Table to Subpart A of Part 1211—Physical Properties of Gasket-Accelerated Aging Test

Table 1

PHYSICAL PROPERTIES OF GASKET-ACCELERATED AGING TEST

	Before Accelerated Aging	After Accelerated Aging
Recovery -- Maximum set when 2-inch (50.8-mm) gauge marks are stretched to 5 inches (127 mm), held for 2 minutes, and measured 2 minutes after release	1/2 inch (12.7 mm)	--
Elongation -- Minimum increase in distance between 2-inch gauge marks at break	250 percent [2 to 7 inches (50.8—178.8 mm)]	65 percent of original
Tensile Strength -- Minimum force at breaking point	850 pounds per square inch (59 mPa)	75 percent of original

Dated: August 25, 2015.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–155164–09]

RIN 1545–BJ48

United States Property Held by Controlled Foreign Corporations in Transactions Involving Partnerships; Rents and Royalties Derived in the Active Conduct of a Trade or Business

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; notice of proposed rulemaking by cross-reference to temporary regulation.

SUMMARY: This document contains proposed regulations that provide rules regarding the treatment as United States property of property held by a controlled foreign corporation (CFC) in connection with certain transactions involving partnerships. In addition, in the Rules and Regulations section of this issue of the **Federal Register**, the Department of Treasury (Treasury Department) and the IRS are issuing temporary regulations under sections 954 and 956, the text of which also serves as the text of certain provisions of these proposed regulations. The proposed regulations affect United States shareholders of CFCs.

DATES: Written or electronic comments and requests for a public hearing must be received by December 1, 2015.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–155164–09), Room 5203, Internal Revenue Service, P.O. 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–155164–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–155164–09).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Rose E. Jenkins, (202) 317–6934; concerning submissions of comments or requests for a public hearing, Regina Johnson, (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 under section 956. Section 956 determines the amount that a United States shareholder (as defined in section 951(b)) of a CFC must include in gross income with respect to the CFC under section 951(a)(1)(B). This amount is determined, in part, based on the average amount of United States property held, directly or indirectly, by the CFC at the close of each quarter during its taxable year. For this purpose, in general, the amount taken into account with respect to any United States property is the adjusted basis of the property, reduced by any liability to which the property is

subject. See section 956(a) and § 1.956–1(e).

Section 956(e) grants the Secretary authority to prescribe such regulations as may be necessary to carry out the purposes of section 956, including regulations to prevent the avoidance of section 956 through reorganizations or otherwise. In addition, section 956(d) grants the Secretary authority to prescribe regulations pursuant to which a CFC that is a pledgor or guarantor of an obligation of a United States person is considered to hold the obligation.

The current regulations under section 956 do not specifically address when the obligations of a foreign partnership will be treated as United States property. The preamble to proposed regulations under section 954(i) (REG–106418–05), published in the **Federal Register** on January 17, 2006 (71 FR 2496), requested comments regarding the application of section 956 to loans made by a CFC to a foreign partnership in which one or more partners are United States shareholders of the CFC. After considering the comments received, the Treasury Department and the IRS have determined to issue these regulations that propose new rules concerning the treatment of obligations of, and United States property held by, a foreign partnership for purposes of section 956.

The temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to sections 954 and 956. The text of the temporary regulations also serves as the text of certain provisions of the proposed regulations herein. The preamble to the temporary regulations explains the temporary regulations and the corresponding proposed regulations.

Explanation of Provisions

1. Obligations of Foreign Partnerships

A. General Rule

Comments received in response to the request for comments in the preamble to the proposed regulations under section 954(i) recommended that the general rule under section 956 should treat an obligation of a foreign partnership held by a CFC as an obligation of a foreign person, rather than as an obligation of its partners, including any partners that are United States persons. Those comments noted that the inclusion of a domestic partnership in the definition of a United States person in section 7701 causes an obligation of a domestic partnership to be treated as an obligation of a United States person for purposes of section 956. Based on that observation, the comments asserted that section 956 implicitly treats both domestic and foreign partnerships as entities, rather than as aggregates of their partners, for purposes of determining whether an obligation of a partnership is United States property, such that an obligation of a foreign partnership with one or more partners that are United States persons should not be treated as an obligation of a United States person for purposes of section 956. The comments further stated that a general rule that treated an obligation of a foreign partnership as an obligation of a foreign person, rather than a United States person, would be consistent with the purposes of section 956.

The definition of United States person in section 7701(a)(30) includes a domestic partnership, such that an obligation of a domestic partnership generally is an obligation of a United States person for purposes of section 956. In contrast, section 7701 contains no corresponding definition of foreign person that includes a foreign partnership, nor any residual definition treating a person that is not a United States person as a foreign person. Moreover, section 956 does not address the status of an obligation of a foreign partnership as an obligation of a United States person or as United States property. Section 956(e), however, provides that the Secretary shall prescribe such regulations as may be necessary to carry out the purposes of section 956, including regulations to prevent the avoidance of section 956. Additionally, the Code and Regulations alternately treat partnerships either as aggregates of their partners or as entities, depending on the context and relevant policy considerations. For example, current law under section 956 employs both approaches with regard to domestic partnerships, applying an aggregate approach with respect to United States property held through a domestic partnership and an entity approach with respect to the obligations of a domestic partnership.

Section 956 is intended to prevent a United States shareholder of a CFC from inappropriately deferring U.S. taxation of CFC earnings and profits by ''prevent[ing] the repatriation of income to the United States in a manner which does not subject it to U.S. taxation.'' H.R. Rep. No. 87–1447, 87th Cong., 2d Sess., at 58 (1962). In the absence of section 956, a United States shareholder of a CFC could access the CFC's funds (untaxed earnings and profits) in a variety of ways other than by the payment of an actual taxable dividend, such that there would be no reason for the United States shareholder to incur the dividend tax. Section 956 ensures that, to the extent CFC earnings are made available for use in the United States or for use by the United States shareholder, the United States shareholder of the CFC is subject to current U.S. taxation with respect to such amounts. Accordingly, under section 956, the investment by a CFC of its earnings and profits in United States property is ''taxed to the [CFC's] shareholders on the grounds that this is substantially the equivalent of a dividend.'' S. Rep. No. 87–1881, 87th Cong., 2d Sess., at 88 (1962).

The Treasury Department and the IRS have determined that failing to treat an obligation of a foreign partnership as an obligation of its partners could allow deferral of U.S. taxation of CFC earnings and profits in a manner inconsistent with the purposes of section 956. When a United States shareholder can conduct operations through a foreign partnership using deferred CFC earnings, those earnings effectively have been made available to the United States shareholder. Additionally, because assets of a partnership generally are available to the partners without additional U.S. tax, a United States shareholder potentially could directly access deferred CFC earnings lent to a foreign partnership in which the United States shareholder is a partner without those earnings becoming subject to current U.S. tax by causing the partnership to make a distribution.

In light of these considerations, these proposed regulations treat an obligation of a foreign partnership as an obligation of its partners for purposes of section 956, subject to the exception described in Part I.B of this preamble for obligations of foreign partnerships in which neither the lending CFC nor any person related to the lending CFC is a partner. More specifically, proposed § 1.956–4(c)(1) generally treats an obligation of a foreign partnership as an obligation of the partners to the extent of each partner's share of the obligation as determined in accordance with the partner's interest in partnership profits. The Treasury Department and the IRS have considered various methods for determining a partner's share of a partnership obligation, including the regulations under section 752 for determining a partner's share of partnership liabilities, the partner's liquidation value percentage (discussed in Part 3 of this preamble), and the partner's interest in partnership profits. Using the partner's interest in partnership profits to determine a partner's share of a partnership obligation is consistent with the observation that, to the extent the

proceeds of a partnership borrowing are used by the partnership to invest in profit-generating activities, partners in the partnership (including service partners with limited or no partnership capital) will benefit from the partnership obligation to the extent of their interests in the partnership profits. Taking this into account along with considerations of administrability, the Treasury Department and the IRS believe that it is appropriate to determine a partner's share of a foreign partnership's obligation in accordance with the partner's interest in partnership profits. However, the Treasury Department and the IRS solicit comments on whether the liquidation value percentage method or another method would be a more appropriate basis for determining a partner's share of a foreign partnership's obligation.

