



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9908]

RIN 1545-B052

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

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the modification of section 958(b) of the Internal Revenue Code (“Code”) by the Tax Cuts and Jobs Act, which was enacted on December 22, 2017. This document finalizes the proposed regulations published on October 2, 2019. The final regulations affect United States persons that have ownership interests in, or that make or receive payments to or from, certain foreign corporations.

DATES: Effective date: These regulations are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability dates: For dates of applicability, see §§1.267(a)-3(d), 1.332-8(b), 1.367(a)-8(r)(1)(i), 1.672(f)-2(e), 1.706-1(b)(6)(v)(A), 1.863-8(h), 1.863-9(l), 1.904-5(o), 1.958-2(h), and 1.6049-5(g).

FOR FURTHER INFORMATION CONTACT: Christina G. Daniels, (202) 317-6934 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

## Background

As in effect before its repeal, section 958(b)(4) provided that section 318(a)(3)(A), (B), and (C) (providing for downward attribution) was not to be applied so as to consider a United States person as owning stock owned by a person who is not a United States person (a “foreign person”). Section 14213 of the Tax Cuts and Jobs Act, Pub. L. 115-97 (the “Act”) repealed section 958(b)(4), effective for the last taxable year of foreign corporations beginning before January 1, 2018, and each subsequent year of the foreign corporations, and for the taxable years of United States shareholders (as defined in section 951(b)) (“U.S. shareholders”) in which or with which such taxable years of the foreign corporations end. As a result of this repeal, stock of a foreign corporation owned by a foreign person can be attributed to a United States person under section 318(a)(3) for various purposes, including for purposes of determining whether a United States person is a U.S. shareholder of the foreign corporation and, therefore, whether the foreign corporation is a controlled foreign corporation (within the meaning of section 957) (“CFC”).

On October 2, 2019, the Department of the Treasury (“Treasury Department”) and the IRS published proposed regulations (REG-104223-18) relating to the repeal of section 958(b)(4) by the Act, in the **Federal Register** (84 FR 52398) (the “proposed regulations”). Additional guidance related to the repeal of section 958(b)(4), including relief from certain information reporting requirements and safe harbors for determining whether a foreign corporation is a CFC and for determining certain items of a CFC (such as taxable income and earnings and profits) based on alternative information, was issued along with the proposed regulations. See Revenue Procedure 2019-40, 2019-43

I.R.B. 982. No public hearing on the proposed regulations was requested or held. All of the written comments that were received by the Treasury Department and the IRS in response to the proposed regulations are available at [www.regulations.gov](http://www.regulations.gov) or upon request. This Treasury decision adopts the proposed regulations as final regulations with the modifications discussed in the Summary of Comments and Explanation of Revisions section of this preamble. Comments outside of the scope of this rulemaking are generally not addressed but may be considered in connection with future guidance.

A notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register** (REG-110059-20) provides regulations under section 954(c)(6) to ensure that the operation of section 954(c)(6) is consistent with its application before the Act's repeal of section 958(b)(4). The notice of proposed rulemaking also modifies the regulations under section 367(a) regarding the direct or indirect transfer of stock or securities of a domestic corporation by a United States person (as defined in section 7701(a)(30)) to a foreign corporation to ensure the attribution rules are applied consistently following the Act's repeal of section 958(b)(4).

## **Summary of Comments and Explanation of Revisions**

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

#### **A. Overview**

The final regulations, like the proposed regulations, generally make modifications to ensure that the operation of certain rules outside of subpart F of subchapter N of chapter 1 of the Code ("subpart F") are consistent with their application before the Act's repeal of section 958(b)(4). Comments generally supported the approach of the

proposed regulations but requested additional modifications, as discussed in more detail in this Summary of Comments and Explanation of Revisions.

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

Section 267(a)(2) sets forth a matching rule that generally provides that if a payment is made to a related person and is not includible in the payee's gross income until paid, the amount is not allowable as a deduction to the taxpayer until the amount is includible in the gross income of the payee ("general matching rule"). Pursuant to regulations issued under section 267(a)(3)(A),<sup>1</sup> subject to certain exceptions, a taxpayer must use the cash method of accounting for deductions of amounts owed to a related foreign person ("foreign payee rule"). The foreign payee rule does not apply to the following amounts: (i) a foreign source amount, other than interest, that is not effectively connected with the conduct of a U.S. trade or business; (ii) an amount, other than interest, that is exempt from U.S. taxation pursuant to a treaty obligation of the United States; and (iii) an amount that is effectively connected with the conduct of a U.S. trade or business (although payments in this clause (iii) are subject to the general matching rule of section 267(a)(2)). See §1.267(a)-3(b) and (c)(1) and (2).

