being two common categories of income. Passive category income includes passive income, which means income that would be FPHCI if the recipient were a CFC. This generally includes dividends, interest, rents, and royalties. *See* section 904(d)(2)(B)(i) and 954(c)(1)(A). However, if such amounts are received or accrued by a U.S. shareholder of a CFC from the CFC, the amounts are treated as passive category income only to the extent they are allocable to passive category income of the CFC (the "CFC look-through rule"). *See* section 904(d)(3). Application of the CFC look-through rule requires determining the category of income of the CFC to which the dividends, interest, rents, or royalties paid to the U.S. shareholder (or other related look-through entity) are allocable.

Rents and royalties received by a CFC are generally passive category income unless the income is derived in the active conduct of a trade or business (the "section 904 active rents and royalties exception"), taking into account activities of affiliated group members. *See* §1.904-4(b)(2)(iii). The section 904 active rents and royalties exception applies both for determining the category to which a U.S. shareholder's inclusion under section 951(a) attributable to the receipt of rents and royalties by a CFC is assigned under section 904(d)(3)(B), and for purposes of applying the CFC look-through rule to determine the category to which dividends, interest, rents, and royalties paid or accrued by the CFC are allocable under section 904(d)(3)(C) and (D).

Financial services income received by certain CFCs or a domestic corporation is treated as general category income (the "financial services income rule"). *See* section 904(d)(2)(C)(i). In determining whether income is financial services income for purposes of section 904, the activities of affiliated group members, including CFCs, are taken into account to determine whether such entities are financial services entities (the "financial services entity requirement"). *See* section 904(d)(2)(C)(ii) and §1.904-4(e)(3)(ii).

The formulation of the CFC look-through rule and the affiliated group rules in both the section 904 active rents and royalties exception and the financial services income rules was premised on the assumption that income of CFCs (including affiliated group members meeting the active conduct requirement or the financial services entity requirement) would be subject to U.S. tax under section 951(a) or on a distribution of earnings and profits generated by such income, and that foreign corporations to which the rules applied would be directly or indirectly controlled by United States persons able to obtain information concerning their activities, income, and expenses. *See* H.R. Rep. No. 99-841, Volume II, at 566 and 573-574 (1986) (Conf. Rep.); *see also* T.D. 8412, 57 FR 20639, 20640 (May 14, 1992); *id.* at 20641; and 66 FR 319, 321 (January 3, 2001). Treating foreign corporations as CFCs or United States persons as U.S. shareholders by reason of downward attribution from foreign persons for purposes of the CFC look-through rule and the affiliated group rules would be inconsistent with the intended scope of the rules. Before the repeal of section 958(b)(4), a U.S. shareholder of a foreign corporation in which U.S. shareholders held directly or indirectly at least 10 percent, but not more than 50 percent, of the voting stock or value, would be eligible to treat dividends, but not interest, rents, and royalties, as other than passive category income. *See* section 904(d)(4). Similarly, under the affiliated group rules, neither the active conduct requirement in the section 904 active rents and royalties exception nor the financial services entity requirement in the financial services income rule could be satisfied by a foreign corporation that would be a CFC only by reason of downward attribution from a foreign person.

Accordingly, in accordance with the regulatory authority provided in section 904(d)(7), the regulations under section 904 are revised to limit the application of the affiliated group rules in the section 904 active rents and royalties exception and the financial services income rule, as well as the CFC look-through rule, to foreign corporations that are CFCs without regard to downward attribution from foreign persons. Further, the CFC look-through rule, as proposed to be revised at 83 FR 63200 (December 7, 2018), is further revised to apply only to U.S. shareholders that are U.S. shareholders without regard to downward attribution from foreign persons. *See* proposed §1.904-5(a)(4)(i) and (vi) (providing definitions that apply for purposes of §§1.904-4 and 1.904-5, pursuant to §§1.904-4(a) and 1.904-5(a)(4) as proposed to be revised at 83 FR 63200 (December 7, 2018)). The Treasury Department and the IRS request comments on these proposed revisions to the regulations under section 904.

H. *Section 958: Rules for determining stock ownership*

To ensure that the regulations under section 958 are consistent with the amended statute, this notice of proposed rulemaking removes the rule in §1.958-2(d)(2) that corresponds to section 958(b)(4). It also revises *Example 4* in §1.958-2(g) to illustrate the application of the ownership attribution rules in section 958 in the absence of section 958(b)(4).

I. *Section 1297: PFIC asset test*

Section 1297(e) provides the rules used to measure a foreign corporation's assets for purposes of determining whether it meets the asset test in section 1297(a)(2) and is a passive foreign investment company ("PFIC"). If the foreign corporation is a CFC and is not a publicly traded corporation, when determining whether the average percentage of assets of the corporation that produce passive income is at least 50 percent, adjusted basis (rather than value) of the assets must be used. Section 1297(e)(2). Accordingly, shareholders of a foreign corporation that became a CFC as a result of the repeal of section 958(b)(4) will have to determine whether the average percentage of assets that produce passive income is at least 50 percent using adjusted basis.

The legislative history to section 1297(e) indicates that the adjusted basis requirement for CFCs exists because "measurement by adjusted basis is well established in the case of controlled foreign corporations' investments of earnings in U.S. property, and is highly appropriate to the task of measuring the earnings of

a controlled foreign corporation that are invested in excess passive assets." H.R. Rep. No. 103-111, at 692 (1993). However, the rule imposes a burden on taxpayers that own stock in foreign corporations that became CFCs solely by reason of the repeal of section 958(b)(4), which may not otherwise be required to account for the basis in assets under U.S. federal income tax rules. Section 1298(g) grants the Secretary the authority to issue regulations that are necessary and appropriate to carry out the purposes of sections 1291 through 1298. In accordance with this authority, the proposed regulations modify the definition of a CFC for purposes of section 1297(e) to disregard downward attribution from foreign persons. *See* proposed §1.1297-1(d)(1)(iii)(A).