The determination of a partner's share of the obligation will be made as of the close of each quarter of the CFC's taxable year in connection with the calculation of the amount of United States property held by the CFC for purposes of section 956(a)(1)(B). Thus, for example, if a partner in a foreign partnership is a United States shareholder of a CFC, an obligation of the partnership that is held by the CFC will be treated as United States property (subject to the exception described in Part 1.B of this preamble for obligations of foreign partnerships in which neither the lending CFC nor any person related to the lending CFC is a partner) to the extent of the United States shareholder partner's share of the obligation as determined in accordance with the partner's interest in partnership profits as of the close of each quarter of the CFC's taxable year.

The general rule in proposed § 1.956–4(c)(1) also applies to determine the extent to which a CFC guarantees or otherwise supports an obligation of a related United States person when the related United States person is a partner in a foreign partnership that incurred the obligation that is the subject of the CFC's credit enhancement. Likewise, if a CFC is a partner in a foreign partnership that owns property that would be United States property if held by the CFC, and the property is subject to a liability that would constitute a specific charge within the meaning of § 1.956–1(e)(1), the CFC's share of the liability, as determined under proposed § 1.956–4(c)(1), would be treated as a specific charge that, under § 1.956–1(e)(1), could reduce the amount taken into account by the CFC in determining the amount of its share of the United States property, as determined under proposed § 1.956–4(b).

One commenter asserted that if a United States shareholder of a CFC is a partner in a foreign partnership and is treated as having an inclusion under section 956 when the CFC makes a loan to the partnership, as can occur under these proposed regulations, and that partner later receives an actual distribution from the partnership, the partner could have an inappropriate second inclusion when it is deemed to receive a distribution from the partnership upon the partnership's repayment of the loan. The second inclusion in this fact pattern could arise under subchapter K to the extent the partner is required to reduce its basis in its partnership interest under section 733 on the actual distribution and again reduce its basis as a result of a deemed distribution under section 752(b) when its share of the loan is repaid. If the distributions exceed the partner's basis in its partnership, including the increase to basis under section 752(a) when the partnership originally undertook the obligation, the partner could recognize gain under section 731. The commenter suggested that having inclusions under both section 956 and subchapter K in this fact pattern is inappropriate and that changes should be made to the subchapter K rules to prevent this result.

The Treasury Department and the IRS have determined that these proposed regulations and the existing rules under subchapter K and section 959 provide the appropriate result in the fact pattern described in the comment. The potential for gain under subchapter K in the fact pattern exists regardless of the application of section 956. The required inclusion under these proposed regulations to the extent a CFC is treated as holding an obligation of a United States person reflects policy considerations distinct from the policy considerations underlying the potential results under subchapter K. Moreover, in the fact pattern, the United States property held by the CFC in connection with its loan to the partnership generates previously taxed earnings and profits described in section 959(c)(1)(A) that, in general, are available for distribution by the CFC to its United States shareholder without further U.S. tax on the distributed amount. Accordingly, these proposed regulations do not include rules under subchapter K to address this comment.

B. Exception for Obligations of Partnerships in Which Neither the Lending CFC Nor Any Person Related to the Lending CFC Is a Partner

The Treasury Department and the IRS have determined that certain obligations of foreign partnerships should not be treated as United States property. Under section 956(c)(2)(L), obligations of a domestic partnership are excluded from the definition of United States property if neither the CFC nor any related person (as defined in section 954(d)(3)) is a partner in the domestic partnership immediately after the acquisition by the CFC of any obligation of the partnership. The Treasury Department and the IRS have determined that the policy considerations underlying this rule are also relevant for comparable foreign partnerships. See H.R. Conf. Rep. No. 108–755, 108th Cong., 2d Sess., at 391 (2004); H.R. Rep. No. 108–548, 108th Cong., 2d Sess., at 198 (2004); S. Rep. No 108–192, 108th Cong., 1st Sess., at 46 (2003). Accordingly, proposed § 1.956–4(c)(2) provides that an obligation of a foreign partnership is treated as an obligation of the foreign partnership (and not as an obligation of its partners) for purposes of determining whether a CFC holds United States property if neither the CFC nor any person related to the CFC (within the meaning of section 954(d)(3)) is a partner in the partnership.

C. Special Obligor Rule in the Case of Certain Distributions

The proposed regulations include a special rule that increases the amount of a foreign partnership obligation that is treated as United States property under the general rule when the following requirements are satisfied: (i) a CFC lends funds (or guarantees a loan) to a foreign partnership whose obligation is, in whole or in part, United States property with respect to the CFC pursuant to proposed § 1.956–4(c)(1); (ii) the partnership distributes the proceeds to a partner that is related to the CFC (within the meaning of section 954(d)(3)) and whose obligation would be United States property if held by the CFC; (iii) the foreign partnership would not have made the distribution but for a funding of the partnership through an obligation held (or treated as held) by the CFC; and (iv) the distribution exceeds the partner's share of the partnership obligation as determined in accordance with the partner's interest in partnership profits. When these requirements are satisfied, proposed § 1.956–4(c)(3) provides that the amount of the partnership obligation that is treated as an obligation of the distributee partner (and thus as United States property held by the CFC) is the lesser of the amount of the distribution that would not have been made but for the funding of the partnership and the amount of the partnership obligation.

For example, assume a United States shareholder of a CFC that is related to the CFC within the meaning of section 954(d)(3) has a 60 percent interest in the profits of a foreign partnership and the CFC lends $100 to the partnership. If the partnership, in turn, distributes $100 to the United States shareholder in a distribution that would not have been made but for the funding by the CFC, the CFC will be treated as holding United States property in the amount of $100.

Section 1.956–1T(b)(5) of the temporary regulations published elsewhere in the Rules and Regulations section of this issue of the **Federal Register** under section 956 also addresses the funded distribution fact pattern discussed above. That temporary rule also provides that the obligation of the foreign partnership is treated as an obligation of the distributee partner when similar conditions are satisfied. The Treasury Department and the IRS expect to withdraw § 1.956–1T(b)(5) as unnecessary when proposed § 1.956–4(c), including § 1.956–4(c)(3), is adopted as a final regulation.

2. Pledges and Guarantees

Existing § 1.956–2(c)(1) provides that, subject to an exception, any obligation of a United States person with respect to which a CFC is a pledgor or guarantor is considered for purposes of section 956 to be United States property held by the CFC. In order to better align the regulations with the statutory text of section 956(d), these regulations propose to revise § 1.956–2(c)(1) to clarify that a CFC that is a pledgor or guarantor of an obligation of a United States person is treated as holding the obligation. Accordingly, under the proposed rule, the general exceptions to the definition of United States property would apply to the obligation treated as held by the CFC.

A. Pledges and Guarantees of Foreign Partnership Obligations by CFCs

These proposed regulations provide that the pledge and guarantee rules under § 1.956–2(c) apply to a CFC that directly or indirectly guarantees an obligation of a foreign partnership that is treated as an obligation of a United States person under proposed § 1.956–4(c). Accordingly, if an obligation of a foreign partnership is treated as an obligation of a United States person pursuant to proposed § 1.956–4(c) and a CFC directly or indirectly guarantees the partnership obligation, the CFC will be treated as holding an obligation of the United States person.

