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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-114734-16]

RIN 1545-BN51

United States Property Held by Controlled Foreign Corporations Through Partnerships with Special Allocations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide rules regarding the determination of the amount of United States property treated as held by a controlled foreign corporation (CFC) through a partnership. The proposed regulations affect United States shareholders of CFCs.

DATES: Written or electronic comments and requests for a public hearing must be received by **[INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-114734-16), 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-114734-16), 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-114734-16).

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

In the Rules and Regulations section of this issue of the **Federal Register**, the Department of Treasury (Treasury Department) and the IRS are issuing final regulations that amend the Income Tax Regulations (26 CFR part 1) relating to sections 954 and 956. Under §1.956-4(b), a CFC that is a partner in a partnership determines its share of United States property held by the partnership in accordance with the CFC's liquidation value percentage in the partnership, or, when relevant, based on a special allocation of income (or, where appropriate, gain) from the property. This document proposes to amend §1.956-4(b) so that a CFC that is a partner in a controlled partnership determines its share of United States property held by the partnership under the liquidation value percentage method, regardless of the existence of any special allocation of income or gain from the property.

Explanation of Provisions

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 of the amounts 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.

Under §1.956-4(b), a CFC that is a partner in a partnership generally is treated as holding its share of United States property held by the partnership in accordance with the CFC partner's liquidation value percentage in the partnership. However, if there is a special allocation of income (or, where appropriate, gain) from United States property that does not have a principal purpose of avoiding the purposes of section 956, the partner's attributable share of that property is determined solely by reference to the special allocation. See §1.956-4(b)(2)(ii). The Treasury Department and the IRS have concluded that, in general, these rules provide a reasonable means of determining a partner's interest in property held by a partnership for purposes of section 956 because they generally result 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.

The Treasury Department and the IRS are concerned, however, that special allocations with respect to a partnership that is controlled by a single multinational group are unlikely to have economic significance for the group as a whole and can facilitate tax planning that is inconsistent with the purposes of section 956. Accordingly, these proposed regulations propose to revise §1.956-4(b) such that a partner's attributable share of each item of property of a partnership controlled by the partner would be determined solely in accordance with the partner's liquidation value percentage, even if

income or gain from the property is subject to a special allocation. Specifically, under proposed §1.956-4(b)(2)(iii), the rule in §1.956-4(b)(2)(ii) requiring a partner's attributable share of partnership property to be determined by reference to special allocations with respect to the property would not apply in the case of a partnership controlled by the partner. For this purpose, a partner is treated as controlling a partnership if the partner and the partnership are related within the meaning of section 267(b) or section 707(b), substituting "at least 80 percent" for "more than 50 percent". The examples in §1.956-4(b)(3) are proposed to be modified in accordance with the proposed rule.

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 them as final regulations, and taxable years of United States shareholders in which or with which such taxable years end, with respect to property acquired on or after the date of publication in the **Federal Register** of the Treasury decision adopting them as final regulations. The IRS may, where appropriate, challenge transactions under currently applicable Code or regulatory provisions or judicial doctrines.

Special Analyses

Certain IRS regulations, including these regulations, 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. The Treasury Department 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 author of these proposed regulations is 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 continues to read in part as follows:

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

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

Par. 2. Section 1.956-4 is amended by:

1. Revising paragraph (b)(2)(ii).
2. Adding paragraph (b)(2)(iii).
3. Adding a sentence at the end of paragraph (i) of Example 2 of paragraph (b)(3).
4. Revising paragraph (ii) of Example 2 of paragraph (b)(3).
5. Revising Example 3 of paragraph (b)(3).
6. Adding Example 4 to paragraph (b)(3).
7. Revising paragraph (f)(1).

The revisions and additions read as follows:

§1.956-4 Certain rules applicable to partnerships.

* * * * *

(b) * * *

(2) * * *

(ii) Special allocations. Except as otherwise provided in paragraph (b)(2)(iii) of this section, for purposes of paragraph (b)(1) of this section, if a partnership agreement provides for the allocation of book income (or, where appropriate, book gain) from a subset of the property of the partnership to a partner other than in accordance with 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.

(iii) Limitation on special allocations in the case of a controlled partnership.

Paragraph (b)(2)(ii) of this section does not apply to determine a partner's attributable share of partnership property in the case of a partnership controlled by the partner. For purposes of this paragraph (b)(2)(iii), a partner controls a partnership when the partner and the partnership are related within the meaning of section 267(b) or section 707(b), determined by substituting "at least 80 percent" for "more than 50 percent" wherever it appears.

(3) * * *

Example 2. (i) Facts. * * * FS does not control FPRS within the meaning of paragraph (b)(2)(iii) of this section.

(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 such property. In general, FS's attributable share of property held by FPRS is determined in accordance with FS's liquidation value percentage. However, because FS does not control FPRS within the meaning of paragraph (b)(2)(iii) of this section and because the special allocation does not have a principal purpose of avoiding the purposes of section 956, under paragraph (b)(2)(ii) of this section, FS's attributable share of the FPRS property is determined by reference to its special allocation. FS's special allocation percentage for the FPRS property is 80%, and thus FS's attributable share of the FPRS property is 80% and its attributable share of FPRS's basis in the FPRS property is \$80x. Accordingly, for purposes of determining the amount of United States property held by FS as of the close of quarter 1 of year 1, FS is treated as holding United States 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 a 25% capital and profits interest in FPRS, a foreign partnership. The remaining 75% capital and profits interest in FPRS is owned by an unrelated foreign person. Thus, FS does not control FPRS within the meaning of paragraph (b)(2)(iii) of this section. FPRS holds property (the "FPRS property") that would be United States property if held by FS directly. The FPRS property has an adjusted basis of \$100x and is anticipated to appreciate in value but generate relatively little income. 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 the unrelated foreign person 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. Because FPRS is not controlled by FS within the meaning of paragraph (b)(2)(iii) of this section, and the special allocation does not have a principal purpose of avoiding the purposes of section 956, under paragraph (b)(2)(ii) of this section, FS's attributable share of the FPRS property is determined by reference to a special allocation with respect to the FPRS property. Given the income and gain anticipated with respect to the FPRS property, it is appropriate to determine FS's attributable share of the property in accordance with the special allocation of gain. Accordingly, for purposes of determining the amount of United States property held by FS in each year that FPRS holds the FPRS property, FS's attributable share of the FPRS property is 80% and its attributable share of FPRS's basis in the FPRS property is \$80x. Thus, FS is treated as holding United States property with an adjusted basis of \$80x.

Example 4. (i) Facts. The facts are the same as in Example 3 of this paragraph (b)(3), except that USP owns the 75% capital and profits interest in FPRS rather than an unrelated foreign person. Thus, FS controls FPRS within the meaning of paragraph (b)(2)(iii) of this section. 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%.

(ii) Result. Because FPRS is controlled by FS within the meaning of paragraph (b)(2)(iii) of this section, under paragraph (b)(2)(iii) of this section, FS's attributable share of the FPRS property is not determined by reference to the special allocation of gain with respect to the FPRS property. Accordingly, for purposes of determining the amount of United States property held by FS in each year that FPRS holds the FPRS property, FS's attributable share of the FPRS property is determined under paragraph (b)(2)(i) in accordance with FS's liquidation value percentage, which is 25%, and its attributable share of FPRS's basis in the FPRS property is \$25x. Thus, FS is treated as holding United States property with an adjusted basis of \$25x.

* * * * *

(f) * * *

(1) Except as otherwise provided in this paragraph (f)(1), paragraph (b) of this section applies to taxable years of controlled foreign corporations ending on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and taxable years of United States shareholders in which or with which such taxable years end, with

respect to property acquired on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Paragraphs (b)(2)(ii) and (iii) of this section, as well as Example 2, Example 3, and Example 4 of paragraph (b)(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 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 property acquired on or after the date of publication in the **Federal Register** of the Treasury decision adopting this rule as a final regulation. For purposes of this paragraph (f)(1), a deemed exchange of property pursuant to section 1001 on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** constitutes an acquisition of the property on or after that date, and a deemed exchange of property pursuant to section 1001 on or after the date of publication in the **Federal Register** of the Treasury decision adopting this rule as a final regulation constitutes an acquisition of the property on or after that date.

See §1.956-2(a)(3), as contained in 26 CFR part 1 revised as of April 1, 2016, for the rules applicable to taxable years of a controlled foreign corporation beginning on or after July 23, 2002, and ending before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and with respect to property acquired before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, to taxable years of a controlled foreign corporation beginning on or after July 23, 2002.

John Dalrymple

Deputy Commissioner for Services and Enforcement.

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