Section 267(a)(3)(B)(i) provides that, notwithstanding the foreign payee rule in section 267(a)(3)(A), in the case of any item payable to a CFC, a deduction is allowable to the payor for any taxable year before the year in which the payment is made only to the extent that an amount attributable to the item is includible during such prior taxable

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<sup>1</sup> In 2004, section 267(a)(3) was amended to redesignate existing section 267(a)(3) as section 267(a)(3)(A), and a new section 267(a)(3)(B) was added. P.L. 108-357. The regulations in §1.267(a)-3 were issued in 1993, under section 267(a)(3) as it existed at the time, currently section 267(a)(3)(A).

year in the gross income of a United States person who owns (within the meaning of section 958(a)) stock in such CFC (“CFC payee rule”). Under the proposed regulations, however, an amount (other than interest) that is income of a related foreign person and exempt from U.S. taxation pursuant to a treaty obligation of the United States was not subject to the CFC payee rule if the related foreign person is a CFC that did not have any U.S. shareholders that owned (within the meaning of section 958(a)) stock in such CFC (a “section 958(a) U.S. shareholder”). See proposed §1.267(a)-3(c)(4).

A comment received shortly before the proposed regulations were published suggested that the regulations should broadly provide that, with respect to all payments subject to section 267(a)(3), the CFC payee rule in section 267(a)(3)(B)(i) applies only to the extent a recipient CFC has one or more section 958(a) U.S. shareholders and that it should be applied without regard to the repeal of section 958(b)(4). Consistent with the purpose of the general matching rule in section 267(a)(2) and in order for the foreign payee rule in section 267(a)(3)(A) to apply consistently with its application before the repeal of section 958(b)(4), the Treasury Department and the IRS agree that, with respect to all payments (including interest) subject to section 267(a)(3), the CFC payee rule in section 267(a)(3)(B)(i) should not apply if a recipient CFC does not have any section 958(a) U.S. shareholders who are required to include amounts in income with respect to the CFC. However, the Treasury Department and the IRS do not agree that the CFC payee rule should be applied without regard to the repeal of section 958(b)(4), because that could permit the avoidance of the CFC payee rule (and the purposes of the matching rule in general) in foreign-parented structures where a section 958(a) U.S. shareholder is required to include amounts in income with respect to a

recipient foreign corporation that is a CFC due solely to the repeal of section 958(b)(4). Accordingly, the exception from the CFC payee rule in proposed §1.267(a)-3(c)(4) is expanded in the final regulations to apply to all amounts payable to a related foreign person that is a CFC that does not have any section 958(a) U.S. shareholders. See §1.267(a)-3(c)(4). As a result, the foreign payee rule in section 267(a)(3)(A) and the regulations under that section will apply to those payments exempt from the application of the CFC payee rule. However, the CFC payee rule continues to apply to a CFC that has a section 958(a) shareholder even if the foreign corporation is a CFC due solely to the repeal of section 958(b)(4).

C. Section 881(c): Portfolio interest

Section 881(c) exempts from tax under section 881(a) U.S.-source portfolio interest received by a foreign corporation (“portfolio interest exception”). For this purpose, portfolio interest generally includes interest paid on a debt obligation that is in registered form but excludes, among other things, interest received by a CFC from a related person (within the meaning of section 864(d)(4)). See section 881(c)(2) and (3). The repeal of section 958(b)(4) results in foreign corporations that were previously not CFCs (and thus potentially eligible for the portfolio interest exception for interest received from related persons) being ineligible for the exception on such interest.

A comment requested that the general approach of the proposed regulations to exclude, where appropriate, CFCs that are CFCs solely as a result of the repeal of section 958(b)(4) be extended to the portfolio interest exception so that CFCs that were not previously CFCs could continue to be eligible for the portfolio interest exception. The rules set forth in the proposed regulations were all issued pursuant to specific

grants of regulatory authority, and the Treasury Department and the IRS have determined that there is no statutory or regulatory authority to modify the limitation on the portfolio interest exception for payments received by CFCs from a related person. Accordingly, the recommendation is not adopted.

The comment also requested that the Treasury Department and the IRS issue guidelines for withholding agents that might not be in a position to know whether a payee was affected by the repeal of section 958(b)(4) and thus might not know whether the payee qualifies for the portfolio interest exception or whether the withholding agent may be required to withhold under section 1442. The comment posited scenarios in which a U.S. payor would not necessarily have the information to determine whether a foreign corporation payee is a CFC and thus would err on the side of withholding as if it were a CFC.