B. Pledges and Guarantees of United States Persons' Obligations by Domestic or Foreign Partnerships

These proposed regulations extend the pledge and guarantee rule in § 1.956–2(c)(1) to pledges and guarantees made by partnerships. Thus, proposed § 1.956–2(c)(1) provides that a partnership that guarantees an obligation of a United States person will be treated as holding the obligation for purposes of section 956. As a result, as discussed in Parts 2.D and 3 of this preamble, proposed § 1.956–4(b) will then treat the partners of the partnership that is the pledgor or guarantor as holding shares of that obligation. For example, if a partnership with one CFC partner guarantees an obligation of the CFC's United States shareholder, the CFC will be treated as holding a share of the obligation under proposed §§ 1.956–1(e)(2), 1.956–2(c)(1), and 1.956–4(b).

Under current § 1.956–2(c)(2), a CFC is treated as a pledgor or guarantor of an obligation of a United States person if its assets serve at any time, even though indirectly, as security for the performance of the obligation. Consistent with this rule, a partnership should be considered a pledgor or guarantor of an obligation of a United States person if the partnership's assets serve indirectly as security for the performance of the obligation, for example, because the partnership agrees to purchase the obligation at maturity if the United States person does not repay it. Thus, proposed § 1.956–2(c)(2) applies the indirect pledge or guarantee rule to domestic and foreign partnerships.

In the case of a partnership that is considered a pledgor or guarantor of an obligation under proposed § 1.956–2(c)(2), however, it would not be appropriate to separately apply § 1.956–2(c)(2) directly to a CFC partner in the partnership to treat the partner as a pledgor or guarantor (in addition to treating the partnership as a pledgor or guarantor) solely as a result of the partnership's indirect pledge or guarantee. Therefore, proposed § 1.956–2(c)(2) provides that when a partnership is considered a pledgor or guarantor of an obligation, a CFC that is a partner in the partnership will not be treated as a pledgor or guarantor of the obligation solely as a result of its ownership of an interest in the partnership. Accordingly, the CFC will be treated under proposed § 1.956–4(b) as holding its share of the obligation to which the pledge or guarantee relates as described in Part 2.D of this preamble but will not also be treated as a separate indirect pledgor or guarantor of the obligation. As a result, the CFC will not be treated as holding more than its share of the obligation, as determined under § 1.956–4(b).

C. Pledges and Guarantees of United States Persons' Obligations by CFC Partners

As discussed in Part 1.A of this preamble, under proposed § 1.956–4(c) an obligation of a foreign partnership generally is treated as an obligation of the partners in the partnership. In addition, as discussed in Part 3 of this preamble, a partner in a partnership is treated as holding its attributable share of property held by the partnership. The application of these two rules and the proposed indirect pledge or guarantee rule could create uncertainty. For example, if a CFC and a related United States person were the only partners in a foreign partnership that borrowed from a person unrelated to the partners, an issue could arise as to whether the partnership assets attributed to the CFC under proposed § 1.956–4(b) are considered under proposed § 1.956–2(c)(2) to indirectly serve as security for the performance of the portion of the partnership obligation that is treated as an obligation of the United States person under proposed § 1.956–4(c).

A CFC that is a partner in a partnership should not be treated as a pledgor or guarantor of an obligation of the partnership merely because the CFC partner is treated under proposed § 1.956–4(b) as owning a portion of the partnership assets that support an obligation that is allocated under proposed § 1.956–4(c) to a partner that is a United States person. Accordingly, proposed § 1.956–4(d) provides that, for purposes of section 956 and proposed § 1.956–2(c)(2), if a CFC is a partner in a partnership, the attribution of the assets of the partnership to the CFC under proposed § 1.956–4(b) does not in and of itself give rise to an indirect pledge or an indirect guarantee of an obligation of the partnership that is allocated under proposed § 1.956–4(c) to a partner that is a United States person. This rule is consistent with the new rule under proposed § 1.956–2(c)(2) providing that a CFC that is a partner in a partnership will not be treated, solely as a result of its interest in the partnership, as a pledgor or guarantor of an obligation with respect to which the partnership is considered to be a pledgor or guarantor. However, as under current law, the determination of whether a CFC's assets serve as security for the performance of an obligation for purposes of proposed § 1.956–2(c)(2) is based on all of the facts and circumstances. In appropriate

circumstances, the existence of other factors, such as the use of proceeds from a partnership borrowing, the use of partnership assets as security for a partnership borrowing, or special allocations of partnership income or gain, may result in a CFC partner being considered a pledgor or guarantor of an obligation of the partnership pursuant to proposed § 1.956–2(c)(2) when taken into account in conjunction with the attribution of the assets of the partnership to the CFC.

D. Amount Taken Into Account With Respect to Pledges or Guarantees

Under existing § 1.956–1(e)(2), the amount taken into account by a CFC in determining the amount of its United States property with respect to a pledge or guarantee described in § 1.956–2(c)(1) is the unpaid principal amount of the obligation with respect to which the CFC is a pledgor or guarantor. In connection with the proposed revision to § 1.956–2(c)(1), which treats a partnership as holding an obligation with respect to which it is a pledgor or guarantor (as discussed in Part 2.B of this preamble), these regulations propose to revise § 1.956–1(e)(2) to also apply in cases in which partnerships are pledgors or guarantors of an obligation.

Accordingly, under proposed § 1.956–1(e)(2), as under current law, each pledgor or guarantor is treated as holding the entire unpaid principal amount of the obligation to which its pledge or guarantee relates. As a result, in cases in which there are, with respect to a single obligation, multiple pledgors or guarantors that are CFCs or partnerships in which a CFC is a partner, the aggregate amount of United States property treated as held by CFCs may exceed the unpaid principal amount of the obligation. To the extent that the CFCs have sufficient earnings and profits, there could be multiple section 951 inclusions with respect to the same obligation that exceed, in the aggregate, the unpaid principal amount of the obligation.

The Treasury Department and the IRS are considering whether to exercise the authority granted under section 956(e) to prescribe regulations as may be necessary to carry out the purposes of section 956 to allocate the amount of the obligation among the relevant CFCs so as to eliminate the potential for multiple inclusions and, instead, limit the aggregate inclusions to the unpaid principal amount of the obligation. Comments are requested on whether the Treasury Department and the IRS should adopt such a limitation, and if such a limitation were adopted, on methods to implement the limitation. One approach to implementing such a limitation would be to allow a taxpayer to allocate the unpaid principal amount of the obligation among the guarantor CFCs and partnerships based on any consistently applied, reasonable method selected by the taxpayer that results in aggregate section 951 inclusions equal to the unpaid principal amount.

Alternatively, the Treasury Department and the IRS could seek to establish a generally applicable method for allocating the unpaid principal amount of the obligation among the various guarantors. Allocating the unpaid principal amount of the obligation among multiple CFCs and partnerships in accordance with their available credit capacities measured, for example, by the relative net values of their assets might be broadly consistent with a creditor's analysis of the support for the obligation, but such an approach would give rise to administrability concerns. A more administrable option would be to require taxpayers to allocate the unpaid principal amount of the obligation based on the earnings and profits of the CFCs that are treated as holding the obligation (or portion thereof). Several allocation methods based on earnings and profits are possible, including methods that allocate the unpaid principal amount of the obligation: (i) to all of the CFCs in accordance with their applicable earnings; (ii) to all of the CFCs in accordance with their earnings and profits described in section 959(c)(3); or (iii) first to the CFCs with only earnings and profits described in section 959(c)(3) (in accordance with their section 959(c)(3) earnings and profits), and then to the remainder of the CFCs, based on applicable earnings. All of these approaches could result in aggregate section 951 inclusions (for the year) totaling less than the unpaid principal amount of the obligation (for example, where one or more CFCs has previously taxed earnings and profits that reduce its section 951 inclusion).