J. *Section 6049: Chapter 61 reporting provisions*

Generally, under chapter 61 of subtitle F of the Code, a payor must report to the IRS (using the appropriate Form 1099) certain payments or transactions with respect to United States persons that are not exempt recipients. The regulations under chapter 61 generally provide that the scope of payments or transactions subject to reporting under chapter 61 depends, in part, on whether or not the payor is a U.S. payor (as defined in §1.6049-5(c)(5)), which generally includes United States persons and their foreign branches, as well as CFCs.

Foreign corporations that became CFCs solely as a result of the repeal of section 958(b)(4) could be subject to an increased burden from the reporting requirements under chapter 61 (and the backup withholding rules under section 3406). To mitigate the increased Form 1099 reporting by foreign corporations that may have no direct or indirect owners that are United States persons, in accordance with the regulatory authority provided in section 6049(a), proposed §1.6049-5(c)(5)(i)(C) provides that a U.S. payor includes only a CFC that is a CFC without regard to downward attribution from a foreign person.

II. Applicability Dates

These regulations are generally proposed to apply on or after October 1, 2019. *See* section 7805(b)(1)(B). For taxable years before taxable years covered by the regulations, a taxpayer may generally apply the rules set forth in the final regulations to the last taxable year of a foreign corporation beginning before January 1, 2018, and each subsequent taxable year of the foreign corporation, and to taxable years of U.S. shareholders in which or with which such taxable years of the foreign corporation end, provided that the taxpayer and United States persons that are related (within the meaning of section 267 or 707) to the taxpayer consistently apply the relevant rule with respect to all foreign corporations. *See* section 7805(b)(7). Moreover, although proposed §1.958-2 is proposed to apply to taxable years of foreign corporations ending on or after October 1, 2019, and taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end, the same result as the proposed revisions applies before such date due to the effective date of the repeal of section 958(b)(4).

A taxpayer may rely on the proposed regulations with respect to any period before the date that these regulations are published as final regulations in the **Federal Register**.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, notices, and other guidance cited in this document are published in the Internal Revenue Bulletin and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS website at http://www.irs.gov.

Special Analyses

I. *Regulatory Planning and Review – Economic Analysis*

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Treasury Department requests comment and any potential data regarding the expected impacts of this proposed regulation.

This regulation is subject to review under section 6(b) of Executive Order 12866 pursuant to the April 11, 2018, Memorandum of Agreement ("April 11, 2018 MOA") between the Treasury Department and the Office of Management and Budget ("OMB") regarding review of tax regulations. The Acting Administrator of the Office of Information and Regulatory Affairs ("OIRA"), OMB, has waived review of this proposed rule in accordance with section 6(a)(3)(A) of Executive Order 12866. OIRA will subsequently make a significance determination of the final rule under the terms of item 1 of the April 11, 2018 MOA between the Treasury Department and OMB regarding review of tax regulations.

A. *Background*

Section 14213 of the Act repealed section 958(b)(4), effective beginning with the last taxable year of a foreign corporation that begins before January 1, 2018 (and taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end). The repeal of section 958(b)(4) by the Act modified the constructive ownership rules that determine whether a foreign corporation is a CFC and whether a U.S. person is a U.S. shareholder of a CFC. Under section 318(a)(3), stock owned by a person is attributed downward to (that is, considered to be owned by) a partnership, estate, trust, or corporation in which the person owns an interest. Prior to repeal, section 958(b)(4) limited the application of section 318(a)(3) for purposes of determining whether a foreign corporation is a CFC and whether a U.S. person is a U.S. shareholder by providing that downward attribution under section 318(a)(3) was not applied so as to consider a U.S. person as owning the stock owned by a foreign person. After the repeal of section 958(b)(4), such stock owned by a foreign person can be attributed downward to a U.S. person, for example, to a

U.S. subsidiary of a foreign parent. As a result, additional foreign corporations are now CFCs, and U.S. persons are now U.S. shareholders of CFCs, even in cases where the foreign corporation has no or little U.S ownership.

B. *The need for proposed regulations*

The legislative history to the Act states that the repeal of section 958(b)(4) was intended "to render ineffective certain transactions that are used to [sic] as a means of avoiding the subpart F provisions." *See* H.R. 115-466, at 633 (2017). As a consequence of this repeal, many foreign entities that are part of multinational groups with U.S. subsidiaries are now considered CFCs even in cases where there is no avoidance of tax under subpart F.

The treatment of a foreign corporation as a CFC, or a U.S. person as a U.S. shareholder, has consequences outside of subpart F because many statutes and regulations outside of subpart F have rules that turn on the status of a foreign corporation as a CFC or the status of a U.S. person as a U.S. shareholder.

These proposed regulations propose changes that are generally intended to ensure that, in appropriate circumstances, the operation of certain rules is consistent with their application before the repeal of section 958(b)(4). This creates continuity and gives taxpayers tax certainty, which allows them to make economically efficient decisions. By restoring the pre-Act rule for certain provisions, the proposed regulations both alleviate certain burdens of CFC status resulting from the section 958(b)(4) repeal unrelated to the aforementioned intended purposes of the repeal and neutralize possible incentives to unfairly exploit the section 958(b)(4) repeal.

C. *Baseline*

The economic analysis that follows compares the proposed regulations to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of the proposed regulations. A no-action baseline reflects the current environment including the existing international tax regulations, prior to any amendment by the proposed regulations.

D. *Cost and benefits of the proposed regulations and potential alternatives*

As described in Part I.A of this Special Analyses, the repeal of section 958(b)(4) causes stock owned by a foreign parent to be attributed to its U.S. subsidiaries, which can cause a foreign subsidiary of a foreign parent to be designated as a CFC, even in instances where there is little or no U.S. ownership in the foreign multinational group. The Treasury Department and the IRS estimate the number of U.S. subsidiaries owned 50 percent or more by a foreign corporation to be roughly 75,000 based on 2016 Treasury tax files data. To the extent that these foreign corporations have foreign subsidiaries, they are potentially affected by the proposed regulations. Unfortunately, however, data do not exist regarding the number of such foreign subsidiaries. The costs and benefits of these proposed regulations are discussed further in this Part I.D.

