1988. Paragraph (e)(6) of this section applies to nonrecognition property acquired in exchanges occurring on or after June 24, 2008.

(Secs. 956(c), 7805, Internal Revenue Code of 1954 (76 Stat. 1017, 68A Stat. 917; (26 U.S.C. 956(c) and 7805 respectively)))

[T.D. 6704, 29 FR 2600, Feb. 20, 1964, as amended by T.D. 6795, 30 FR 942, Jan. 29, 1965; T.D. 7712, 45 FR 52374, Aug. 7, 1980; T.D. 8209, 53 FR 22171, June 14, 1988; T.D. 9402, 73 FR 35582, June 24, 2008]

§ 1.956–1T Shareholder's pro rata share of a controlled foreign corporation's increase in earnings invested in United States property (temporary).

(a) [Reserved]

(b)(1)–(3) [Reserved]

(4) *Treatment of certain investments of earnings in United States Property*—(i) *Special rule*. For purposes of § 1.956–1(b)(1) of the regulations, a controlled foreign corporation will be considered to hold indirectly (A) the investments in United States property held on its behalf by a trustee or a nominee or (B) at the discretion of the District Director, investments in U.S. property acquired by any other foreign corporation that is controlled by the controlled foreign corporation, if one of the principal purposes for creating, organizing, or funding (through capital contributions or debt) such other foreign corporation is to avoid the application of section 956 with respect to the controlled foreign corporation. For purposes of this paragraph (b), a foreign corporation will be controlled by the controlled foreign corporation if the foreign corporation and the controlled foreign corporation are related parties under section 267(b). In determining for purposes of this paragraph (b) whether two or more corporations are members of the same controlled group under section 267(b)(3), a person is considered to own stock owned directly by such person, stock owned with the application of section 1563(e)(1), and stock owned with the application of section 267(c). The following examples illustrate the application of this paragraph.

Example 1. P, a domestic corporation, owns all of the outstanding stock of FS1, a controlled foreign corporation, and all of the outstanding stock of FS2, also a controlled foreign corporation. FS1 sells products to FS2 in exchange for trade receivables due in 60 days. FS2 has no earnings and profits. FS1 has substantial accumulated earnings and profits. FS2 loans to P an amount equal to the debt it owes FS1. FS2 pays the trade receivables according to the terms of the receivables. FS1 will not be considered to hold indirectly the investment in United States property under this paragraph (b)(4), because there was no transfer of funds to FS2.

Example 2. The facts are the same as in Example 1, except that FS2 does not pay the receivables. FS1 is considered to hold indirectly the investment in United States property under this paragraph (b)(4), because there was a transfer of funds to FS2, a principal purpose of which was to avoid the application of section 956 to FS1.

(ii) *Effective date*. This section is effective June 14, 1988, with respect to investments made on or after June 14, 1988.

(c)–(d) [Reserved]

(e)(1)–(4) [Reserved]

(5) *Exclusion for certain recourse obligations*. For purposes of § 1.956–1(e)(1) of the regulations, in the case of an investment in United States property consisting of an obligation of a related person, as defined in section 954(d)(3) and paragraph (e) of § 1.954–1, a liability will not be recognized as a specific charge if the liability representing the charge is with recourse with respect to the general credit or other assets of the investing controlled foreign corporation.

(6) *Adjusted basis of property acquired in certain nonrecognition transactions*—(i) *Scope and purpose*. This paragraph (e)(6) provides rules for determining, solely for purposes of section 956, the basis of certain United States property acquired by a controlled foreign corporation pursuant to an exchange in which the controlled foreign corporation's basis in such United States property is determined under section 362(a). This paragraph (e)(6) also applies if United States property, the basis in which has been determined under these temporary regulations, is transferred (in one or more subsequent exchanges) to a related person (within the meaning of section 954(d)(3)), pursuant to an exchange in which the related person's basis in such property is determined, in whole or in part, by reference to the transferor's basis in such property. The

purpose of this paragraph (e)(6) is to prevent the effective repatriation of earnings and profits of a controlled foreign corporation that acquires United States property in connection with an exchange to which this paragraph (e)(6) applies without a corresponding income inclusion under section 951(a)(1)(B) by claiming a basis in the United States property less than the amount of earnings and profits effectively repatriated.

(ii) *Definition of United States property*. For purposes of this paragraph (e)(6), *United States property* is stock of a domestic corporation described in section 956(c)(1)(B) or an obligation of a domestic corporation described in 956(c)(1)(C) that is acquired by a controlled foreign corporation from the domestic issuing corporation. The exceptions provided under section 956(c)(2) shall apply for this purpose.

(iii) *Basis of United States property*. Solely for purposes of section 956, the basis of United States property acquired by a controlled foreign corporation in connection with an exchange to which this paragraph (e)(6) applies shall be no less than the fair market value of the property transferred by the controlled foreign corporation in exchange for such United States property. For purposes of this paragraph (e)(6), the term property has the meaning set forth in section 317(a), but also includes any liability assumed by the controlled foreign corporation in connection with the exchange notwithstanding the application of section 357(a). The fair market value of the property transferred by the controlled foreign corporation in exchange for the United States property shall be determined at the time of the exchange.

(iv) *Timing*. For purposes of §1.956–2(d)(1)(i)(a), a controlled foreign corporation that acquires United States property in an exchange to which this paragraph (e)(6) applies acquires an adjusted basis in such property at the time of the controlled foreign corporation's exchange of property for such United States property.

(v) *Transfers to related persons*. If a controlled foreign corporation transfers United States property, the basis in which has been determined under this paragraph (e)(6), to a related person (within the meaning of section 954(d)(3)) (related person transferee) in an exchange pursuant to which the related person transferee's basis in such United States property is determined, in whole or in part, by reference to the controlled foreign corporation's basis in such United States property, then, solely for purposes of section 956, the related person transferee's basis in such United States property shall be no less than the basis of such United States property in the hands of the controlled foreign corporation immediately before the exchange as determined under paragraph (e)(6)(iii) of this section. This paragraph (e)(6)(v) shall also apply in the case of one or more successive transfers of the United States property by a related person transferee to one or more persons related to the controlled foreign corporation (within the meaning of section 954(d)(3)). This paragraph (e)(6)(v) shall apply regardless of whether a subsequent transfer was part of a plan (or series of related transactions) that includes the controlled foreign corporation's acquisition of the United States property.

(vi) *Examples*. The rules of this paragraph (e)(6) are illustrated by the following examples:

Example 1. (i) *Facts*. USP, a domestic corporation, is the common parent of an affiliated group that joins in the filing of a consolidated return. USP owns 100 percent of the stock of US1 and US2, both domestic corporations and members of the USP consolidated group. US1 owns 100 percent of the stock of CFC, a controlled foreign corporation. US2 issues $100x of its stock to CFC in exchange for $10x of CFC stock and $90x cash. US2's transfer of its stock to CFC is described in section 351, US2 recognizes no gain in the exchange under section 1032(a), and CFC's basis in the US2 stock acquired in the exchange is determined under section 362(a).

(ii) *Analysis*. The US2 stock acquired by CFC in the exchange constitutes United States property under paragraph (e)(6)(ii) of this section because CFC acquires the US2 stock from US2, the issuing corporation. Therefore, because CFC's basis in the US2 stock is determined under section 362(a), then for purposes of section 956, CFC's basis in the US2 stock shall, under paragraph (e)(6)(iii) of this section, be no less than $90x, the fair market value of the property exchanged by CFC for the US2 stock (the $10x of CFC stock issued in the exchange does not constitute property for purposes of paragraph (e)(6)(iii) of this section). Pursuant to paragraph (e)(6)(iv) of this section, for purposes of §1.956–2(d)(1)(i)(a) CFC shall be treated as acquiring its basis of no less than $90x in the US2 stock at the time of its transfer of property to US2 in exchange for the US2 stock. The result would be the same if, instead of CFC transferring $90x of cash to US2 in the exchange, CFC assumes a $90x liability of US2.

Example 2. (i) *Facts.* USP, a domestic corporation owns 100 percent of the stock of USS, a domestic corporation. USP also owns 100 percent of the stock of CFC, a controlled foreign corporation. USP's basis in its USS stock equals the fair market value of the USS stock, or $100x. USP transfers its USS stock to CFC in exchange for $100x of CFC stock. USP's transfer of its USS stock to CFC is described in section 351, USP recognizes no gain in the exchange under section 351(a), and CFC's basis in the USS stock acquired in the exchange, determined under section 362(a), equals $100x.

(ii) *Analysis.* The USS stock acquired by CFC in the exchange does not constitute United States property under paragraph (e)(6)(ii) of this section because CFC acquires the USS stock from USP. Therefore, CFC's basis in the US2 stock, for purposes of section 956, is not determined under this paragraph (e)(6). Instead, CFC's basis in the USS stock is determined under the general rule of section 956(a) and under §1.956–1(e)(1)–(4). As determined under section 362(a), CFC's basis in the USS stock is $100x.

Example 3. (i) *Facts.* USP, a domestic corporation, owns 100 percent of the stock of CFC1, a controlled foreign corporation. CFC1 holds United States property (within the meaning of paragraph (e)(6)(ii) of this section) with a basis of $30x for purposes of section 956 that was determined under paragraph (e)(6)(iii) of this section. CFC1 owns 100 percent of the stock of CFC2, a controlled foreign corporation. CFC1 transfers the United States property to CFC2 in an exchange described in section 351. CFC2's basis in the United States property is determined under section 362(a).

(ii) *Analysis.* In the section 351 exchange, CFC1 transferred United States property to CFC2 with a basis that was determined under paragraph (e)(6)(iii) of this section. Further, CFC2's basis in the United States property is determined under section 362(a) by reference, in whole or in part, to CFC's basis in such property. Therefore, for purposes of section 956, pursuant to paragraph (e)(6)(v) of this section CFC2's basis in the United States property shall be no less than $30x. Paragraph (e)(6)(v) of this section would also apply if CFC2 subsequently transfers the United States property to another person related to CFC1 (within the meaning of section 954(d)(3)) if such related person's basis in the United States property is determined by reference, in whole or in part, to CFC2's basis in such property.

(f) *Effective/applicability date.* (1) Paragraph (e)(5) of this section is effective June 14, 1988, with respect to investments made on or after June 14, 1988. Paragraph (e)(6) of this section applies to nonrecognition property acquired in exchanges occurring on or after June 24, 2008.

(2) The applicability of paragraph (e)(6) of this section will expire on June 23, 2011.

[T.D. 8209, 53 FR 22171, June 14, 1988, as amended at T.D. 9402, 73 FR 35582, June 24, 2008]

§ 1.956–2 Definition of United States property.

(a) *Included property*—(1) *In general.* For purposes of section 956(a) and §1.956–1, United States property is (except as provided in paragraph (b) of this section) any property acquired (within the meaning of paragraph (d)(1) of this section) by a foreign corporation (whether or not a controlled foreign corporation at the time) during any taxable year of such foreign corporation beginning after December 31, 1962, which is—

(i) Tangible property (real or personal) located in the United States;

(ii) Stock of a domestic corporation;

(iii) An obligation (as defined in paragraph (d)(2) of this section) of a United States person (as defined in section 957(d)); or

(iv) Any right to the use in the United States of—

(*a*) A patent or copyright,

(*b*) An invention, model, or design (whether or not patented),

(*c*) A secret formula or process, or

(*d*) Any other similar property right, which is acquired or developed by the foreign corporation for use in the United States by any person. Whether a right described in this subdivision has been acquired or developed for use in the United States by any person is to be determined from all the facts and circumstances of each case. As a general rule, a right actually used principally in the United States will be considered to have been acquired or developed for use in the United States in the absence of affirmative evidence