In considering the options, the Treasury Department and the IRS will consider whether it is appropriate to select a method that could result in aggregate section 951 inclusions for a year totaling less than the unpaid principal amount of the obligation, the extent to which a particular method creates planning opportunities inconsistent with the policies underlying sections 956 and 959, and how administrable and effective the method is over multiple years. In particular, the Treasury Department and the IRS are concerned that certain proration methods could create an incentive for taxpayers to include as additional pledgors or guarantors of an obligation CFCs with substantial amounts of previously taxed earnings and profits, solely to allocate substantial portions of the obligation to these CFCs and thereby minimize the current section 951 inclusions. There are also a number of complexities that could affect the application of a rule that limits multiple inclusions, including differences in taxable years among the relevant CFCs and fluctuations in the unpaid principal amount of the obligation as well as the earnings and profits of the CFCs. The Treasury Department and the IRS request that comments on potential allocation methods address the issues described in this paragraph.

3. Partnership Property Indirectly Held by a CFC Partner

Under current § 1.956–2(a)(3), if a CFC is a partner in a partnership that holds property that would be United States property if held directly by the CFC partner, the CFC partner is treated as holding an interest in the property based on its interest in the partnership. These proposed regulations provide rules on the determination of the amount that the CFC partner is treated as holding under this rule, which is redesignated in these proposed regulations as proposed § 1.956–4(b).

Under proposed § 1.956–4(b), a CFC partner will be treated as holding its share of partnership property determined in accordance with the CFC partner's liquidation value percentage, taking into account any special allocation of income, or, where appropriate, gain from that property that is not disregarded or reallocated under section 704(b) or any other Code section, regulation, or judicial doctrine and that does not have a principal purpose of avoiding the purposes of section 956. See § 1.704–1(b)(1)(iii). This rule serves, in general, as a reasonable measure of a partner's interest in property held by a partnership because it generally results in an allocation of specific items of property that corresponds with each partner's economic interest in that property, including any income, or gain, that may be subject to special allocations.

These proposed regulations include examples illustrating the application of this proposed rule, including an example that illustrates a case in which it is appropriate to take into account a special allocation of gain because the property is anticipated to appreciate in value but generate relatively little income. Although, proposed § 1.956–4(b) would apply only to property

acquired on or after publication in the **Federal Register** of the Treasury decision adopting the rule as a final regulation, it generally would be reasonable to use the method set forth in proposed § 1.956–4(b) to determine a partner's interest in property acquired prior to finalization.

Although the method provided by proposed § 1.956–4(b) generally should reflect a partner's economic interest in partnership property, the Treasury Department and the IRS solicit comments on whether there may be situations in which the method would not reflect the partners' economic interest in the partnership or its property, and, if so, whether there are alternative measures or rules to better address such circumstances. Furthermore, the Treasury Department and the IRS solicit comments on whether a single method should be used as the general rule for determining both a partner's share of a partnership obligation (as determined under proposed § 1.956–4(c)), discussed in Part 1.A of this preamble) and a partner's share of partnership assets, and, if so, whether the appropriate measure would be a partner's interest in partnership profits, a partner's liquidation value percentage, or an alternative measure.

4. Trade or Service Receivables Acquired From Related United States Persons

Section 956(c)(3) provides that United States property generally includes trade or service receivables acquired from a related United States person in a factoring transaction when the obligor with respect to the receivables is a United States person. Section 1.956–3T(b)(2) provides rules for determining whether a trade or service receivable has been indirectly acquired from a related United States person for purposes of section 956(c)(3). These provisions include a rule that applies to receivables held on a CFC's behalf by a partnership in which the CFC owns (directly or indirectly) a beneficial interest. See § 1.956–3T(b)(2)(ii)(A). This rule is similar to the rule in both current § 1.956–2(a)(3) and proposed § 1.956–4(b). Section 1.956–3T(b)(2) also includes a rule that applies to receivables held on a CFC's behalf by another foreign corporation controlled by the CFC if one of the principal purposes for creating, organizing, or funding such other foreign corporation (through capital contributions or debt) is to avoid the application of section 956. See § 1.956–3T(b)(2)(ii)(B). This rule is similar to a rule in § 1.956–1T(b)(4).

The Treasury Department and the IRS have determined that the rules in § 1.956–3T(b)(2)(ii) applicable to factoring transactions involving partnerships should be consistent with the rules provided in § 1.956–1T(b)(4) and proposed § 1.956–4(b), which generally apply when partnerships own property that would be United States property in the hands of a CFC partner. Accordingly, these proposed regulations propose to revise the rules governing factoring transactions so that rules similar to the rules in current § 1.956–1T(b)(4) and proposed § 1.956–4(b) apply to factoring transactions involving partnerships. These proposed regulations also propose to revise the rules governing factoring transactions to remove the reference to S corporations, which are treated as partnerships for purposes of subpart F, including section 956. See section 1373(a).

5. Obligations of Disregarded Entities and Domestic Partnerships

The Treasury Department and the IRS understand that issues have arisen as to the proper treatment under section 956 of obligations of entities that are disregarded as entities separate from their owner for federal tax purposes. Accordingly, these proposed regulations state explicitly in proposed § 1.956–2(a)(3) that, for purposes of section 956, an obligation of a disregarded entity is treated as an obligation of the owner of the disregarded entity. Thus, for example, an obligation of a disregarded entity that is owned by a domestic corporation is treated as an obligation of the domestic corporation for purposes of section 956. The rule in proposed § 1.956–2(a)(3) follows from the application of the entity classification rules of § 301.7701–3 and is therefore not a change from current law.

In addition, proposed § 1.956–4(e) confirms that, for purposes of section 956, an obligation of a domestic partnership is an obligation of a United States person, regardless of whether the partners in the partnership are United States persons. Under section 956(c)(1)(C), an obligation of a United States person generally is United States property for purposes of section 956 unless an exception in section 956(c)(2) applies to the obligation. For example, as noted in Part 1.B of this preamble, section 956(c)(2)(L) would apply to exclude an obligation of a domestic partnership held by a CFC from the definition of United States property if neither the CFC nor a person related to the CFC (within the meaning of section 954(d)(3)) were a partner in the partnership.

6. Proposed Effective/Applicability Dates

These proposed regulations are proposed to be effective for taxable years of CFCs ending on or after the date of publication in the **Federal Register** of the Treasury decision adopting these rules as final regulations, and taxable years of United States shareholders in which or with which such taxable years end. Most of these rules are proposed to apply to property acquired, or pledges or guarantees entered into, on or after September 1, 2015, including property considered acquired, or pledges or guarantees considered entered into, on or after September 1, 2015 as a result of a deemed exchange pursuant to section 1001. See proposed § 1.956–4(c) (dealing with obligations of foreign partnerships, described in Part 1 of this preamble); proposed §§ 1.956–2(c), 1.956–4(d), and 1.956–1(e)(2) (dealing with pledges or guarantees, including pledges or guarantees either by a partnership or with respect to obligations of a foreign partnership, described in Part 2 of this preamble); and proposed § 1.956–3 (dealing with trade or service receivables acquired from related United States persons, described in Part 4 of this preamble). Two rules, however, are proposed to apply to obligations held on or after the date of publication in the **Federal Register** of the Treasury decision adopting these rules as final regulations. See proposed §§ 1.956–2(a)(3) and 1.956–4(e) (dealing with obligations of disregarded entities and domestic partnerships, respectively, described in Part 5 of this preamble). Finally, proposed § 1.956–4(b) (dealing with partnership property indirectly held by a CFC, described in Part 3 of this preamble) is proposed to apply to property acquired on or after the date of publication in the **Federal Register** of the Treasury decision adopting these rules as final regulations. No inference is intended as to the application of the provisions proposed to be amended by these proposed regulations under current law, including in transactions involving obligations of foreign partnerships. The IRS may, where appropriate, challenge transactions under currently applicable Code or regulatory provisions or judicial doctrines.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. It

has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these 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. Treasury and the IRS request comments on all aspects of the proposed rules. 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 electronic or 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 these proposed regulations are Barbara E. Rasch and Rose E. Jenkins of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

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 adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805.