1. Benefits

Restoring continuity with pre-repeal rules in appropriate cases is beneficial in two primary ways. First, it reinstates expected reporting burdens and tax costs for businesses that would otherwise experience unintended and unanticipated increases in these costs due to the unexpected switch to CFC designation described in Part I.A of this Special Analyses. Unanticipated increases in costs can be detrimental to normal business operations and can put affected groups at a disadvantage relative to competitors who did not experience such changes. Regulations designed to maintain continuity of normal business operations are appropriate and will promote a positive business environment relative to the no action baseline.

One of the provisions in these proposed regulations that alleviates burden is the provision under section 863 on income from space and ocean activities and international communications income. In this case (as well as in all other aspects of these proposed regulations), the proposed regulations prevent unintended disruption in business activity by determining CFC status as if section 958(b)(4) had not been repealed. In the absence of these proposed regulations, foreign-parented multinational groups in the space, ocean, and international communications industries that have U.S. subsidiaries could potentially have their foreign subsidiaries designated as CFCs. The designation of the foreign subsidiaries of the foreign-parented multinational groups as CFCs would result in all (in the case of space and ocean income) or half (in the case of international communications income) of the foreign subsidiary's space and ocean income or international communications income being treated as U.S. source income where the CFCs are controlled directly or indirectly by foreign persons. Comments received suggested that such treatment would render companies' business models untenable. Accordingly, the proposed regulations provide that for purposes of the treatment of space and ocean income and international communications income as U.S. source income, the determination of whether a foreign corporation is a CFC is made without regard to downward attribution from a foreign person. See Part I.F of the Explanation of Provisions for further explanation of this provision.

Another example of reduced burden under this rule relates to the timing of certain transactions. As explained in Part I.A of the Explanation of Provisions, section 267(a)(2) provides a rule for determining the time at which an otherwise deductible amount owed to a related person may be deducted. In general, if a payee is on the cash method of accounting, the payor is not allowed a deduction until the amount is actually paid, even if the payor uses the accrual method of accounting. The current regulations include an exemption that allows an accrual-based payor to deduct certain treaty-exempt amounts before they are actually paid to a related foreign person. However, this exemption is not allowed if the related foreign person is a CFC. Instead, with respect to an amount owed to a CFC, the payor may only take a deduction in an earlier year to the extent that an amount attributable to the item is includible during such prior taxable year in the gross income of a U.S. person who owns stock in the CFC. However, after the repeal of section 958(b)(4), a CFC may not have any U.S. shareholders that would have an income inclusion under subpart F. In this situation, the payor would be un-

able to deduct the amount until it is actually paid.

Because of the effective date of the repeal of section 958(b)(4), a foreign corporation that was not a CFC under prior law could now become a CFC beginning as early as January 1, 2017 (even though the Act was not enacted until December 22, 2017). Accordingly, a taxpayer may have deducted an amount accrued in 2017 that, due to the repeal of section 958(b)(4), would no longer be allowable in 2017. Furthermore, due to the reduction of the corporate tax rate in the Act, a deduction allowed on a company's 2017 tax return at the then statutory rate of 35 percent would be valued at 21 percent if the taxpayer were forced to move the deduction to 2018 or 2019. The repeal of section 958(b)(4) in this situation may result in an inadvertent deferral of certain deductions with permanent tax effect and correspondingly create unnecessary required adjustments to the income tax provisions in companies' financial accounting statements. The proposed guidance removes inconsistent annual treatment of deductions for certain treaty-exempt payments in the year the amounts are accrued when the amounts are owed to related foreign corporations that do not have any direct or indirect U.S. shareholders.

The second benefit of restoring pre-Act treatment is that doing so can neutralize unanticipated incentives for tax minimization resulting from the repeal. That is, CFC status can both increase burdens and offer benefits, but the unintended increase in CFC designations and the ease with which taxpayers can create a CFC could incentivize taxpayers to take advantage of potential benefits arising from CFC status. For example, Part I.B of the Explanation of Provisions describes a proposed revision that is intended to prevent taxpayers from using the special rule for CFCs in section 332(d)(3) to inappropriately avoid U.S. tax on a liquidating distribution. In addition, Part I.D of the Explanation of Provisions describes a proposed revision that is intended to prevent taxpayers from using a CFC that has no direct or indirect U.S. shareholders to take advantage of the special rule relating to CFCs that are grantors of a trust, facilitating tax-free distributions from the trust to U.S. beneficiaries despite no income inclusion by the shareholders of the CFC. Because these benefits were not intended for CFCs without direct or indirect U.S. shareholders, the anti-abuse aspects of these proposed regulations are designed to remove such incentives for taxpayers with those CFCs. Such regulations are beneficial because they promote an environment in which business operations are undertaken based on sound economic principles rather than for tax-motivated reasons.

2. Costs

The proposed regulations restore pre-section 958(b)(4) repeal CFC designation by determining CFC designation in limited situations as if section 958(b)(4) had not been repealed, essentially restoring the pre-repeal "status quo" in these situations. The proposed regulations do not impose any new systems, methods, structures, reporting, or other potentially burdensome rules that could increase compliance costs. In fact, as described above, they reduce costs or burdens that would ensue in the absence of the proposed regulations. Hence, in restoring the status quo in appropriate circumstances, the proposed regulations are not expected to impose new costs.

II. *Regulatory Flexibility Act*

It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). The proposed regulations generally affect CFCs and U.S. shareholders of CFCs. As an initial matter, CFCs, as foreign corporations, are not considered small entities. Nor are U.S. taxpayers considered small entities to the extent the taxpayers are natural persons or entities other than small entities. Thus, the proposed regulations generally only affect small entities if a U.S. taxpayer that is a U.S. shareholder of a CFC is a small entity.

Businesses that are U.S. shareholders of CFCs are generally not small businesses because the ownership of sufficient stock of a CFC in order to be a U.S. shareholder generally entails significant resources and investment. Therefore, the Treasury Department and the IRS have determined that the proposed regulations would not affect a substantial number of domestic small business entities. Moreover, the proposed regulations do not impose any new costs on taxpayers. Consequently, the Treasury Department and the IRS have determined that the proposed regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required.