A withholding agent is generally subject to an actual knowledge or reason to know standard. See §1.1441-7(b)(1). A withholding agent is considered to have reason to know with respect to a claim relevant to withholding under chapter 3 (including section 1442) if “its knowledge of relevant facts or of statements contained in the withholding certificates or other documentation is such that a reasonably prudent person in the position of the withholding agent would question the chapter 3 claims made.” See §1.1441-7(b)(2). The Treasury Department and the IRS have concluded that this standard is appropriate for withholding agents, and additional rules applicable only to portfolio interest are not necessary. Moreover, it would be outside of the scope of this rulemaking to provide rules generally applicable to the standard of diligence applicable to withholding agents. Accordingly, the suggestion is not adopted.

D. Section 1248: Gain from certain sales or exchanges of stock in certain foreign corporations

Section 1248(a) provides that certain gain recognized on the sale or exchange of stock of a foreign corporation by a United States person is included in the gross income of that person as a dividend if (i) the foreign corporation was a CFC at any time during the five-year period ending on the date of the sale or exchange, and (ii) the United States person owned or is considered to have owned, within the meaning of section 958, 10 percent or more of the total combined voting power of the foreign corporation at any time during that five-year period. A comment suggested that, consistent with the approach taken in the proposed regulations with respect to other sections, section 958(b) should be applied without regard to the repeal of section 958(b)(4) for purposes of section 1248 to prevent unintended consequences.

The final regulations do not adopt this comment because the Treasury Department and the IRS have determined that section 958(b), as modified by the Act, should apply for purposes of section 1248. This treatment is consistent with the application of section 958(b) for purposes of the subpart F provisions, and this consistent treatment is appropriate because one of the types of transactions that the repeal of section 958(b)(4) was intended to address – that is, transactions used to avoid the subpart F provisions, including decontrolling a foreign subsidiary to convert a CFC to a non-CFC – could also be used to avoid the section 1248 provisions.

E. Section 1297: PFIC asset test

The proposed regulations modified the definition of a CFC for purposes of section 1297(e) to disregard downward attribution from foreign persons. See proposed §1.1297-1(d)(1)(iii)(A). On July 11, 2019, the Treasury Department and the IRS



published other proposed regulations (REG-105474-18) under §1.1297-1 in the **Federal Register** (84 FR 33120) (the “PFIC proposed regulations”). The Treasury Department and the IRS have decided to finalize proposed §1.1297-1(d)(1)(iii)(A) as part of the Treasury Decision finalizing the PFIC proposed regulations.

F. Section 6049: Chapter 61 reporting provisions

Generally, under chapter 61 of subtitle F of the Code, a payor must report to the IRS (using the appropriate Form 1099) certain payments or transactions with respect to United States persons that are not exempt recipients. The regulations under chapter 61 generally provide that the scope of payments or transactions subject to reporting under chapter 61 depends, in part, on whether or not the payor is a U.S. payor (as defined in §1.6049-5(c)(5)(i)), which generally includes United States persons and their foreign branches, as well as CFCs. To mitigate the increased Form 1099 reporting by foreign corporations that may have no direct or indirect owners that are United States persons, in accordance with the regulatory authority provided in section 6049(a), proposed §1.6049-5(c)(5)(i)(C) provided that a U.S. payor includes only a CFC that is a CFC without regard to downward attribution from a foreign person.

A comment requested that the exception from Form 1099 reporting be expanded to all CFCs, even if they would be CFCs without regard to the repeal of section 958(b)(4), due to the burden of the required reporting and the interaction with the requirements of local law to which CFCs are subject. Because the comment does not relate to the consequences of the repeal of section 958(b)(4), it is outside of the scope of these regulations. As a result, the rules in proposed §1.6049-5 are finalized as proposed.

## II. Applicability Dates

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

## III. Effect on Other Documents

Section 5.01 of Notice 2018-13 (2018-6 I.R.B. 341) is obsolete as of **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

### **Statement of Availability of IRS Documents**

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

## **Special Analyses**

These regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

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

Consequently, the Treasury Department and the IRS have determined that the regulations will not have a significant economic impact on a substantial number of small entities. Notwithstanding this certification, the Treasury Department and the IRS invite comments on the impacts of these regulations on small entities.

Pursuant to section 7805(f), the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received.

## **Drafting Information**

The principal authors of the regulations are Karen J. Cate and Christina G. Daniels of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in the development of the regulations.

### **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

### **Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

#### **PART 1--INCOME TAXES**

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

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

1. In paragraph (c)(2), the first sentence, by removing the language “or (a)(3)”.
2. By revising paragraph (c)(4).
3. In paragraph (d), by revising the second sentence and adding five sentences at the end of the paragraph.

The revisions and additions read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(4) Certain amounts owed to certain controlled foreign corporations. An amount that is income of a related foreign person is exempt from the application of section 267(a)(3)(B)(i) if the related foreign person is a controlled foreign corporation that does not have any United States shareholders (as defined in section 951(b)) that own (within the meaning of section 958(a)) stock of the controlled foreign corporation. However, in this case, the amount is subject to the application of section 267(a)(3)(A) in the same manner as if the related foreign person were a foreign corporation that is not a controlled foreign corporation.