* * * * *

Section 1.956–1 also issued under 26 U.S.C. 956(d) and 956(e).

Section 1.956–2 also issued under 26 U.S.C. 956(d) and 956(e).

Section 1.956–3 also issued under 26 U.S.C. 864(d)(8) and 956(e).

Section 1.956–4 also issued under 26 U.S.C. 956(d) and 956(e).

* * * * *

■ **Par. 2.** Section 1.954–2 is amended by revising paragraphs (c)(1)(i), (c)(1)(iv), (c)(2)(ii), (c)(2)(iii)(E), (c)(2)(viii), (d)(1)(i) and (ii), (d)(2)(ii), (d)(2)(iii)(E), (d)(2)(v), and (j) to read as follows:

§ 1.954–2 Foreign personal holding company income.

* * * * *

(c) * * *

(1) * * *

(i) [The text of proposed amendments to § 1.954–2(c)(1)(i) is the same as the text of § 1.954–2T(c)(1)(i) published elsewhere in this issue of the **Federal Register**].

* * * * *

(iv) [The text of proposed amendments to § 1.954–2(c)(1)(iv) is the same as the text of § 1.954–2T(c)(1)(iv) published elsewhere in this issue of the **Federal Register**].

(2) * * *

(ii) [The text of proposed amendments to § 1.954–2(c)(2)(ii) is the same as the text of § 1.954–2T(c)(2)(ii) published elsewhere in this issue of the **Federal Register**].

(iii) * * *

(E) [The text of proposed amendments to § 1.954–2(c)(2)(iii)(E) is the same as the text of § 1.954–2T(c)(2)(iii)(E) published elsewhere in this issue of the **Federal Register**].

* * * * *

(viii) [The text of proposed amendments to § 1.954–2(c)(2)(viii) is the same as the text of § 1.954–2T(c)(2)(viii) published elsewhere in this issue of the **Federal Register**].

* * * * *

(d) * * *

(1) * * *

(i) [The text of proposed amendments to § 1.954–2(d)(1)(i) is the same as the text of § 1.954–2T(d)(1)(i) published elsewhere in this issue of the **Federal Register**].

(ii) [The text of proposed amendments to § 1.954–2(d)(1)(ii) is the same as the text of § 1.954–2T(d)(1)(ii) published elsewhere in this issue of the **Federal Register**].

(2) * * *

(ii) [The text of proposed amendments to § 1.954–2(d)(2)(ii) is the same as the text of § 1.954–2T(d)(2)(ii) published elsewhere in this issue of the **Federal Register**].

(iii) * * *

(E) [The text of proposed amendments to § 1.954–2(d)(2)(iii)(E) is the same as the text of § 1.954–2T(d)(2)(iii)(E) published elsewhere in this issue of the **Federal Register**].

* * * * *

(v) [The text of proposed amendments to § 1.954–2(d)(2)(v) is the same as the text of § 1.954–2T(d)(2)(v) published elsewhere in this issue of the **Federal Register**].

* * * * *

(j) [The text of proposed amendments to § 1.954–2(j) is the same as the text of § 1.954–2T(j) published elsewhere in this issue of the **Federal Register**].

■ **Par. 3.** Section 1.956–1 is amended by revising paragraphs (b)(4) and (5), (e)(2), and (g), to read as follows:

§ 1.956–1 Shareholder's pro rata share of a controlled foreign corporation's increase in earnings invested in United States property.

* * * * *

(b) * * *

(4) [The text of proposed amendments to § 1.956–1(b)(4) is the same as the text of § 1.956–1T(b)(4) published elsewhere in this issue of the **Federal Register**].

(5) [The text of proposed amendments to § 1.956–1(b)(5) is the same as the text of § 1.956–1T(b)(5) published elsewhere in this issue of the **Federal Register**].

* * * * *

(e) * * *

(2) *Rule for pledges and guarantees.* For purposes of this section, the amount of an obligation treated as held (before application of § 1.956–4(b)) as a result of a pledge or guarantee described in § 1.956–2(c) is the unpaid principal amount of the obligation on the applicable determination date.

* * * * *

(g) through (g)(2) [The text of proposed amendments to § 1.956–1(g) through (g)(2) is the same as the text of § 1.956–1T(g) through (g)(2) published elsewhere in this issue of the **Federal Register**].

(3) Paragraph (e)(2) of this section applies to taxable years of controlled foreign corporations ending on or after the date of publication in the **Federal Register** of the Treasury decision adopting this rule as a final regulation, and taxable years of United States shareholders in which or with which such taxable years end, with respect to pledges or guarantees entered into on or after September 1, 2015. For purposes of this paragraph (g)(3), a pledgor or guarantor is treated as entering into a pledge or guarantee when there is a significant modification, within the meaning of § 1.1001–3(e), of an obligation with respect to which it is a pledgor or guarantor on or after September 1, 2015.

* * * * *

■ **Par. 4.** Section 1.956–2 is amended by:

■ a. Revising paragraphs (a)(3) and (c)(1) and (2).

■ b. Adding *Example 4* to paragraph (c)(3);
■ c. Adding reserved paragraph (g); and
■ d. Adding paragraph (h).

The revisions and additions read as follows:

§ 1.956–2 Definition of United States property.

(a) * * *

(3) *Treatment of disregarded entities.* For purposes of section 956, an obligation of a business entity (as defined in § 301.7701–2(a) of this chapter) that is disregarded as an entity separate from its owner for federal tax purposes under §§ 301.7701–1 through 301.7701–3 of this chapter is treated as an obligation of its owner.

* * * * *

(c) * * * (1) *General rule.* Except as provided in paragraph (c)(4) of this section, for purposes of section 956, any obligation of a United States person with respect to which a controlled foreign corporation or a partnership is a pledgor or guarantor will be considered to be held by the controlled foreign corporation or the partnership, as the case may be. See § 1.956–1(e)(2) for rules that determine the amount of the obligation treated as held by a pledgor or guarantor under this paragraph (c). For rules that treat an obligation of a foreign partnership as an obligation of the partners in the foreign partnership for purposes of section 956, see § 1.956–4(c).

(2) *Indirect pledge or guarantee.* If the assets of a controlled foreign corporation or a partnership serve at any time, even though indirectly, as security for the performance of an obligation of a United States person, then, for purposes of paragraph (c)(1) of this section, the controlled foreign corporation or partnership will be considered a pledgor or guarantor of that obligation. If a partnership is considered a pledgor or guarantor of an obligation, a controlled foreign corporation that is a partner in the partnership will not also be treated as a pledgor or guarantor of the obligation solely as a result of its ownership of an interest in the partnership. For purposes of this paragraph, a pledge of stock of a controlled foreign corporation representing at least 66 2/3 percent of the total combined voting power of all classes of voting stock of such corporation will be considered an indirect pledge of the assets of the controlled foreign corporation if the pledge is accompanied by one or more negative covenants or similar restrictions on the shareholder effectively limiting the corporation's discretion to dispose of assets and/or incur liabilities other than in the ordinary course of business. See § 1.956–4(d) for guidance on the treatment of indirect pledges or guarantees of an obligation of a partnership attributed to its partners under § 1.956–4(c).

(3) * * *

* * * * *

Example 4. (i) *Facts.* USP, a domestic corporation, owns 70% of the stock of FS, a controlled foreign corporation, and a 90% interest in FPRS, a foreign partnership. X, an unrelated foreign person, owns 30% of the stock of FS. Y, an unrelated foreign person, owns a 10% interest in FPRS. There are no special allocations in the FPRS partnership agreement. FPRS borrows $100x from Z, an unrelated person. FS pledges its assets as security for FPRS's performance of its obligation to repay the $100x loan. USP's share of the $100x FPRS obligation, determined in accordance with its interest in partnership profits, is $90x. Under § 1.956–4(c), $90x of the FPRS obligation is treated as an obligation of USP for purposes of section 956.