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. The Treasury Department and the IRS request comments on the impact of these proposed regulations on small business entities.

Comments and Requests for a Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the "ADDRESSES" heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. The Treasury Department and the IRS also request comments on whether any other rules should be modified in light of the repeal of section 958(b)(4).

All comments will be available at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of the proposed regulations are Karen J. Cate and Jorge M. Oben of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department

and the IRS participated in the development of the proposed regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entry for § 1.267(a)-3 and adding entries for §§ 1.332-8 and 1.1297-1 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.267(a)-3 also issued under 26 U.S.C. 267(a)(3)(A) and (a)(3)(B)(ii).

* * * * *

Section 1.332-8 also issued under 26 U.S.C. 332(d)(4).

* * * * *

Section 1.1297-1 also issued under 26 U.S.C. 1298(g).

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Par. 2. Section 1.267(a)-3 is amended by:

1. Removing the language "or (a)(3)" from paragraph (c)(2).
2. Revising paragraph (c)(4).
3. In paragraph (d), revising the second sentence and adding five sentences at the end of the paragraph.

The revisions and addition read as follows:

§1.267(a)-3 Deduction of amounts owed to related foreign persons.

* * * * *

(c) * * *

(4) *Certain amounts owed to certain controlled foreign corporations*. An amount (other than interest) that is income of a related foreign person with respect to which the related foreign person is exempt from United States taxation on the amount owed pursuant to a treaty obligation of the United States (such as under an article relating to the taxation of business profits) is exempt from the application of section 267(a)(3)(B)(i) if the related foreign person is a controlled foreign corporation that does not have any United States shareholders (as defined in section 951(b)) that own (within the meaning of section 958(a)) stock of the controlled foreign corporation.

* * * * *

(d) * * * Except as otherwise provided in this paragraph (d), the regulations in this section issued under section 267 apply to all other deductible amounts that are incurred after July 31, 1989, but do not apply to amounts that are incurred pursuant to a contract that was binding on September 29, 1983, and at all times thereafter (unless the contract was renegotiated, extended, renewed, or revised after that date). Paragraph (c)(2) of this section applies to payments accrued on or after October 22, 2004. For payments accrued before October 22, 2004, see §1.267(a)-3(c)(2), as contained in 26 CFR part 1, revised as of April 1, 2004. Paragraph (c)(4) of this section applies to payments accrued on or after October 1, 2019. For payments accrued before October 1, 2019 a taxpayer may apply paragraph (c)(4) of this section for payments accrued during the last taxable year of a foreign corporation beginning before January 1, 2018, and each subsequent taxable year of the foreign corporation, provided that the taxpayer and United States persons that are related (within the meaning of section 267 or 707) to the taxpayer consistently apply such paragraph with respect to all foreign corporations. For payments accrued before October 22, 2004, see §1.267(a)-3(c)(4), as contained in 26 CFR part 1, revised as of April 1, 2004.

Par. 3. Section 1.332-8 is added to read as follows:

§1.332-8 Recognition of gain on liquidation of certain holding companies.

(a) *Definition of controlled foreign corporation*. For purposes of section 332(d)(3), a controlled foreign corporation has the meaning provided in section 957, determined without applying subparagraphs (A), (B), and (C) of section 318(a)(3) so as to consider a United States person as owning stock which is owned by a person who is not a United States person.

(b) *Applicability date*. This section applies to distributions in complete liquidation occurring on or after October 1, 2019, and to distributions in complete liquidation occurring before October 1, 2019, that result from an entity classification election made under §301.7701-3 of this chapter that is filed on or after October 1, 2019. For distributions in complete liquidation occurring before October 1, 2019, other than distributions in complete liquidation occurring before October 1, 2019, that result from an entity classification election made under §301.7701-3 of this chapter that is filed on or after October 1, 2019, a taxpayer may apply this section to distributions in complete liquidation occurring during the last taxable year of a distributee foreign corporation beginning before January 1, 2018, and each subsequent taxable year of the foreign corporation, provided that the taxpayer and United States persons that are related (within the meaning of section 267 or 707) to the taxpayer consistently apply this section with respect to all foreign corporations.

Par. 4. Section 1.367(a)-8 is amended by:

1. Revising the second sentence of paragraph (k)(14)(ii).
2. In paragraph (p)(3), designating Examples 1 through 3 as paragraphs (p)(3)(i) through (iii), respectively.
3. In newly redesignated paragraphs (p)(3)(i) through (iii), redesignating the paragraphs in the first column as the paragraphs in the second column:

Old Paragraphs	New Paragraphs
(p)(3)(i)(i) and (ii)	(p)(3)(i)(A) and (B)
(p)(3)(ii)(i) and (ii)	(p)(3)(ii)(A) and (B)
(p)(3)(iii)(i) and (ii)	(p)(3)(iii)(A) and (B)

4. In each newly redesignated paragraph listed in the first column, removing the language in the second column and adding in its place the language in the third column:

Paragraph	Remove	Add
(p)(3)(i)(B)	this *Example 1*	In paragraph (p)(3)(i)(A) of this section (the facts of this *Example 1*)
(p)(3)(ii)(B)	this *Example 2*	In paragraph (p)(3)(ii)(A) of this section (the facts of this *Example 1*)

5. In paragraph (q)(2):
   a. Removing the language "at least 5% (applying the attribution rules of section 318, as modified by section 958(b))" each place that it appears and adding "at least 5% (determined as provided in paragraph (k)(14)(ii) of this section)" in its place.
   b. Designating *Examples 1* through *25* as paragraphs (q)(2)(i) through (xxv), respectively.