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

United States persons that are related (within the meaning of section 267 or 707) to the taxpayer consistently apply such paragraph with respect to all foreign corporations. For payments accrued before October 22, 2004, see §1.267(a)-3(c)(4), as contained in 26 CFR part 1, revised as of April 1, 2004.

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

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

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

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

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

1. In paragraph (k)(14)(ii), by revising the second sentence.
2. In paragraph (p)(3), by designating Examples 1 through 4 as paragraphs (p)(3)(i) through (iv), respectively.
3. In newly redesignated paragraphs (p)(3)(i) through (iv), by redesignating the paragraphs in the first column as the paragraphs in the second column:

<b>Old Paragraphs</b>	<b>New Paragraphs</b>
(p)(3)(i)(i) and (ii)	(p)(3)(i)(A) and (B)
(p)(3)(ii)(i) and (ii)	(p)(3)(ii)(A) and (B)
(p)(3)(iii)(i) and (ii)	(p)(3)(iii)(A) and (B)
(p)(3)(iv)(i) and (ii)	(p)(3)(iv)(A) and (B)

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

<b>Paragraph</b>	<b>Remove</b>	<b>Add</b>
(p)(3)(i)(B)	this <u>Example 1</u>	in paragraph (p)(3)(i)(A) of this section (the facts of this <u>Example 1</u> )
(p)(3)(ii)(B)	this <u>Example 2</u>	in paragraph (p)(3)(ii)(A) of this section (the facts of this <u>Example 2</u> )

5. In paragraph (q)(2), by removing the language “at least 5% (applying the attribution rules of section 318, as modified by section 958(b))” wherever it appears and adding the language “at least 5% (determined as provided in paragraph (k)(14)(ii) of this section)” in its place.

6. In paragraph (q)(2), by designating Examples 1 through 25 as paragraphs (q)(2)(i) through (xxv), respectively.

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

<b>Old Paragraphs</b>	<b>New Paragraphs</b>
(q)(2)(i)(i) and (ii)	(q)(2)(i)(A) and (B)
(q)(2)(ii)(i) and (ii)	(q)(2)(ii)(A) and (B)
(q)(2)(ii)(B)(A) and (B)	(q)(2)(ii)(B)( <u>1</u> ) and ( <u>2</u> )
(q)(2)(iii)(i) and (ii)	(q)(2)(iii)(A) and (B)
(q)(2)(iv)(i) and (ii)	(q)(2)(iv)(A) and (B)
(q)(2)(iv)(B)(A) and (B)	(q)(2)(iv)(B)( <u>1</u> ) and ( <u>2</u> )
(q)(2)(iv)(B)( <u>2</u> )( <u>1</u> ) through ( <u>3</u> )	(q)(2)(iv)(B)( <u>2</u> )(i) through ( <u>iii</u> )
(q)(2)(v)(i) and (ii)	(q)(2)(v)(A) and (B)
(q)(2)(vi)(i) through (iii)	(q)(2)(vi)(A) through (C)
(q)(2)(vi)(B)(A) and (B)	(q)(2)(vi)(B)( <u>1</u> ) and ( <u>2</u> )
(q)(2)(vi)(B)( <u>2</u> )( <u>1</u> ) through ( <u>3</u> )	(q)(2)(vi)(B)( <u>2</u> )(i) through ( <u>iii</u> )
(q)(2)(vii)(i) and (ii)	(q)(2)(vii)(A) and (B)
(q)(2)(viii)(i) and (ii)	(q)(2)(viii)(A) and (B)
(q)(2)(ix)(i) and (ii)	(q)(2)(ix)(A) and (B)



(q)(2)(x)(i) and (ii)	(q)(2)(x)(A) and (B)
(q)(2)(x)(B)(A) through (C)	(q)(2)(x)(B)( <u>1</u> ) through ( <u>3</u> )
(q)(2)(xi)(i) through (iii)	(q)(2)(xi)(A) through (C)
(q)(2)(xii)(i) and (ii)	(q)(2)(xii)(A) and (B)
(q)(2)(xii)(B)(A) through (C)	(q)(2)(xii)(B)( <u>1</u> ) through ( <u>3</u> )
(q)(2)(xiii)(i) and (ii)	(q)(2)(xiii)(A) and (B)
(q)(2)(xiv)(i) and (ii)	(q)(2)(xiv)(A) and (B)
(q)(2)(xiv)(B)(A) and (B)	(q)(2)(xiv)(B)( <u>1</u> ) and ( <u>2</u> )
(q)(2)(xv)(i) and (ii)	(q)(2)(xv)(A) and (B)
(q)(2)(xvi)(i) and (ii)	(q)(2)(xvi)(A) and (B)
(q)(2)(xvii)(i) and (ii)	(q)(2)(xvii)(A) and (B)
(q)(2)(xvii)(B)(A) through (C)	(q)(2)(xvii)(B)( <u>1</u> ) through ( <u>3</u> )
(q)(2)(xvii)(B)( <u>3</u> )( <u>1</u> ) through ( <u>3</u> )	(q)(2)(xvii)(B)( <u>3</u> )(i) through (iii)
(q)(2)(xviii)(i) and (ii)	(q)(2)(xviii)(A) and (B)
(q)(2)(xix)(i) and (ii)	(q)(2)(xix)(A) and (B)
(q)(2)(xx)(i) through (vi)	(q)(2)(xx)(A) through (F)
(q)(2)(xx)(B)(A) and (B)	(q)(2)(xx)(B)( <u>1</u> ) and ( <u>2</u> )
(q)(2)(xx)(B)( <u>1</u> )( <u>1</u> ) and ( <u>2</u> )	(q)(2)(xx)(B)( <u>1</u> )(i) and (ii)
(q)(2)(xxi)(i) and (ii)	(q)(2)(xxi)(A) and (B)
(q)(2)(xxi)(B)(A) through (C)	(q)(2)(xxi)(B)( <u>1</u> ) through ( <u>3</u> )
(q)(2)(xxii)(i) through (iii)	(q)(2)(xxii)(A) through (C)
(q)(2)(xxii)(B)(A) through (C)	(q)(2)(xxii)(B)( <u>1</u> ) through ( <u>3</u> )
(q)(2)(xxii)(C)(A) through (C)	(q)(2)(xxii)(C)( <u>1</u> ) through ( <u>3</u> )

(q)(2)(xxiii)(i) through (iv)	(q)(2)(xxiii)(A) through (D)
(q)(2)(xxiii)(B)(A) through (D)	(q)(2)(xxiii)(B)( <u>1</u> ) through ( <u>4</u> )
(q)(2)(xxiii)(C)(A) and (B)	(q)(2)(xxiii)(C)( <u>1</u> ) and ( <u>2</u> )
(q)(2)(xxiv)(i) and (ii)	(q)(2)(xxiv)(A) and (B)
(q)(2)(xxv)(i) and (ii)	(q)(2)(xxv)(A) and (B)

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

<b>Paragraph</b>	<b>Remove</b>	<b>Add</b>
(q)(2)(ii)(B)( <u>2</u> )	paragraph (ii)(A) of this <u>Example 2</u>	paragraph (q)(2)(ii)(B)( <u>1</u> ) of this section (paragraph ( <u>1</u> ) in the results in this <u>Example 2</u> )
(q)(2)(iv)(B)( <u>2</u> )(i)	paragraph (ii)(A) of this <u>Example 4</u>	paragraph (q)(2)(iv)(B)( <u>1</u> ) of this section (paragraph ( <u>1</u> ) in the results in this <u>Example 4</u> )
(q)(2)(vi)(B)( <u>1</u> )	paragraph (ii)(B) of this <u>Example 6</u>	paragraph (q)(2)(vi)(B)( <u>2</u> ) of this section (paragraph ( <u>2</u> ) in the results in this <u>Example 6</u> )

(q)(2)(vi)(C)	paragraph (i) of this <u>Example 6</u>	paragraph (q)(2)(vi)(A) of this section (the facts in this <u>Example 6</u> )
(q)(2)(xi)(C)	paragraph (i) of this <u>Example 11</u>	paragraph (q)(2)(xi)(A) of this section (the facts in this <u>Example 11</u> )
(q)(2)(xx)(C)	paragraph (i) of this <u>Example 20</u>	paragraph (q)(2)(xx)(A) of this section (the facts in this <u>Example 20</u> )
(q)(2)(xx)(C)	paragraph (ii) of this <u>Example 20</u>	paragraph (q)(2)(xx)(B) of this section (the results in this <u>Example 20</u> )
(q)(2)(xx)(D)	paragraph (i) of this <u>Example 20</u>	paragraph (q)(2)(xx)(A) of this section (the facts in this <u>Example 20</u> )
(q)(2)(xx)(D)	paragraph (ii) of this <u>Example 20</u>	paragraph (q)(2)(xx)(B) of this section (the facts in this <u>Example 20</u> )
(q)(2)(xx)(E)	paragraph (i) of this <u>Example 20</u>	paragraph (q)(2)(xx)(A) of this section (the facts in this <u>Example 20</u> )

(q)(2)(xx)(F)	paragraph (i) of this <u>Example 20</u>	paragraph (q)(2)(xx)(A) of this section (the facts in this <u>Example 20</u> )
(q)(2)(xxii)(C) introductory text	in paragraph (i) of this <u>Example 22</u>	paragraph (q)(2)(xxii)(A) of this section (the facts in this <u>Example 22</u> )
(q)(2)(xxiii)(C) introductory text	paragraph (i) of this <u>Example 23</u>	paragraph (q)(2)(xxiii)(A) of this section (the facts in this <u>Example 23</u> )
(q)(2)(xxiii)(C) introductory text	paragraph (ii) of this <u>Example 23</u>	paragraph (q)(2)(xxiii)(B) of this section (the results in this <u>Example 23</u> )
(q)(2)(xxiii)(D)	paragraph (i) of this <u>Example 23</u>	paragraph (q)(2)(xxiii)(A) of this section (the facts in this <u>Example 23</u> )
(q)(2)(xxiv)(A)	in paragraph (i) of <u>Example 6</u>	paragraph (q)(2)(vi)(A) of this section (the facts in <u>Example 6</u> )

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

Paragraph	Remove	Add
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(c)(1)(ii)	(q)(2) of this section, Example 6	(q)(2)(vi) of this section
(c)(4)(iv)	paragraph (q)(2) of this section, Examples 1, 2, 3, and 5	paragraphs (q)(2)(i), (ii), (iii), and (v) of this section
(j)(1)	(q)(2) of this section, Example 2	(q)(2)(ii) of this section
(k)(1) introductory text	(q)(2) of this section, Example 4	(q)(2)(iv) of this section
(k)(1)(ii)	(q)(2) of this section, Example 3	(q)(2)(iii) of this section
(k)(1)(iii)	(q)(2) of this section, Example 11	(q)(2)(xi) of this section
(k)(6)(i)	(q)(2) of this section, Example 5	(q)(2)(v) of this section
(k)(6)(i)	(q)(2) of this section, Example 6	(q)(2)(vi) of this section
(k)(6)(ii)	(q)(2) of this section, Example 7	(q)(2)(vii) of this section
(k)(6)(iii)	(q)(2) of this section, Example 8	(q)(2)(viii) of this section
(k)(8)	(q)(2) of this section, Example 9	(q)(2)(ix) of this section

(k)(12)(i)	(q)(2) of this section, Example 20	(q)(2)(xx) of this section
(k)(14) introductory text	paragraph (q)(2), Examples 4, 6, 10, 12, 17, 21, and 23 of this section	paragraphs (q)(2)(iv), (vi), (x), (xii), (xvii), (xxi), and (xxiii) of this section
(m)(1)	(q)(2) of this section, Example 13	(q)(2)(xiii) of this section
(n)(1)	(q)(2) of this section, Example 14	(q)(2)(xiv) of this section
(o)(1)(ii)	(q)(2) of this section, Example 15	(q)(2)(xv) of this section
(o)(1)(iii) introductory text	(q)(2) of this section, Example 16	(q)(2)(xvi) of this section
(o)(5)(i)(A)	(q)(2) of this section, Example 18	(q)(2)(xviii) of this section
(o)(5)(i)(B)	(q)(2) of this section, Example 19	(q)(2)(xix) of this section
(o)(5)(i)(C)	(q)(2) of this section, Example 22	(q)(2)(xxii) of this section
(o)(5)(i)(D)	(q)(2) of this section, Example 22	(q)(2)(xxii) of this section
(o)(6)	(q)(2) of this section, Example 20	(q)(2)(xx) of this section

(r)(2)(i)	paragraph (q)(2) of this section, Examples 24 and 25	paragraphs (q)(2)(xxiv) and (xxv) of this section
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10. By revising the paragraph (r) subject heading.

11. In paragraph (r)(1)(i), by adding three sentences at the end of the paragraph.

The revisions and addition read as follows:

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

\* \* \* \* \*

(k) \* \* \*

(14) \* \* \*

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

\* \* \* \* \*

(r) Applicability dates--(1) \* \* \*

(i) \* \* \* Paragraph (k)(14)(ii) of this section applies to transfers occurring on or after October 1, 2019, and to transfers occurring before October 1, 2019, that result

from an entity classification election made under §301.7701-3 of this chapter that is filed on or after October 1, 2019. For transfers occurring before October 1, 2019, other than transfers occurring before October 1, 2019, that result from an entity classification election made under §301.7701-3 of this chapter that is filed on or after October 1, 2019, a taxpayer may apply paragraph (k)(14)(ii) of this section to transfers occurring during the last taxable year of a transferee foreign corporation beginning before January 1, 2018, and each subsequent taxable year of the foreign corporation, provided that the taxpayer and United States persons that are related (within the meaning of section 267 or 707) to the taxpayer consistently apply such paragraph with respect to all foreign corporations. For transfers occurring before October 1, 2019, other than transfers occurring before October 1, 2019, that result from an entity classification election made under §301.7701-3 of this chapter that is filed on or after October 1, 2019, where the taxpayer does not apply paragraph (k)(14)(ii) of this section as described in the preceding sentence, see paragraph (k)(14)(ii) of this section as in effect and contained in 26 CFR part 1, as revised April 1, 2020.