(ii) *Result.* For purposes of section 956, under paragraph (c)(1) of this section, FS is considered to hold an obligation of USP in the amount of $90x, and thus is treated as holding United States property in the amount of $90x.

* * * * *

(h) *Effective/applicability date.* (1) Paragraph (a)(3) of this section applies to taxable years of controlled foreign corporations ending on or after the date of publication in the **Federal Register** of the Treasury decision adopting this rule as a final regulation, and taxable years of United States shareholders in which or with which such taxable years end, with respect to obligations held on or after the date of publication in the **Federal Register** of the Treasury decision adopting this rule as a final regulation.

(2) Paragraphs (c)(1), (c)(2), and *Example 4* of paragraph (c)(3) of this section apply to taxable years of controlled foreign corporations ending on or after the date of publication in the **Federal Register** of the Treasury decision adopting these rules as final regulations, and taxable years of United States shareholders in which or with which such taxable years end, with respect to pledges and guarantees entered into on or after September 1, 2015. For purposes of this paragraph (h)(2), a pledgor or guarantor is treated as entering into a pledge or guarantee when there is a significant modification, within the meaning of § 1.1001–3(e), of an obligation with respect to which it is a pledgor or guarantor on or after September 1, 2015.

■ **Par. 5.** Section § 1.956–3 is added to read as follows:

§ 1.956–3 Certain trade or service receivables acquired from United States persons.

(a) through (b)(2)(i) [Reserved]. For further guidance, see § 1.956–3T(a) through (b)(2)(i).

(ii) *Acquisition by nominee, pass-through entity, or related foreign corporation.* A controlled foreign corporation is treated as holding a trade or service receivable that is held by a nominee on its behalf, or by a simple trust or other pass-through entity (other than a partnership) to the extent of its direct or indirect ownership or beneficial interest in such simple trust or other pass-through entity. See §§ 1.956–1T(b)(4) and 1.956–4(b) for rules that may treat a controlled foreign corporation as indirectly holding a trade or service receivable held by a foreign corporation or partnership. A controlled foreign corporation that is treated as holding a trade or service receivable held by another person (the *direct holder*) (or that would be treated as holding the receivable if the receivable were United States property or would be United States property if held directly by the controlled foreign corporation) is considered to have acquired the receivable from the person from whom the direct holder acquired the receivable. This paragraph (b)(2)(ii) does not limit the application of paragraph (b)(2)(iii) of this section. The following examples illustrate the application of this paragraph (b)(2)(ii):

Example 1. (i) *Facts.* A domestic corporation, P, wholly owns a controlled foreign corporation, FS, with substantial earnings and profits. FS contributes $200x of cash to a partnership, PRS, in exchange for an 80% partnership interest. An unrelated foreign person contributes real estate located in a foreign country with a fair market value of $50x to PRS for the remaining 20% partnership interest. There are no special allocations in the PRS partnership agreement. PRS uses the $200x of cash received from FS to purchase trade receivables from P. The obligors with respect to the trade receivables are United States persons that are not related to any partner in PRS. The liquidation value percentage, as determined under § 1.956–4(b), for FS with respect to PRS is 80%. A principal purpose of funding PRS (through FS's cash contribution) is to avoid the application of section 956 with respect to FS.

(ii) *Result.* Under § 1.956–4(b)(1), FS is treated as holding 80% of the trade receivables acquired by PRS from P, with a basis equal to $160x (80% × $200x, PRS's basis in the trade receivables). However, because FS controls PRS and a principal purpose of FS funding PRS was to avoid the application of section 956 with respect to FS, under § 1.956–1T(b)(4), if the trade receivables would be United States property if held directly by FS, FS additionally would be treated as holding the trade receivables to the extent that they exceed the amount of the

receivables it holds under § 1.956–4(b), which is $40x ($200x − $160x). Accordingly, under this paragraph (b)(2)(ii), FS is treated as having acquired from P, a related United States person, the trade receivables that it is treated as holding with a basis equal to $200x ($160x + $40x). Thus, FS is treated as holding United States property with a basis of $200x under paragraph (a) of this section.

Example 2. (i) *Facts.* A domestic corporation, P, wholly owns a controlled foreign corporation, FS1, that has earnings and profits of at least $300x. FS1 organizes a foreign corporation, FS2, with a $200x cash contribution. FS2 uses the cash contribution to purchase trade receivables from P. The obligors with respect to the trade receivables are unrelated United States persons. A principal purpose of funding FS2 (through FS1's cash contribution) is to avoid the application of section 956 with respect to FS1.

(ii) *Result.* Under § 1.956–1T(b)(4), if the trade receivables held by FS2 were United States property, FS1 would be treated as holding the trade receivables held by FS2 because FS1 controls FS2 and a principal purpose of FS1 funding FS2 was to avoid the application of section 956 with respect to FS1. Accordingly, under this paragraph (b)(2)(ii), FS1 is treated as having acquired from P, a related United States person, the trade receivables that it would be treated as holding with a basis equal to $200x. Thus, FS1 is treated as holding United States property with a basis of $200x under paragraph (a) of this section.

(b)(2)(iii) through (c) [Reserved]. For further guidance, see § 1.956–3T(b)(2)(iii) through (c).

(d) *Effective/applicability date.* Paragraph (b)(2)(ii) of this section applies to taxable years of controlled foreign corporations ending on or after the date of publication in the **Federal Register** of the Treasury decision adopting this rule as a final regulation, and taxable years of United States shareholders in which or with which such taxable years end, with respect to trade or service receivables acquired on or after September 1, 2015. For purposes of this paragraph (d), a significant modification, within the meaning of § 1.1001–3(e), of a trade or service receivable on or after September 1, 2015 constitutes an acquisition of the trade or service receivable on or after that date.

■ **Par. 6.** Section 1.956–4 is added to read as follows:

§ 1.956–4 Certain rules applicable to partnerships.

(a) *Overview.* This section provides rules concerning the application of section 956 to certain obligations of and property held by a partnership. Paragraph (b) of this section provides rules concerning United States property held indirectly by a controlled foreign corporation through a partnership. Paragraph (c) of this section provides rules that generally treat obligations of a foreign partnership as obligations of the partners in the foreign partnership, as well as a special rule that treats a partner that is a United States person as owing additional amounts of a partnership obligation in certain circumstances. Paragraph (d) of this section sets forth a rule concerning the application of the indirect pledge or guarantee rule to obligations of partnerships. Paragraph (e) of this section provides that obligations of a domestic partnership are obligations of a United States person. Paragraph (f) of this section provides effective and applicability dates. See §§ 1.956–1T(b)(4) and 1.956–2(c) for additional rules applicable to partnerships.

(b) *Property held indirectly through a partnership*—(1) *General rule.* For purposes of section 956, a partner in a partnership is treated as holding its attributable share of any property held by the partnership (including an obligation that the partnership is treated as holding as a result of the application of § 1.956–2(c)). A partner's attributable share of partnership property is determined under the rules set forth in paragraph (b)(2) of this section. An upper-tier partnership's attributable share of the property of a lower-tier partnership is treated as property of the upper-tier partnership for purposes of applying this paragraph (b)(1) to the partners of the upper-tier partnership. For purposes of section 956, a partner's adjusted basis in the property of the partnership equals the partner's attributable share of the partnership's adjusted basis in the property (taking into account any adjustments to basis under section 743(b) (with respect to the partner) or section 734(b) or any similar adjustments to basis), as determined under the rules set forth in paragraph (b)(2) of this section. The rules in § 1.956–1(e)(2) apply to determine the amount of an obligation treated as held by a partnership as a result of the application of § 1.956–2(c). See § 1.956–1T(b)(4) for special rules that may treat a controlled foreign corporation as holding a greater amount of United States property held by a partnership than the amount determined under this section.