6. In newly redesignated paragraphs (q)(2)(i) through (xxv), redesignating the paragraphs in the first column as the paragraphs in the second column:

Old Paragraphs	New Paragraphs
(q)(2)(i)(i) and (ii)	(q)(2)(i)(A) and (B)
(q)(2)(ii)(i) and (ii)	(q)(2)(ii)(A) and (B)
(q)(2)(ii)(B)(A) and (B)	(q)(2)(ii)(B)(*1*) and (*2*)
(q)(2)(iii)(i) and (ii)	(q)(2)(iii)(A) and (B)
(q)(2)(iv)(i) and (ii)	(q)(2)(iv)(A) and (B)
(q)(2)(iv)(B)(A) and (B)	(q)(2)(iv)(B)(*1*) and (*2*)
(q)(2)(iv)(B)(*2*)(*1*) through (*3*)	(q)(2)(iv)(B)(*2*)(*i*) through (*iii*)
(q)(2)(v)(i) and (ii)	(q)(2)(v)(A) and (B)
(q)(2)(vi)(i) through (iii)	(q)(2)(vi)(A) through (C)
(q)(2)(vi)(B)(A) and (B)	(q)(2)(vi)(B)(*1*) and (*2*)
(q)(2)(vi)(B)(*2*)(*1*) through (*3*)	(q)(2)(vi)(B)(*2*)(*i*) through (*iii*)
(q)(2)(vii)(i) and (ii)	(q)(2)(vii)(A) and (B)
(q)(2)(viii)(i) and (ii)	(q)(2)(viii)(A) and (B)
(q)(2)(ix)(i) and (ii)	(q)(2)(ix)(A) and (B)
(q)(2)(x)(i) and (ii)	(q)(2)(x)(A) and (B)
(q)(2)(x)(B)(A) through (C)	(q)(2)(x)(B)(*1*) through (*3*)
(q)(2)(xi)(i) through (iii)	(q)(2)(xi)(A) through (C)
(q)(2)(xii)(i) and (ii)	(q)(2)(xii)(A) and (B)
(q)(2)(xii)(B)(A) through (C)	(q)(2)(xii)(B)(*1*) through (*3*)
(q)(2)(xiii)(i) and (ii)	(q)(2)(xiii)(A) and (B)
(q)(2)(xiv)(i) and (ii)	(q)(2)(xiv)(A) and (B)
(q)(2)(xiv)(B)(A) and (B)	(q)(2)(xiv)(B)(*1*) and (*2*)
(q)(2)(xv)(i) and (ii)	(q)(2)(xv)(A) and (B)
(q)(2)(xvi)(i) and (ii)	(q)(2)(xvi)(A) and (B)
(q)(2)(xvii)(i) and (ii)	(q)(2)(xvii)(A) and (B)
(q)(2)(xvii)(B)(A) through (C)	(q)(2)(xvii)(B)(*1*) through (*3*)
(q)(2)(xvii)(B)(*3*)(*1*) through (*3*)	(q)(2)(xvii)(B)(*3*)(*i*) through (*iii*)
(q)(2)(xviii)(i) and (ii)	(q)(2)(xviii)(A) and (B)
(q)(2)(xix)(i) and (ii)	(q)(2)(xix)(A) and (B)
(q)(2)(xx)(i) through (vi)	(q)(2)(xx)(A) through (F)
(q)(2)(xx)(B)(A) and (B)	(q)(2)(xx)(B)(*1*) and (*2*)

Old Paragraphs	New Paragraphs
(q)(2)(xx)(B)(*1*)(*1*) and (*2*)	(q)(2)(xx)(B)(*1*)(*i*) and (*ii*)
(q)(2)(xxi)(i) and (ii)	(q)(2)(xxi)(A) and (B)
(q)(2)(xxi)(B)(A) through (C)	(q)(2)(xxi)(B)(*1*) through (*3*)
(q)(2)(xxii)(i) through (iii)	(q)(2)(xxii)(A) through (C)
(q)(2)(xxii)(B)(A) through (C)	(q)(2)(xxii)(B)(*1*) through (*3*)
(q)(2)(xxii)(C)(A) through (C)	(q)(2)(xxii)(C)(*1*) through (*3*)
(q)(2)(xxiii)(i) through (iv)	(q)(2)(xxiii)(A) through (D)
(q)(2)(xxiii)(B)(A) through (D)	(q)(2)(xxiii)(B)(*1*) through (*4*)
(q)(2)(xxiii)(C)(A) and (B)	(q)(2)(xxiii)(C)(*1*) and (*2*)
(q)(2)(xxiv)(i) and (ii)	(q)(2)(xxiv)(A) and (B)
(q)(2)(xxv)(i) and (ii)	(q)(2)(xxv)(A) and (B)

7. In each newly redesignated paragraph listed in the first column, removing the language in the second column and adding in its place the language in the third column:

Paragraph	Remove	Add
(q)(2)(ii)(B)(*2*)	paragraph (ii)(A) of this *Example 2*	paragraph (q)(2)(ii)(B)(*1*) of this section (paragraph (*1*) in the results in this *Example 2*)
(q)(2)(iv)(B)(*2*)(*i*)	paragraph (ii)(A) of this *Example 4*	paragraph (q)(2)(iv)(B)(*1*) of this section (paragraph (*1*) in the results in this *Example 4*)
(q)(2)(vi)(B)(*1*)	paragraph (ii)(B) of this *Example 6*	paragraph (q)(2)(vi)(B)(*2*) of this section (paragraph (*2*) in the results in this *Example 6*)
(q)(2)(vi)(C)	paragraph (i) of this *Example 6*	paragraph (q)(2)(vi)(A) of this section (the facts in this *Example 6*)
(q)(2)(xi)(C)	paragraph (i) of this *Example 11*	paragraph (q)(2)(xi)(A) of this section (the facts in this *Example 11*)
(q)(2)(xx)(C)	paragraph (i) of this *Example 20*	paragraph (q)(2)(xx)(A) of this section (the facts in this *Example 20*)
(q)(2)(xx)(C)	paragraph (ii) of this *Example 20*	paragraph (q)(2)(xx)(B) of this section (the results in this *Example 20*)
(q)(2)(xx)(D)	paragraph (i) of this *Example 20*	paragraph (q)(2)(xx)(A) of this section (the facts in this *Example 20*)
(q)(2)(xx)(D)	paragraph (ii) of this *Example 20*	paragraph (q)(2)(xx)(B) of this section (the facts in this *Example 20*)
(q)(2)(xx)(E)	paragraph (i) of this *Example 20*	paragraph (q)(2)(xx)(A) of this section (the facts in this *Example 20*)
(q)(2)(xx)(F)	paragraph (i) of this *Example 20*	paragraph (q)(2)(xx)(A) of this section (the facts in this *Example 20*)
(q)(2)(xxii)(C) introductory text	in paragraph (i) of this *Example 22*	paragraph (q)(2)(xxii)(A) of this section (the facts in this *Example 22*)
(q)(2)(xxiii)(C) introductory text	paragraph (i) of this *Example 23*	paragraph (q)(2)(xxiii)(A) of this section (the facts in this *Example 23*)
(q)(2)(xxiii)(C) introductory text	paragraph (ii) of this *Example 23*	paragraph (q)(2)(xxiii)(B) of this section (the results in this *Example 23*)
(q)(2)(xxiii)(D)	paragraph (i) of this *Example 23*	paragraph (q)(2)(xxiii)(A) of this section (the facts in this *Example 23*)
(q)(2)(xxiv)(A)	in paragraph (i) of *Example 6*	paragraph (q)(2)(vi)(A) of this section (the facts in *Example 6*)

8. Amend each paragraph listed in the first column, by removing the language in the second column and adding in its place the language in the third column:

Paragraph	Remove	Add
(c)(1)(ii)	(q)(2) of this section, Example 6	(q)(2)(vi) of this section
(c)(4)(iv)	paragraph (q)(2) of this section, Examples 1, 2, 3, and 5	paragraphs (q)(2)(i), (ii), (iii), and (v) of this section
(j)(1)	(q)(2) of this section, Example 2	(q)(2)(ii) of this section
(k)(1) introductory language	(q)(2) of this section, Example 4	(q)(2)(iv) of this section
(k)(1)(ii)	(q)(2) of this section, Example 3	(q)(2)(iii) of this section
(k)(1)(iii)	(q)(2) of this section, Example 11	(q)(2)(xi) of this section
(k)(6)(i)	(q)(2) of this section, Example 5	(q)(2)(v) of this section
(k)(6)(i)	(q)(2) of this section, Example 6	(q)(2)(vi) of this section
(k)(6)(ii)	(q)(2) of this section, Example 7	(q)(2)(vii) of this section
(k)(6)(iii)	(q)(2) of this section, Example 8	(q)(2)(viii) of this section
(k)(8)	(q)(2) of this section, Example 9	(q)(2)(ix) of this section
(k)(12)(i)	(q)(2) of this section, Example 20	(q)(2)(xx) of this section
(k)(14) introductory language	paragraph (q)(2), Examples 4, 6, 10, 12, 17, 21, and 23 of this section	paragraphs (q)(2)(iv), (vi), (x), (xii), (xvii), (xxi), and (xxiii) of this section
(m)(1)	(q)(2) of this section, Example 13	(q)(2)(xiii) of this section
(n)(1)	(q)(2) of this section, Example 14	(q)(2)(xiv) of this section
(o)(1)(ii)	(q)(2) of this section, Example 15	(q)(2)(xv) of this section
(o)(1)(iii) introductory language	(q)(2) of this section, Example 16	(q)(2)(xvi) of this section
(o)(5)(i)(A)	(q)(2) of this section, Example 18	(q)(2)(xviii) of this section
(o)(5)(i)(B)	(q)(2) of this section, Example 19	(q)(2)(ixx) of this section
(o)(5)(i)(C)	(q)(2) of this section, Example 22	(q)(2)(xxii) of this section
(o)(5)(i)(D)	(q)(2) of this section, Example 22	(q)(2)(xxii) of this section
(o)(6)	(q)(2) of this section, Example 20	(q)(2)(xx) of this section
(r)(2)(i)	paragraph (q)(2) of this section, Examples 24 and 25	paragraphs (q)(2)(xxiv) and (xxv) of this section

9. Revising the heading of paragraph (r).
10. Adding two sentences at the end of paragraph (r)(1)(i).

The revision and addition read as follows:

§1.367(a)-8 Gain recognition agreement requirements.

* * * * *

(k) * * *

(14) * * *

(ii) * * * If, as a result of the disposition or other event, a foreign corporation acquires the transferred stock or securities or, as applicable, substantially all the assets of the transferred corporation, the condition of this paragraph (k)(14)(ii) is satisfied only if the U.S. transferor owns at least five percent (applying the attribution rules of section 318, as modified by section 958(b), without applying subparagraphs (A), (B), and (C) of section 318(a)(3) so as to consider the U.S. transferor as owning stock which is owned by a person who is not a United States person) of the total voting power and the total value of the outstanding stock of such foreign corporation.

* * * * *

(r) *Applicability dates*. (1) * * *

(i) * * * Paragraph (k)(14)(ii) of this section applies to transfers occurring on or after October 1, 2019, and to transfers occurring before October 1, 2019, that result from an entity classification election made under §301.7701-3 of this chapter that is filed on or after October 1, 2019. For transfers occurring before October 1, 2019, other than transfers occurring before October 1, 2019, that result from an entity classification election made under §301.7701-3 of this chapter that is filed on or after October 1, 2019, a taxpayer may apply paragraph (k)(14)(ii) of this section to transfers occurring during the last taxable year of a transferee foreign corporation beginning before January 1, 2018, and each subsequent taxable year of the foreign corporation, provided that the taxpayer and United States persons that are related (within the meaning of section 267 or 707) to the taxpayer consistently apply such paragraph with respect to all foreign corporations.

* * * * *

Par. 5. Section 1.672(f)-2 is amended by revising paragraphs (a) and (e) to read as follows:

§1.672(f)-2 Certain foreign corporations.