\* \* \* \* \*

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

§1.672(f)-2 Certain foreign corporations.

(a) Application of general rule in this section. Subject to the provisions of paragraph (b) of this section, if the owner of any portion of a trust upon application of the grantor trust rules without regard to section 672(f) is a controlled foreign corporation or a passive foreign investment company (as defined in section 1297), the corporation is



treated as a domestic corporation for purposes of applying the rules of §1.672(f)-1. For purposes of this section, a controlled foreign corporation has the meaning provided in section 957, determined without applying section 318(a)(3)(A), (B), and (C) so as to consider a United States person as owning stock which is owned by a person who is not a United States person.

\* \* \* \* \*

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

taxable years of foreign corporations ending before October 1, 2019, and taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, where the taxpayer does not apply the provisions of paragraph (a) of this section relating to controlled foreign corporations, see paragraph (a) of this section as in effect and contained in 26 CFR part 1, as revised April 1, 2020.

Par. 6. Section 1.706-1 is amended:

1. By revising paragraph (b)(6)(ii).
2. By revising the paragraph (b)(6)(v) subject heading.
3. In paragraph (b)(6)(v)(A), by revising the first sentence and adding three sentences after the first sentence.

The revisions and addition read as follows:

§1.706-1 Taxable years of partner and partnership.

\* \* \* \* \*

(b) \* \* \*

(6) \* \* \*

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

\* \* \* \* \*

(v) Applicability dates--(A) \* \* \* The provisions of this paragraph (b)(6) (other than paragraph (b)(6)(iii) of this section and paragraph (b)(6)(ii) of this section to the extent described in the next sentence) apply to partnership taxable years, other than those of an existing partnership, that begin on or after July 23, 2002. The provisions in paragraph (b)(6)(ii) of this section relating to controlled foreign corporations apply to taxable years of foreign corporations ending on or after October 1, 2019, and taxable years of United States shareholders in which or with which such taxable years of foreign corporations end. For taxable years of foreign corporations ending before October 1, 2019, and taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, a taxpayer may apply such provisions to the last taxable year of a foreign corporation beginning before January 1, 2018, and each subsequent taxable year of the foreign corporation, and to taxable years of United States shareholders in which or with which such taxable years of the foreign corporation end, provided that the taxpayer and United States persons that are related (within the meaning of section 267 or 707) to the taxpayer consistently apply such provisions with respect to all foreign corporations. For taxable years of foreign corporations ending before October 1, 2019, and taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, where the taxpayer does not apply the provisions of paragraph (b)(6)(ii) of this section relating to controlled foreign corporations, see paragraph (b)(6)(ii) of this section as in effect and contained in 26 CFR part 1, as revised April 1, 2020. \* \* \*

\* \* \* \* \*

Par. 7. Section 1.863-8 is amended:

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

2. By revising paragraph (h).

The revisions and addition read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

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

\* \* \* \* \*

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

corporations. For taxable years of foreign corporations ending before October 1, 2019, where the taxpayer does not apply the provisions of paragraph (b)(2)(ii) of this section relating to the meaning of a CFC, see paragraph (b)(2)(ii) of this section as in effect and contained in 26 CFR part 1, as revised April 1, 2020.

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

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

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

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

\* \* \* \* \*

(l) Applicability dates. Except as otherwise provided in this paragraph (l), this section applies to taxable years beginning on or after December 27, 2006. The provisions in paragraph (b)(2)(ii) of this section relating to the meaning of a CFC apply to taxable years of foreign corporations ending on or after October 1, 2019. For taxable years of foreign corporations ending before October 1, 2019, a taxpayer may apply such

provisions to the last taxable year of a foreign corporation beginning before January 1, 2018, and each subsequent taxable year of the foreign corporation, provided that the taxpayer and United States persons that are related (within the meaning of section 267 or 707) to the taxpayer consistently apply such provisions with respect to all foreign corporations. For taxable years of foreign corporations ending before October 1, 2019, where the taxpayer does not apply the provisions of paragraph (b)(2)(ii) of this section relating to the meaning of a CFC, see paragraph (b)(2)(ii) of this section as in effect and contained in 26 CFR part 1, as revised April 1, 2020.

Par. 9. Section 1.904-5 is amended by revising paragraph (a)(4)(i), the first sentence of paragraph (a)(4)(vi), and paragraph (o) to read as follows:

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

(a) \* \* \*

(4) \* \* \*

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

\* \* \* \* \*

(vi) The term United States shareholder has the meaning given such term by section 951(b) (taking into account the special rule for certain captive insurance companies contained in section 953(c)), determined without applying section 318(a)(3)(A), (B), and (C) so as to consider a United States person as owning stock

which is owned by a person who is not a United States person, except that for purposes of this section, a United States shareholder includes any member of the controlled group of the United States shareholder. \* \* \*

\* \* \* \* \*

(o) Applicability dates. Except as otherwise provided in this paragraph (o), this section is applicable for taxable years that both begin after December 31, 2017, and end on or after December 4, 2018. Paragraphs (a)(4)(i) and (vi) of this section are applicable for taxable years of foreign corporations ending on or after October 1, 2019, and taxable years of United States persons ending on or after October 1, 2019. For taxable years of foreign corporations ending before October 1, 2019, and taxable years of United States persons ending before October 1, 2019, a taxpayer may apply such provisions to the last taxable year of a foreign corporation beginning before January 1, 2018, and each subsequent taxable year of the foreign corporation, and to taxable years of United States shareholders in which or with which such taxable years of the foreign corporation end, provided that the taxpayer and United States persons that are related (within the meaning of section 267 or 707) to the taxpayer consistently apply such provisions with respect to all foreign corporations. For taxable years of foreign corporations ending before October 1, 2019, and taxable years of United States persons ending before October 1, 2019, where the taxpayer does not apply the provisions of paragraphs (a)(4)(i) and (vi) of this section, see paragraphs (a)(4)(i) and (vi) of this section as in effect and contained in 26 CFR part 1, as revised April 1, 2020.

Par. 10. Section 1.958-2 is amended:

1. By removing and reserving paragraph (d)(2).

2. In paragraph (g), by designating Examples 1 through 6 as paragraphs (g)(1) through (6), respectively.

3. In newly designated paragraphs (g)(1) and (2), by removing the language “paragraph (c)(1)(iii) and (2) of this section” and adding the language “paragraphs (c)(1)(iii) and (c)(2) of this section” in its place.

4. By revising newly designated paragraph (g)(4).

5. In paragraph (h), by adding three sentences to the end of the paragraph.

6. By removing the parenthetical authority citation at the end of the section.

The revisions and additions read as follows:

§1.958-2 Constructive ownership of stock.

\* \* \* \* \*

(g) \* \* \*

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

\* \* \* \* \*

(h) \* \* \* Paragraphs (d)(2) and (g)(4) of this section apply to taxable years of foreign corporations ending on or after October 1, 2019, and taxable years of United States shareholders in which or with which such taxable years of foreign corporations end. For taxable years of foreign corporations ending before October 1, 2019, and taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, a taxpayer may apply such provisions to the last taxable year of a foreign corporation beginning before January 1, 2018, and each subsequent



taxable year of the foreign corporation, and to taxable years of United States shareholders in which or with which such taxable years of the foreign corporation end, provided that the taxpayer and United States persons that are related (within the meaning of section 267 or 707) to the taxpayer consistently apply such provisions with respect to all foreign corporations. For taxable years of foreign corporations ending before October 1, 2019, and taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, where the taxpayer does not apply the provisions of paragraphs (d)(2) and (g)(4) of this section, see paragraph (d)(2) and (g)(4) of this section as in effect and contained in 26 CFR part 1, as revised April 1, 2020.

Par. 11. Section 1.6049-5 is amended by revising paragraphs (c)(5)(i)(C) and (g) to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(5) \* \* \*

(i) \* \* \*

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

\* \* \* \* \*

(g) Applicability dates. Except as otherwise provided in this paragraph (g), this section applies to payments made on or after January 6, 2017. For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016. For payments made after December 31, 2000, and before July 1, 2014, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2013. Paragraph (c)(5)(i)(C) of this section applies to payments made on or after October 1, 2019. For payments made before October 1, 2019, a taxpayer may apply paragraph (c)(5)(i)(C) of this section for payments during the last taxable year of a foreign corporation beginning before January 1, 2018, and each subsequent taxable year of the foreign corporation, provided that the taxpayer and United States persons that are related (within the meaning of section 267 or 707) to the taxpayer consistently apply such paragraph with respect to all foreign corporations. For payments made before October 1, 2019, where the taxpayer does not apply the provisions of paragraph (c)(5)(i)(C) of this section, see paragraph (c)(5)(i)(C) of this section as in effect and contained in 26 CFR part 1, as revised April 1, 2020

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

Approved: July 24, 2020

David J. Kautter,

Assistant Secretary for the Treasury (Tax Policy).