(2) *Methodology*—(i) *Liquidation value percentage.* Except as otherwise provided in paragraph (b)(2)(ii) of this section, for purposes of paragraph (b)(1) of this section, a partner's attributable share of partnership property is determined in accordance with the partner's liquidation value percentage. For purposes of this paragraph (b)(2)(i), the liquidation value of a partner's interest in a partnership is the amount of cash the partner would receive with respect to the interest if, immediately after the occurrence of the most recent event described in § 1.704–1(b)(2)(iv)(*f*)(*5*) or § 1.704–1(b)(2)(iv)(*s*)(*1*) (a *revaluation event*), or, if there has been no revaluation event, immediately after the formation of the partnership, as the case may be, the partnership sold all of its assets for cash equal to the fair market value of such assets (taking into account section 7701(g)), satisfied all of its liabilities (other than those described in § 1.752–7), paid an unrelated third party to assume all of its § 1.752–7 liabilities in a fully taxable transaction, and then liquidated. A partner's liquidation value percentage, which is determined upon the formation of a partnership and redetermined upon any revaluation event, irrespective of whether the capital accounts of the partners are adjusted under § 1.704–1(b)(2)(iv)(*f*), is the ratio (expressed as a percentage) of the liquidation value of the partner's interest in the partnership divided by the aggregate liquidation value of all of the partners' interests in the partnership.

(ii) *Special allocations.* For purposes of paragraph (b)(1) of this section, if a partnership agreement provides for the allocation of income (or, where appropriate, gain) from partnership property to a partner that differs from the partner's liquidation value percentage in a particular taxable year (a *special allocation*), then the partner's attributable share of that property is determined solely by reference to the partner's special allocation with respect to the property, provided the special allocation does not have a principal purpose of avoiding the purposes of section 956.

(3) *Examples.* The following examples illustrate the rule of this paragraph (b):

Example 1. (i) *Facts.* USP, a domestic corporation, wholly owns FS, a controlled foreign corporation, which, in turn, owns an interest in FPRS, a foreign partnership. The remaining interest in FPRS is owned by an unrelated foreign person. FPRS holds non-depreciable property, with an adjusted basis of $100x, that would be United States property (''US property'') if held by FS directly. At the close of quarter 1 of year 1, the liquidation value percentage, as determined under paragraph (b)(2) of this section, for FS with respect to FPRS is 25%. There are no special allocations in the FPRS partnership agreement.

(ii) *Result.* Under paragraph (b)(1) of this section, for purposes of section 956, FS is treated as holding its attributable share of the property held by FPRS with an adjusted basis equal to its attributable share of FPRS's adjusted basis in the property. Under paragraph (b)(2) of this section, FS's

attributable share of FPRS's property is determined in accordance with FS's liquidation value percentage, which is 25%. Thus, FS's attributable share of property held by FPRS is 25%, and its attributable share of FPRS's basis in the property is $25x. Accordingly, for purposes of determining the amount of US property held by FS as of the close of quarter 1 of year 1, FS is treated as holding US property with an adjusted basis of $25x.

Example 2. (i) *Facts.* The facts are the same as in Example 1, except that the FPRS partnership agreement, which satisfies the requirements of section 704(b), specially allocates 80% of the income with respect to US property to FS. The special allocation does not have a principal purpose of avoiding the purposes of section 956.

(ii) *Result.* Under paragraph (b)(1) of this section, for purposes of section 956, FS is treated as holding its attributable share of the property held by FPRS with an adjusted basis equal to its attributable share of FPRS's adjusted basis in the property. In general, FS's attributable share of FPRS property is determined in accordance with FS's liquidation value percentage. However, under paragraph (b)(2)(ii) of this section, FS's attributable share of US property is determined in accordance with its special allocation. FS's special allocation percentage for US property is 80%, and thus FS's attributable share of US property held by FPRS is 80% and its attributable share of FPRS's basis in US property is $80x. Accordingly, for purposes of determining the amount of US property held by FS as of the close of quarter 1 of year 1, FS is treated as holding US property with an adjusted basis of $80x.

Example 3. (i) *Facts.* USP, a domestic corporation, wholly owns FS, a controlled foreign corporation, which, in turn, owns an interest in FPRS, a foreign partnership. USP owns the remaining interest in FPRS. FPRS holds property (the ''FPRS property'') that would be United States property (''US property'') if held by FS directly. The FPRS property is anticipated to appreciate in value but generate relatively little income. The US property has an adjusted basis of $100x. The FPRS partnership agreement, which satisfies the requirements of section 704(b), specially allocates 80% of the income with respect to the FPRS property to USP and 80% of the gain with respect to the disposition of FPRS property to FS. The special allocation does not have a principal purpose of avoiding the purposes of section 956.

(ii) *Result.* Under paragraph (b)(2)(ii) of this section, the partners' attributable shares of the FPRS property are determined in accordance with the special allocation of gain. Accordingly, for purposes of determining the amount of US property held by FS in each year that FPRS holds FPRS property, FS's attributable share of the FPRS property is 80% and its attributable share of FPRS's basis in US property is $80x. Thus, FS is treated as holding US property with an adjusted basis of $80x.

(c) *Obligations of a foreign partnership*—(1) *In general.* Except as provided in paragraphs (c)(2) and (3) of this section, for purposes of section 956, an obligation of a foreign partnership is treated as a separate obligation of each of the partners in the partnership to the extent of each partner's share of the obligation. A partner's share of the partnership's obligation is determined in accordance with the partner's interest in partnership profits. The partner's interest in partnership profits is determined by taking into account all facts and circumstances relating to the economic arrangement of the partners. An upper-tier partnership's share of an obligation of a lower-tier partnership is treated as an obligation of the upper-tier partnership for purposes of applying this paragraph (c)(1) to the partners of the upper-tier partnership.

(2) *Exception for obligations of partnerships in which neither the lending controlled foreign corporation nor any person related to the lending controlled foreign corporation is a partner.* For purposes of applying section 956 with respect to a controlled foreign corporation, an obligation of a foreign partnership is treated as an obligation of a foreign partnership, and not as an obligation of its partners, if neither the controlled foreign corporation nor any person related to the controlled foreign corporation within the meaning of section 954(d)(3) is a partner in the partnership. For purposes of section 956, an obligation treated as an obligation of a foreign partnership pursuant to this paragraph (c)(2) is not an obligation of a United States person.

(3) *Special obligor rule in the case of certain partnership distributions.* For purposes of determining a partner's share of a foreign partnership's obligation under section 956, if the foreign partnership distributes an amount of money or property to a partner that is related to a controlled foreign corporation within the meaning of section 954(d)(3) and whose obligation would be United States property if held (or if treated as held) by the controlled foreign corporation, and the foreign partnership would not have made the distribution but for a funding of the partnership through an obligation held (or treated as held) by a controlled foreign corporation, notwithstanding § 1.956–1(e), the partner's share of the partnership obligation is the greater of—

(i) The partner's share of the partnership obligation as determined under paragraph (c)(1) of this section; and

(ii) The lesser of the amount of the distribution that would not have been made but for the funding of the partnership and the amount of the obligation (as determined under § 1.956–1(e)).

(4) *Examples.* The following examples illustrate the rules of this paragraph (c):

Example 1. (i) *Facts.* USP, a domestic corporation, wholly owns FS, a controlled foreign corporation, and owns a 90% interest in the partnership profits of FPRS, a foreign partnership. X, a foreign person that is unrelated to USP or FS, owns a 10% interest in the partnership profits of FPRS. FPRS borrows $100x from FS. FS's basis in the FPRS obligation is $100x.