(a) *Application of general rule in this section*. Subject to the provisions of paragraph (b) of this section, if the owner of any portion of a trust upon application of the grantor trust rules without regard to section 672(f) is a controlled foreign corporation or a passive foreign investment company (as defined in section 1297), the corporation will be treated as a domestic corporation for purposes of applying the rules of §1.672(f)-1. For purposes of this section, the only controlled foreign corporations taken into account are those that are controlled foreign corporations within the meaning provided in section 957, determined without applying subparagraphs (A), (B), and (C) of section 318(a)(3) so as to consider a United States person as owning stock which is owned by a person who is not a United States person.

* * * * *

(e) *Applicability dates*. Except as provided in this paragraph (e), the rules of this section apply to taxable years of shareholders of controlled foreign corporations and passive foreign investment companies beginning after August 10, 1999, and taxable years of controlled foreign corporations and passive foreign investment companies ending with or within such taxable years of the shareholders. The provisions in paragraph (a) of this section relating to the controlled foreign corporations taken into account for purposes of this section apply to taxable years of foreign corporations ending on or after October 1, 2019, and taxable years of United States shareholders in which or with which such taxable years of foreign corporations end. For taxable years of foreign corporations ending before October 1, 2019, and taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, a taxpayer may apply such provisions to the last taxable year of a foreign corporation beginning before January 1, 2018, and each subsequent taxable year of the foreign corporation, and to taxable years of United States shareholders in which or with which such taxable years of the foreign corporation end, provided that the taxpayer and United States persons that are related (within the meaning of section 267 or 707) to the taxpayer consistently apply such provisions with respect to all foreign corporations.

Par. 6. Section 1.706-1 is amended by:

1. Revising paragraph (b)(6)(ii).
2. Revising the heading for paragraph (b)(6)(v).
3. In paragraph (b)(6)(v)(A), revising the first sentence and adding two sentences after the first sentence.

The revisions and addition read as follows:

§1.706-1 Taxable years of partner and partnership.

* * * * *

(b) * * *

(6) * * *

(ii) *Definition of foreign partner*. For purposes of this paragraph (b)(6), a foreign partner is any partner that is not a United States person (as defined in section 7701(a)(30)), except that a partner that is a controlled foreign corporation (within the meaning of section 957(a)) in which a United States shareholder (as defined in section 951(b)) owns (within the meaning of section 958(a)) stock is not treated as a foreign partner.

* * * * *

(v) *Applicability dates*. (A) * * * The provisions of this paragraph (b)(6) (other than paragraph (b)(6)(iii) of this section and paragraph (b)(6)(ii) of this section to the extent described in the next sentence) apply to partnership taxable years, other than those of an existing partnership, that begin on or after July 23, 2002. The provisions in paragraph (b)(6)(ii) of this section relating to controlled foreign corporations apply to taxable years of foreign corporations ending on or after October 1, 2019, and taxable years of United States shareholders in which or with which such taxable years of foreign corporations end. For taxable years of foreign corporations ending before October 1, 2019, and taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, a taxpayer may apply such provisions to the last taxable year of a foreign corporation beginning before January 1, 2018, and each subsequent taxable year of the foreign corporation, and to taxable years of United States shareholders in which or with which such taxable years of the foreign corporation end, provided that the taxpayer and United States persons that are related (within the meaning of section 267 or 707) to the taxpayer consistently apply such provisions with respect to all foreign corporations. * * *

* * * * *

Par. 7. Section 1.863-8 is amended by:

1. In paragraph (b)(2)(ii), revising the first sentence and adding a sentence at the end of the paragraph.
2. Revising paragraph (h).

The revisions and addition read as follows:

§1.863-8 Source of income derived from space and ocean activity under section 863(d).

* * * * *

(b) * * *

(2) * * *

(ii) * * * Space and ocean income derived by a controlled foreign corporation (CFC) is income from sources within the United States. * * * For purposes of this section, a controlled foreign corporation has the meaning provided in section 957, determined without applying subparagraphs (A), (B), and (C) of section 318(a)(3) so as to consider a United States per-

son as owning stock which is owned by a person who is not a United States person.

* * * * *

(h) *Applicability dates*. Except as provided in this paragraph (h), this section applies to taxable years beginning on or after December 27, 2006. The provisions in paragraph (b)(2)(ii) of this section relating to the meaning of CFC apply to taxable years of foreign corporations ending on or after October 1, 2019. For taxable years of foreign corporations ending before October 1, 2019, a taxpayer may apply such provisions to the last taxable year of a foreign corporation beginning before January 1, 2018, and each subsequent taxable year of the foreign corporation, provided that the taxpayer and United States persons that are related (within the meaning of section 267 or 707) to the taxpayer consistently apply such provisions with respect to all foreign corporations.

Par. 8. Section 1.863-9 is amended by revising paragraphs (b)(2)(ii) and (l) to read as follows:

§1.863-9 Source of income derived from communications activity under section 863(a), (d), and (e).

* * * * *

(b) * * *

(2) * * *

(ii) *International communications income derived by a controlled foreign corporation*. International communications income derived by a controlled foreign corporation (CFC) is one-half from sources within the United States and one-half from sources without the United States. For purposes of this section, a controlled foreign corporation has the meaning provided in section 957, determined without applying subparagraphs (A), (B), and (C) of section 318(a)(3) so as to consider a United States person as owning stock which is owned by a person who is not a United States person.

* * * * *

(l) *Applicability dates*. Except as otherwise provided in this paragraph (l), this section applies to taxable years beginning on or after December 27, 2006. The provisions in paragraph (b)(2)(ii) of this section relating to the meaning of CFC apply to taxable years of foreign corporations ending on or after October 1, 2019. For taxable years of foreign corporations ending before October 1, 2019, a taxpayer may apply such provisions to the last taxable year of a foreign corporation beginning before January 1, 2018, and each subsequent taxable year of the foreign corporation, provided that the taxpayer and United States persons that are related (within the meaning of section 267 or 707) to the taxpayer consistently apply such provisions with respect to all foreign corporations.

Par. 9. Section 1.904-5, as proposed to be amended at 83 FR 63200 (December 7, 2018), is further amended by:

1. Revising paragraph (a)(4)(i).
2. Revising the first sentence of paragraph (a)(4)(vi).
3. Revising paragraph (o).

The revisions read as follows:

§1.904-5 Look-through rules as applied to controlled foreign corporations and other entities.

(a) * * *

(4) * * *

(i) The term *controlled foreign corporation* has the meaning given such term by section 957 (taking into account the special rule for certain captive insurance companies contained in section 953(c)), determined without applying subparagraphs (A), (B), and (C) of section 318(a)(3) so as to consider a United States person as owning stock which is owned by a person who is not a United States person.

* * * * *

(vi) The term *United States shareholder* has the meaning given such term by section 951(b) (taking into account the special rule for certain captive insurance companies contained in section 953(c)), determined without applying subparagraphs (A), (B), and (C) of section 318(a)(3) so as to consider a United States person as owning stock which is owned by a person who is not a United States person, except that for purposes of this section, a United States shareholder includes any member of the controlled group of the United States shareholder. * * *

* * * * *

(o) *Applicability dates*. Except as otherwise provided in this paragraph (o), this section applies to taxable years that both begin after December 31, 2017, and end on or after December 4, 2018. Paragraphs (a)(4)(i) and (vi) of this section apply to taxable years of foreign corporations ending on or after October 1, 2019, and taxable years of United States persons ending on or after October 1, 2019. For taxable years of foreign corporations ending before October 1, 2019, and taxable years of United States persons ending before October 1, 2019, a taxpayer may apply such provisions to the last taxable year of a foreign corporation beginning before January 1, 2018, and each subsequent taxable year of the foreign corporation, and to taxable years of United States shareholders in which or with which such taxable years of the foreign corporation end, provided that the taxpayer and United States persons that are related (within the meaning of section 267 or 707) to the taxpayer consistently apply such provisions with respect to all foreign corporations.

Par. 10. Section 1.958-2 is amended by:

1. Removing and reserving paragraph (d)(2).
2. In paragraph (g), designating *Examples 1* through *6* as paragraphs (g)(1) through (6), respectively.
3. In newly designated paragraphs (g)(1) and (2), removing the language "paragraph (c)(1)(iii) and (2) of this section" and adding "paragraphs (c)(1)(iii) and (c)(2) of this section" in its place.
4. Revising newly designated paragraph (g)(4).
5. Adding paragraph (h).
6. Removing the parenthetical authority citation at the end of the section.

The revisions and addition read as follows:

§1.958-2 Constructive ownership of stock.

* * * * *

(g) * * *

(4) *Example 4*. Foreign corporation U owns 100 percent of the one class of stock in domestic corporation V and also 100 percent of the one class of stock in foreign corporation W. Because more than 50 percent in value of the stock of V Corporation is owned by its sole shareholder, U Corporation, V Corporation is considered under paragraph (d)(1)(iii) of this section as owning the stock owned by U Corporation in W Corporation, and accordingly is a United States shareholder of W Corporation.

* * * * *

(h) *Applicability date*. Paragraphs (d)(2) and (g)(4) of this section apply to taxable years of foreign corporations ending on or after October 1, 2019, and taxable years of United States shareholders in which or with which such taxable years of foreign corporations end. For taxable years of foreign corporations ending be-

fore October 1, 2019, and taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, a taxpayer may apply such provisions to the last taxable year of a foreign corporation beginning before January 1, 2018, and each subsequent taxable year of the foreign corporation, and to taxable years of United States shareholders in which or with which such taxable years of the foreign corporation end, provided that the taxpayer and United States persons that are related (within the meaning of section 267 or 707) to the taxpayer consistently apply such provisions with respect to all foreign corporations.

Par. 11. Section 1.1297-1, as proposed to be added at 84 FR 33120 (July 11, 2019), is amended by revising paragraphs (d)(1)(iii)(A) and (g)(1) to read as follows:

§1.1297-1 Definition of passive foreign investment company.

* * * * *

(d) * * *

(1) * * *

(A) *Controlled foreign corporation*. For purposes of section 1297(e)(2)(A), the term *controlled foreign corporation* has the meaning provided in section 957, determined without applying subparagraphs (A), (B), and (C) of section 318(a)(3) so as to consider a United States person as owning stock which is owned by a person who is not a United States person.

* * * * *

(g) * * *

(1) *Paragraph (d)(1)(iii)(A) of this section*. Paragraph (d)(1)(iii)(A) of this section applies to taxable years of shareholders ending on or after October 1, 2019. For taxable years of shareholders ending before October 1, 2019, a shareholder may apply paragraph (d)(1)(iii)(A) of this section to the last taxable year of a foreign corporation beginning before January 1, 2018, and each subsequent taxable year of the foreign corporation, provided that the shareholder and United States persons that are related (within the meaning of section 267 or 707) to the taxpayer consistently apply such paragraph with respect to all foreign corporations.

* * * * *

Par. 12. Section 1.6049-5 is amended by revising paragraphs (c)(5)(i)(C) and (g) to read as follows:

§1.6049-5 Interest and original issue discount subject to reporting after December 31, 1982.

* * * * *

(c) * * *

(5) * * *

(i) * * *

(C) A controlled foreign corporation within the meaning of section 957, determined without applying subparagraphs (A), (B), and (C) of section 318(a)(3) so as to consider a United States person as owning stock which is owned by a person who is not a United States person.

* * * * *

(g) *Applicability dates*. Except as otherwise provided in this paragraph (g), this section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016. For payments made after December 31, 2000, and before July 1, 2014, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2013.) Paragraph (c)(5)(i)(C) of this section applies to payments made on or after October 1, 2019. For payments made before October 1, 2019, a taxpayer may apply paragraph (c)(5)(i)(C) of this section for payments during the last taxable year of a foreign corporation beginning before January 1, 2018, and each subsequent taxable year of the foreign corporation, provided that the taxpayer and United States persons that are related (within the meaning of section 267 or 707) to the taxpayer consistently apply such paragraph with respect to all foreign corporations.

Kirsten Wielobob,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on October 1, 2019, 8:45 a.m., and published in the issue of the Federal Register for October 2, 2019, 84 F.R. 52398)

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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