AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

(c) For 1977, Y's gross income is $10,000 and Y's foreign base company shipping income is $7,500. Since Y fails to meet the 80-percent income test of §1.955–5(b)(1), Y is no longer a less developed country shipping company described in §1–955–5(b), and X's investment in the stock of Y is no longer treated as a qualified investment in less developed countries under §1.955–2 (applied without regard to §1.955–2(b)(5)(ii). However, assume that on December 31, 1977, Y's net worth (as defined in paragraph (c)(2)(1) of this section) is $100,000, that Y's qualified investments in foreign base company shipping operations (determined under this section) on December 31, 1977, are $75,000, and that X's investment in the stock of Y (as determined under paragraph (g) of this section) continues to be $50,000. Then $67,500, i.e.,

$$\frac{\$75,000}{\$100,000} \times \$50,000$$

of X's $50.000 investment in the stock of Y is treated as a qualified investment in foreign company shipping operations under paragraph (c) of this section.

(d) For 1978, all of Y's gross income is foreign base company shipping income. Although Y is again a less developed country shipping company described in §1.955–5(b), X's investment in the stock of Y is no longer treated as a qualified investment in less developed countries under §1.955–2(b)(5)(iii). Thus, X's investment in the stock of Y is not treated as a qualified investment in foreign base company shipping operations under subparagraph (1) of this paragraph. However, X's investment in the stock of Y may be so treated under another provision of this section, as was the case in item (c) of this example.

(Secs. 955 (b)(2) and 7805 of the Internal Revenue Code of 1954 (89 Stat. 63; 26 U.S.C. 955(b)(2), and 68A Stat. 917; 26 U.S.C. 7805))

[T.D. 7894, 48 FR 22532, May 19, 1983; 48 FR 40888, Sept. 12, 1983, as amended by T.D. 7959, 49 FR 22280, May 29, 1984]

§ 1.955A–3 Election as to qualified investments by related persons.

(a) *In general.* If a United States shareholder elects the benefits of section 955(b) 2 with respect to a related group (as defined in paragraph (b)(1) of this section) of controlled foreign corporations, then an investment in foreign base company shipping operation made by one member of such group will be treated as having been made by another member to the extent provided in paragraph (c)(4) of this section, and each member will be subject to the other provisions of paragraph (c) of this section. An election once made shall apply for the taxable year for which it is made and for all subsequent years unless the election is revoked or a new election is made to add one or more controlled foreign corporations to election coverage. For the manner of making an election under section 955(b)(2), and for rules relating to the revocation of such an election, see paragraph (d) of this section. For rules relating to the coordination of sections 955(b)(2) and 955(b)(3), see paragraph (e) of this section.

(b) *Related group*—(1) *Related group defined.* The term ''related group'' means two or more controlled foreign corporations, but only if all of the following requirements are met:

(i) All such corporations use the same taxable year.

(ii) The same United States shareholder controls each such corporation within the meaning of section 954(d)(3) at the end of such taxable year, and

(iii) Such United States shareholder elects to treat such corporations as a related group.

(iv) If any of the corporations is on a 52–53 week taxable year and if all of the taxable years of the corporations end within the same 7-day period, the rule of paragraph (b)(1)(i) of this section shall be deemed satisfied.

(v) An election under paragraph (b)(1)(iii) of this section will not be valid in the case of an election by a U.S. shareholder (the ''first U.S. shareholder'') if—

(A) The first U.S. shareholder controls a second U.S. shareholder,

(B) The second U.S. shareholder controls one or more controlled foreign corporations, and

(C) Any of the controlled foreign corporations are the subject of the election by the first U.S. shareholder, unless the second U.S. shareholder consents to the election by the first U.S. shareholder.

(2) *Group taxable years defined.* The ''group taxable year'' is the common taxable year of a related group.

(3) *Limitation.* If a United States shareholder elects to treat two or more corporations as a related group for a group taxable year (the ''first group taxable year''), then such United

States shareholder (and any other United States shareholder which is controlled by such shareholder) may not also elect to treat two or more other corporations as a related group for a group taxable year any day of which falls within the first group taxable year.

(4) *Illustrations.* The application of this paragraph may be illustrated by the following examples:

Example 1. Domestic corporation M owns 100 percent of the only class of stock of controlled foreign corporations A, B, C, D, and E. A, B, and C use the calendar year as the taxable year. D and E use the fiscal year ending on June 30 as the taxable year. M may elect to treat A, B and C as a related group. However, M may not elect to treat C, D, and E as a related group.

Example 2. The facts are the same as in example 1. In addition, M elects to treat A, B, and C as a related group for the group taxable year which ends on December 31, 1976. M may not also elect to treat D and E as a related group for the group taxable year ending on June 30, 1977.

Example 3. United States shareholder A owns 60 percent of the only class of stock of controlled foreign corporation X and 40 percent of the only class of stock of controlled foreign corporation Y. United States shareholder B owns the other 40 percent of the stock of X and the other 60 percent of the stock of Y. Neither A nor B (nor both together) may elect to treat X and Y as a related group.

(c) *Effect of election.* If a United States shareholder elects to treat two or more controlled foreign corporations as a related group for any group taxable year then, for purposes of determining the foreign base company income (see §1.954–1) and the increase or decrease in qualified investments in foreign base company shipping operations (see §§1.954–7. 1.955A–1, and 1.955A–4) of each member of such group for such year, the following rules shall apply:

(1) *Intragroup dividends.* The gross income of each member of the related group shall be deemed not to include dividends received from any other member of such group, to the extent that such dividends are attributable (within the meaning of §1.954–6(f)(4)) to foreign base company shipping income. In determining net foreign base company shipping income, deductions allocable to intragroup dividends attributable to foreign base company shipping income shall not be allowed.

(2) *Group excess deduction.* (i) The deductions allocable under §1.954–1(c) to the foreign base company shipping income of each member of the related group shall be deemed to include such member's pro rata share of the group excess deduction.

(ii) The group excess deduction for the group taxable year is the sum of the excesses for each member of the related group (having an excess) of—

(A) The member's deductions (determined without regard to this subparagraph) allocable to foreign base company shipping income for such year, over

(B) The member's foreign base company shipping income for such year.

(iii) A member's pro rata share of the group excess deduction is the amount which bears the same ratio to such group excess deduction as—

(A) The excess of such member's foreign base company shipping income over the deductions (so determined) allocable thereto, bears to

(B) The sum of such excesses for each member of the related group having an excess.

(iv) For purposes of this subparagraph, ''foreign base company shipping income'' means foreign base company shipping income (as defined in §1.954–6), reduced by excluding therefrom all amounts which are—

(A) Excluded from subpart F income under section 952(b) (relating to exclusion of United States income) or

(B) Excluded from foreign base company income under section 954(b)(4) (relating to exception for foreign corporation not availed of to reduce taxes).

(v) The application of this subparagraph may be illustrated by the following example:

Example. Controlled foreign corporations X, Y, and Z are a related group for calendar year 1976. The excess group deduction for 1976 is $9, X's pro rata share of the group excess deduction is $6, and Y's pro rata share is $3, determined as follows on the basis of the facts shown in the following table:

	X	Y	Z	Group
(1) Gross shipping income	$100	$90	$90	
(2) Shipping deductions	60	70	80	
(3) Net shipping income	40	20	(9)	
(4) Group excess deduction ..	.....	.....	.....	80

	X	Y	Z	Group
(5) X's pro rata share of group excess deduction ($9 × $40/$60)	6			
(6) Y's pro rata share of group excess deduction ($9 × $20/$60)		3		

(3) *Intragroup investments.* On both of the determination dates applicable to the group taxable year for purposes of section 954(g) or section 955(a)(2), the qualified investments in foreign base company shipping operations of each member of the related group shall be deemed not to include stock of any other member of the related group. In addition, neither the gains nor the losses on dispositions of such stock during the group taxable year shall be taken into account under §1.955A–1(b)(1)(ii) in determining the decrease in qualified investments in foreign base company shipping operations of any member of such related group.

(4) *Group excess investment.* (i) On the later (and only the later) of the two determination dates applicable to the group taxable year for purposes of section 954(g) or section 955(a)(2), the qualified investments in foreign base company shipping operations of each member of the related group shall be deemed to include such member's pro rata share of the group excess investment.

(ii) The group excess investment for the group taxable year is the sum of the excess for each member of the related group (having an excess) of—

(A) The member's increase in qualified investments in foreign base company shipping operations (determined under §1.954–7 after the application of subparagraph (3) of this paragraph) for such year, over

(B) The member's foreign base company shipping income for such year.

(iii) A member's pro rata share of the group excess investment is the amount which bears the same ratio to such group excess investment as—

(A) Such member's shortfall, in qualified investments bears to

(B) the sum of the shortfalls in qualified investments of each member of such related group having a shortfall.

(iv) If a member has an increase in qualified investments in foreign base company shipping operations (determined as provided in §1.954–7 after the application of subparagraph (3) of this paragraph) for the group taxable year, then such member's ''shortfall in qualified investments'' is the excess of—

(A) Such member's foreign base company shipping income for such year, over

(B) Such increase.

(v) If a member has a decrease in qualified investments in foreign base company shipping operations (determined under §1.955A–1(b)(1) or §1.955A–4(a), whichever is applicable, after the application of subparagraph (3) of this paragraph) for the group taxable year, then such member's ''shortfall in qualified investments'' is the sum of—

(A) Such member's foreign base company shipping income for such year and

(B) Such decrease.

(vi) For purposes of this subparagraph, ''foreign base company shipping income'' means foreign base company shipping income (as defined in subparagraph (2)(iv) of this paragraph), reduced by the deductions allocable thereto under §1.954–1(c) (including the additional deductions described in subparagraph (2) of this paragraph).

(vii) The application of paragraphs (c)(1), (3), and (4) of this section may be illustrated by the following example:

Example. (a) Controlled foreign corporations R, S, and T are a related group for calendar year 1977. R and S do not own the stock of any member of the related group.

(b) On December 31, 1977, T has qualified investments in foreign base company shipping operations (determined without regard to paragraphs (c)(3) and (4)) of $105, of which $15 consists of stock of S. After application of paragraph (c)(3) (but before application of paragraph (c)(4)), on December 31, 1977, T has qualified investments in foreign base company shipping operations of $90, determined as follows:

(1) Qualified investments (determined without regard to paragraph (c)(3)) on December 31, 1977	$105
(2) Less: Qualified investments in stock of another member of a related group (as required by paragraph (c)(3))	15
(3) Balance	90

(c) During 1977, T's foreign base company shipping income is $180, determined without regard to paragraph (c)(1). Included in the $180 is $5 in dividends in respect of T's stock in S. During 1977, T has shipping deductions

of $91. Of T's shipping deductions, $1 is allocable to the dividends from S. After application of paragraph (c)(1), T's net shipping income during 1977 is $85, determined as follows:

(1) Foreign base company shipping income	.....	$180
(2) Less: intragroup dividends (as required by paragraph (c)(1))	.....	5
(3) Balance	.....	175
(4) Shipping deductions	$91	
(5) Less: deductions allocable to intragroup dividends (as required by paragraph (c)(1))	1	
(6) Balance	90	
(7) Net shipping income (line (3) minus line (6))	.....	85

(d) During 1977 (without regard to paragraph (c)(4)), R's increase in qualified investments in foreign base company shipping operations is $120; S's decrease is $55; and T's increase is $35, determined on the basis of the facts shown in the following table. In all cases, the listed amounts of qualified investments on December 31, 1976, reflect any adjustments required by paragraph (c)(3) for 1976, but not any adjustment required by paragraph (c)(4) for 1976 (see §§1.955A–3 (c)(3) and (4)(i)).

	R	S	T
(1) Qualified investments on December 31, 1977 (in the case of T, taken from line (3) of part (b) of this example)	$220	$150	$90
(2) Qualified investments on December 31, 1976	100	205	55
(3) Increase (decrease) (line (1) minus line (2))	120	(55)	35

(e) In 1977, R's net shipping income is $100; S's is $95; and T's is $85, determined as follows:

	R	S	T
(1) Gross foreign base company shipping income (in the case of T, taken from line (3) of part (c) of this example)	$200	$180	$175
(2) Shipping deductions (in the case of T, taken from line (6) of part (c) of this example)	100	85	90
(3) Net shipping income (line (1) minus line (2))	100	95	85

(f) By application of paragraph (c)(4) for 1977, S's pro rata share of the group excess investment is $15, and T's pro rata share is $5, determined as follows:

	R	S	T	Group
(1) Net shipping income (taken from line (3) of part (e) of this example)	$100	$95	$85	
(2) Increase (decrease) in qualified investments (taken from line (3) of part (d) of this example)	120	(55)	35	
(3) Excess investment	20	.....	.....	$20
(4) Shortfall	.....	150	50	200
(5) S's pro rata share of group excess investment ($20 × $150/$200)	.....	15		
(6) T's pro rata share of group excess investment ($20 × $50/$200)	.....	.....	5	.....

(g) After application of paragraph (c)(4), for purposes of determining their increase or decrease in qualified investments in foreign base company shipping operations for 1977, on December 31, 1977, the amount of R's qualified investments is $200; the amount of S's is $165; and the amount of T's is $95, determined as follows:

	R	S	T
(1) Qualified investments on December 31, 1977 (taken from line (1) of part (d) of this example)	$220	$150	$90
(2) Plus: pro rata share of group excess investment (as required by paragraph (c)(4)) (taken from lines (5) and (6) of part (f) of this example)	.....	15	5
(3) Minus: Excess investment treated as investments of related group members (taken from line (3) of part (f) of this example)	20		
(4) Total qualified investments	200	165	95

(h) After application of paragraph (c)(1), (3), and (4), during 1977, R's increase in qualified investments in foreign base company shipping operations is $100; S's decrease is $40; and T's increase is $40, determined as set forth in the table below. In all cases, the listed amounts of qualified investments on December 31, 1976, reflect any similar adjustments required by paragraph (c)(3) for 1976, but not any adjustment required by paragraph (c)(4) for 1976 (see §1.955A–3(c)(3) and (4)(i)).

	R	S	T
(1) Qualified investments on December 31, 1977 (taken from line (4) of part (g) of this example)	$200	$165	$95
(2) Qualified investments on December 31, 1976 (see line (2) of part (d) of this example)	100	205	55
(3) Increase (decrease) (line (1) minus line (2))	100	(40)	40

(5) *Collateral effect.* (i) An election under this section by a United States shareholder to treat two or more controlled foreign corporations as a related group for a group taxable year shall have no effect on—

(A) Any other United States shareholder (including a minority shareholder of a member of such related group).

(B) Any other controlled foreign corporation, and

(C) The foreign personal holding company income, foreign base company sales income, and foreign base company services income, and the deductions allocable under §1.954–1(c) thereto, of any member of such related group.

(ii) See §1.952–1(c)(2)(ii) for the effect of an election under this section on the computation of earnings and profits and deficits in earnings and profits under section 952 (c) and (d).

(iii) The application of this subparagraph may be illustrated by the following example:

Example. United States shareholder A owns 80 percent of the only class of stock of controlled foreign corporations X and Y. United States shareholder B owns the other 20 percent of the stock of X and Y. X and Y both use the calendar year as the taxable year. A elects to treat X and Y as a related group for 1977. For purposes of determining the amounts includible in B's gross income under section 951(a) in respect of X and Y, the election made by A shall be disregarded and all of B's computations shall be made without regard to this section, as illustrated in §1.952–3(d).

(d) *Procedure*—(1) *Time and manner of making election.* A United States shareholder shall make an election under this section to treat two or more controlled foreign corporations as a related group for a group taxable year and subsequent years by filing a statement to such effect with the return for the taxable year within which or with which such group taxable year ends. The statement shall include the following information:

(i) The name, address, taxpayer identification number, and taxable year of the United States shareholder;

(ii) The name, address, and taxable year of each controlled foreign corporation which is a member of the related group and is to be subject to the election; and

(iii) A schedule showing the calculations by which the amounts described in this section have been determined for the taxable year for which the election is first effective. With respect to each subsequent taxable year to which the election applies, a new schedule showing calculations of such amounts for that taxable year must be filed with the return for that taxable year. A consent to an election required by paragraph (b)(1)(v) of this section shall include the same information required for the election statement.

(2) *Revocation.* (i) Except as provided in subdivision (ii) of this subparagraph, an election under this section by a United States shareholder shall be binding for the group taxable year for which it is made and for subsequent years.

(ii) Upon application by the United States shareholder (and any other United States shareholder controlled by such shareholder which consented under paragraph (b)(1)(v) of this section to the election), an election made under this section may, subject to the approval of the Commissioner, be revoked. An application to revoke the election, as of a specified group taxable year, with respect to one or more (but not all) controlled foreign corporations, subject to an election shall be deemed to be an application to revoke the election. Approval will not be granted unless a material and substantial change in circumstances occurs which could not have been anticipated when the election was made. The application for consent to revocation shall be made by mailing a letter for such purpose to Commissioner of Internal Revenue, Attention: T:C:C, Washington, DC 20224, containing a statement of the facts which justify such consent. If a member of a related group subject to an election ceases to meet the requirements of paragraph (b) of this section for membership in the group by reason of any action taken by it or any member of the group or the electing United States shareholder, then the election will be deemed to be revoked as of the beginning of the taxable year in which such action occurred. If such action is taken principally for the purpose of revoking the election without applying for and obtaining the approval of the Commissioner to the revocation, then no further election covering any member of that related group may be made by any

United States shareholder for the remainder of the taxable year in which the action occurred and the five succeeding taxable years.

(e) *Coordination with section 955(b)(3).* If a United States shareholder elects under this section to treat two or more controlled foreign corporations as a related group for any taxable year, and if such United States shareholder is required under §1.955A–4(c)(2) for purposes of filing any return to estimate the qualified investments in foreign base company shipping operations of any member of such group, then such United States shareholder shall, for purposes of filing such return, determine the amount includible in his gross income in respect of each member of such related group on the basis of such estimate. If the actual amount of such investments is not the same as the amount of the estimate, the United States shareholder shall immediately notify the Commissioner. The Commissioner will thereupon redetermine the amount of tax of such United States shareholder for the year or years with respect to which the incorrect amount was taken into account. The amount of tax, if any, due upon such redetermination shall be paid by the United States shareholder upon notice and demand by the district director. The amount of tax, if any, shown by such redetermination to have been overpaid shall be credited or refunded to the United States shareholder in accordance with the provisions of sections 6402 and 6511 and the regulations thereunder. If a United States shareholder elects under this section and if the United States shareholder has made an election under section 955(b)(3) as to at least one member of the related group, then the qualified investment amounts necessary for the calculations of paragraphs (c)(3) and (4) of this section shall be obtained, for each member of the related group, as of the determination dates applicable to each of the members.

(f) *Illustrations.* The application of this section may be illustrated by the following examples:

Example 1. (a) Controlled foreign corporations X and Y are wholly owned subsidiaries of domestic corporation M, X and Y use the calendar year as the taxable year. For 1977, X and Y are not export trade corporations (as defined in section 971(a)), nor have they any income derived from the insurance of United States risks (within the meaning of section 963(a)). M does not elect to treat X and Y as a related group for 1977.

(b) For 1977, X and Y each have gross income (determined as provided in §1.951–6(h)(1)) of $1,000. X's foreign base company income is $20 and Y's foreign base company imcome is $0, determined as follows, based on the facts shown in the following table:

	X	Y
(1) Foreign lease company shipping income	$1,000	$1,000
(2) Less: amounts excluded from subpart F income under section 952(b) (relating to U.S. income) and amounts excluded from foreign base company income under section 945(b)(4) (relating to corporation not availed of to reduce taxes)	0	0
(3) Balance	1,000	1,000
(4) Less: deductions allocable under §1.954–1(c) to balance	800	1,040
(5) Remaining balance	200	0
(6) Less: Increase in qualified investments in foreign base company shipping operations	180	
(7) Foreign base company income	20	

(c) For 1977, Y has a withdrawal of previously excluded Subpart F income from investment in foreign base company shipping operations of $20, determined as follows, on the basis of the facts shown in the following table:

(1) Qualified investments in foreign base company shipping operations at December 31, 1976	$1,210
(2) Less: qualified investments in foreign base company shipping operations at December 31, 1977	1,170
(3) Balance	40
(4) Less: excess of recognized losses over recognized gains on sales during 1977 of qualified investments in foreign base company shipping operations	20
(5) Tentative decrease in qualified investments in foreign base company shipping operations for 1977	20
(6) Limitation described in §1.955A–1(b)(2)	160
(7) Y's amount of previously excluded subpart F income withdrawn from investment in foreign base company shipping operations (lesser of lines (5) and (6))	20

Example 2. (a) The facts are the same as in example 1, except that M does elect to treat X and Y as a related group for 1977.

(b) The group excess deduction, which is solely attributable to Y's net shipping loss, is $40 (i.e., $1,040 − $1,000). Since X is the only

member of the related group with net shipping income, X's pro rata share of the group excess deduction is the entire $40 amount.

(c) X's foreign base company income for 1977 is zero, determined as follows:

(1) Preliminary net foreign base company shipping income (line (b)(5) of example 1)	$200
(2) Less: X's pro rata share of group excess deduction	40
(3) Remaining balance	160
(4) Less: increase in qualified investments in foreign base company shipping operations	180
(5) Foreign base company income	0

(d) The group excess investment, which is solely attributable to X's excess investment, is $20 (i.e., $180 minus $160). Since Y is the only member of the related group with a shortfall in qualified investments, Y's share of the group excess investment is the entire $20 amount.

(e) During 1976 and 1977, Y owns no stock of X. Y's withdrawal of previously excluded subpart F income from investment in foreign base company shipping operations for 1977 is zero, determined as follows:

(1) Qualified investments at December 31, 1976	$1,210
(2)(i) Qualified investments at December 31, 1977 (determined without regard to paragraph (c)(4) of this section)	1,170
(ii) Y's pro rata share of group excess investment	20
(iii) Total qualified investments at December 31, 1977 (Line (i) plus line (ii)	1,190
(3) Balance (line (1) minus line (2)(iii)	20
(4) Less: excess of recognized losses over recognized gains on sales during 1977 of qualified investments in foreign base company shipping operations	20
(5) Decrease in qualified investments for 1977	0

(Secs. 955 (b)(2) and 7805 of the Internal Revenue Code of 1954 (89 Stat. 63; 26 U.S.C. 955(b)(2), and 68A Stat. 917; 26 U.S.C. 7805))

[T.D. 7894, 48 FR 22535, May 19, 1983; 48 FR 40888, Sept. 12, 1983, as amended by T.D. 7959, 49 FR 22280, May 29, 1984]

§ 1.955A–4 Election as to date of determining qualified investment in foreign base company shipping operations.

(a) *Nature of election.* In lieu of determining the increase under the provisions of section 954(g) and §1.954–7(a) or the decrease under the provisions of section 955(a)(2) and §1.955A–1(b) in a controlled foreign corporation's qualified investments in foreign base company shipping operations for a taxable year in the manner provided in such provisions, a United States shareholder of such controlled foreign corporation may elect, under the provisions of section 955(b)(3) and this section, to determine such increase in accordance with the provisions of §1.954–7(b) and to determine such decrease by ascertaining the amount by which—

(1) Such controlled foreign corporation's qualified investments in foreign base company shipping operations at the close of such taxable year exceed its qualified investments in foreign base company shipping operations at the close of the taxable year immediately following such taxable year, and reducing such excess by

(2) The amount determined under §1.955A–1(b)(1)(ii) for such taxable year subject to the limitation provided in §1.995A–1(b)(2) for such taxable year. An election under this section may be made with respect to each controlled foreign corporation with respect to which a person is a United States shareholder within the meaning of section 951(b), but the election may not be exercised separately with respect to the increases and the decreases of such controlled foreign corporation. If an election is made under this section to determine the increase of a controlled foreign corporation in accordance with the provisions of §1.954–7(b), subsequent decreases of such controlled foreign corporation shall be determined in accordance with this paragraph and not in accordance with §1.955A–1(b).

(b) *Time and manner of making election*—(1) *Without consent.* An election under this section with respect to a controlled foreign corporation shall be made without the consent of the Commissioner by a United States shareholder's filing a statement to such effect with his return for his taxable year in which or with which ends the first taxable year of such controlled foreign corporation in which—

(i) Such shareholder is a United States shareholder, and

(ii) Such controlled foreign corporation realizes foreign base company shipping income, as defined in §1.954–6.

The statement shall contain the name and address of the controlled foreign corporation and identification of such first taxable year of such corporation.