(ii) *Result.* Under paragraph (c)(1) of this section, for purposes of section 956, the obligation of FPRS is treated as obligations of its partners (USP and X) to the extent of each partner's interest in the partnership profits of FPRS. Because USP, a partner in FPRS, is related to FS within the meaning of section 954(d)(3), the exception in paragraph (c)(2) of this section does not apply. Based on its interest in FPRS's profits, USP's attributable share of the FPRS obligation is $90x. Accordingly, for purposes of section 956, $90x of the FPRS obligation held by FS is treated as an obligation of USP and is United States property within the meaning of section 956(c). Therefore, on the date the loan is made, FS is treated as holding United States property of $90x.

Example 2. (i) *Facts.* The facts are the same as in paragraph (i) of Example 1, except that USP owns 40% of the stock of FS and is not a related person (as defined in section 954(d)(3)) with respect to FS. Y, a United States person that is unrelated to USP or X, owns the remaining 60% of the stock of FS.

(ii) *Result.* Because neither FS nor any person related to FS within the meaning of section 954(d)(3) is a partner in FPRS, the exception in paragraph (c)(2) of this section applies to treat the FPRS obligation as an obligation of a foreign partnership and not an obligation of a United States person. Therefore, paragraph (c)(1) of this section does not apply, and FS is not treated as holding United States property.

Example 3. (i) *Facts.* USP, a domestic corporation, wholly owns FS, a controlled foreign corporation. USP has a 60% interest in the partnership profits of FPRS, a foreign partnership. FS has a 30% interest in the partnership profits of FPRS. U.S.C., a domestic corporation that is unrelated to USP and FS, has a 10% interest in the partnership profits of FPRS. FPRS borrows $100x from an unrelated person. FS guarantees the FPRS obligation.

(ii) *Result.* Under paragraph (c)(1) of this section, for purposes of section 956, the obligation of FPRS is treated as obligations of its partners (USP, FS, and U.S.C.) to the extent of each partner's interest in the partnership profits of FPRS. Because USP, a partner in FPRS, is related to FS within the meaning of section 954(d)(3), and because FS is a partner in FPRS, the exception in paragraph (c)(2) of this section does not apply. Based on their interests in partnership profits, USP's attributable share of the FPRS obligation is $60x, and U.S.C.'s attributable share of the FPRS obligation is $10x. For purposes of section 956, $60x of the FPRS obligation is treated as an obligation of USP,

and $10x of the FPRS obligation is treated as an obligation of U.S.C.. Under § 1.956–2(c)(1), FS is treated as holding the obligations of USP and U.S.C. that FS guaranteed. All of the exceptions to the definition of United States property contained in section 956 and § 1.956–2 apply to determine whether the obligations of USP and U.S.C. treated as held by FS constitute United States property. Accordingly, the obligation of U.S.C. is not United States property under section 956(c)(2)(F) and § 1.956–2(b)(1)(viii). The obligation of USP, however, is United States property within the meaning of section 956(c). Therefore, on the date the guarantee is made, FS is treated as holding United States property of $60x.

Example 4. (i) *Facts.* USP, a domestic corporation, wholly owns FS, a controlled foreign corporation. USP has a 70% interest in the partnership profits of FPRS, a foreign partnership. A domestic corporation that is unrelated to USP and FS has a 30% interest in the partnership profits of FPRS. FPRS borrows $100x from FS and makes a distribution of $80x to USP. FPRS would not have made the distribution to USP but for the funding of FPRS by FS.

(ii) *Result.* Because USP, a partner in FPRS, is related to FS within the meaning of section 954(d)(3), the exception in paragraph (c)(2) of this section does not apply. Moreover, an obligation of USP held by FS would be United States property. USP's attributable share of the FPRS obligation as determined under paragraph (c)(1) of this section in accordance with USP's interest in partnership profits is $70x. Under paragraph (c)(3) of this section, USP's share of the FPRS obligation is the greater of (i) USP's attributable share of the obligation, $70x, or (ii) the lesser of the amount of the distribution, $80x, or the amount of the obligation, $100x. For purposes of section 956, therefore, $80x of the FPRS obligation is treated as an obligation of USP and is United States property within the meaning of section 956(c). Thus, on the date the loan is made, FS is treated as holding United States property of $80x.

(d) *Limitation on a partner's indirect pledge or guarantee.* For purposes of section 956 and § 1.956–2(c), a controlled foreign corporation that is a partner in a partnership is not considered a pledgor or guarantor of the portion of an obligation of the partnership attributed to its partners that are United States persons under paragraph (c) of this section solely as a result of the attribution of a portion of the partnership's assets to the controlled foreign corporation under paragraph (b) of this section.

(e) *Obligations of a domestic partnership.* For purposes of section 956, an obligation of a domestic partnership is an obligation of a United States person. See section 956(c)(2)(L) for an exception from the treatment of such an obligation as United States property.

(f) *Effective/applicability dates.* (1) Paragraph (b) of this section applies to taxable years of controlled foreign corporations ending on or after [DATE OF PUBLICATION OF FINAL RULE], and taxable years of United States shareholders in which or with which such taxable years end, with respect to property acquired on or after [DATE OF PUBLICATION OF FINAL RULE]. For purposes of this paragraph (f)(1), a deemed exchange of property pursuant to section 1001 on or after [DATE OF PUBLICATION OF FINAL RULE] constitutes an acquisition of the property on or after that date.

(2) Paragraph (c) of this section applies to taxable years of controlled foreign corporations ending on or after [DATE OF PUBLICATION OF FINAL RULE], and taxable years of United States shareholders in which or with which such taxable years end, with respect to obligations acquired, or pledges or guarantees entered into, on or after September 1, 2015. For purposes of this paragraph (f)(2), a significant modification, within the meaning of § 1.1001–3(e), of an obligation on or after September 1, 2015 constitutes an acquisition of the obligation on or after that date. Furthermore, for purposes of this paragraph (f)(2), a pledgor or guarantor is treated as entering into a pledge or guarantee when there is a significant modification, within the meaning of § 1.1001–3(e), of an obligation with respect to which it is a pledgor or guarantor on or after September 1, 2015.

(3) Paragraph (d) of this section applies to taxable years of controlled foreign corporations ending on or after [DATE OF PUBLICATION OF FINAL RULE], and taxable years of United States shareholders in which or with which such taxable years end, with respect to pledges or guarantees entered into on or after September 1, 2015. For purposes of this paragraph (f)(3), a pledgor or guarantor is treated as entering into a pledge or guarantee when there is a significant modification, within the meaning of § 1.1001–3(e), of an obligation with respect to which it is a pledgor or guarantor on or after September 1, 2015.

(4) Paragraph (e) of this section applies to taxable years of controlled foreign corporations ending on or after [DATE OF PUBLICATION OF FINAL RULE], and to taxable years of United States shareholders in which or with which such taxable years end, with respect to obligations held on or after [DATE OF PUBLICATION OF FINAL RULE].

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–123640–15]

RIN 1545–BM86

Administration of Multiemployer Plan Participant Vote on an Approved Suspension of Benefits Under MPRA

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: Temporary regulations relating to the administration of a multiemployer plan participant vote on an approved suspension of benefits under the Multiemployer Pension Reform Act of 2014 (MPRA) are being issued in the Rules and Regulations section of this issue of the **Federal Register**. The text of those regulations also serves as the text of these proposed regulations.

DATES: Comments and requests for a public hearing must be received by November 2, 2015.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–123640–15), Room 5205, Internal Revenue Service, P.O. 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–123640–15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–123640–15).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, the Department of the Treasury MPRA guidance information line at (202) 622–1559; concerning submission of comments, and the previously-scheduled hearing, Regina Johnson at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed