AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

which such taxable years of the controlled foreign corporations end. If an election is made to apply the last two sentences of §1.954–2(c)(2)(ii) and §1.954–2(c)(2)(v) through (vii) to taxable years of a controlled foreign corporation beginning after December 31, 2004, then the election must also be made for the last sentence of paragraph (b)(1)(vi) of this section.

(f)–(g) [Reserved]

(h) *Effective/applicability date.* (1) Paragraph (a)(3) of this section applies to taxable years of controlled foreign corporations ending on or after November 3, 2016, and taxable years of United States shareholders in which or with which such taxable years end, with respect to obligations held on or after November 3, 2016.

(2) Paragraphs (c)(1), (c)(2), and *Example 4* of paragraph (c)(3) of this section apply to taxable years of controlled foreign corporations ending on or after November 3, 2016, and taxable years of United States shareholders in which or with which such taxable years end, with respect to pledges and guarantees entered into on or after September 1, 2015. For purposes of this paragraph (h)(2), a pledgor or guarantor is treated as entering into a pledge or guarantee when there is a significant modification, within the meaning of §1.1001–3(e), of an obligation with respect to which it is a pledgor or guarantor on or after September 1, 2015.

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

(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 2601, Feb. 20, 1964, as amended by T.D. 7712, 45 FR 52374, Aug. 7, 1980; T.D. 7797, 46 FR 57675, Nov. 25, 1981; T.D. 8209, 53 FR 22171, June 14, 1988; T.D. 9008, 67 FR 48025, July 23, 2002; T.D. 9406, 73 FR 38117, July 3, 2008; T.D. 9525, 76 FR 26181, May 6, 2011; T.D. 9589, 77 FR 27614, May 11, 2012; T.D. 9761, 81 FR 20886, Apr. 8, 2016; T.D. 9792, 81 FR 76507, Nov. 3, 2016]

§1.956–2T Definition of United States Property (temporary).

(a)(1) through (a)(3) [Reserved] For further guidance, see §1.956–2(a) through (b)(1)(x).

(4) *Certain foreign stock and obligations held by expatriated foreign subsidiaries following an inversion transaction*—(i) *General rule.* Except as provided in paragraph (a)(4)(ii) of this section, for purposes of section 956 and §1.956–2(a), United States property includes an obligation of a foreign person and stock of a foreign corporation when the following conditions are satisfied—

(A) The obligation or stock is held by a controlled foreign corporation that is an expatriated foreign subsidiary, regardless of whether, when the obligation or stock was acquired, the acquirer was a controlled foreign corporation or an expatriated foreign subsidiary;

(B) The foreign person or foreign corporation is a non-CFC foreign related person, regardless of whether, when the obligation or stock was acquired, the foreign person or foreign corporation was a non-CFC foreign related person; and

(C) The obligation or stock was acquired—

(*1*) During the applicable period; or

(*2*) In a transaction related to the inversion transaction.

(ii) *Exceptions.* For purposes of section 956 and §1.956–2(a), United States property does not include—

(A) Any obligation of a non-CFC foreign related person arising in connection with the sale or processing of property if the amount of the obligation at no time during the taxable year exceeds the amount that would be ordinary and necessary to carry on the trade or business of both the other party to the sale or processing transaction and the non-CFC foreign related person had the sale or processing transaction been made between unrelated persons; and

(B) Any obligation of a non-CFC foreign related person to the extent the principal amount of the obligation does not exceed the fair market value of readily marketable securities sold or purchased pursuant to a sale and repurchase agreement or otherwise posted or received as collateral for the obligation in the ordinary course of its business by a United States or foreign person which is a dealer in securities or commodities.

(iii) *Definitions.* The definitions in §1.7874–12T apply for the purposes of the application of paragraphs (a)(4), (c)(5), and (d)(2) of this section.

(iv) *Examples.* The following examples illustrate the rules of this paragraph (a)(4). For purposes of the examples, FA, a foreign corporation, wholly owns DT, a domestic corporation, which, in turn, wholly owns FT, a foreign corporation that is a controlled foreign corporation. FA also wholly owns FS, a foreign corporation. FA acquired DT in an inversion transaction that was completed on January 1, 2015.

Example 1. (A) *Facts.* FT acquired an obligation of FS on January 31, 2015.

(B) *Analysis.* Pursuant to §1.7874–12T, DT is a domestic entity, FT is an expatriated foreign subsidiary, and FS is a non-CFC foreign related person. In addition, FT acquired the FS obligation during the applicable period. Thus, as of January 31, 2015, the obligation of FS is United States property with respect to FT for purposes of section 956(a) and §1.956–2(a).

Example 2. (A) *Facts.* The facts are the same as in *Example 1* of this paragraph (a)(4)(iv), except that on February 15, 2015, FT contributed assets to FS in exchange for 60% of the stock of FS, by vote and value.

(B) *Analysis.* As a result of the transaction on February 15, 2015, FS becomes a controlled foreign corporation with respect to which an expatriated entity, DT, is a United States shareholder. Accordingly, under §1.7874–12T(a)(9), FS is an expatriated foreign subsidiary, and is therefore not a non-CFC foreign related person. Thus, as of February 15, 2015, the stock and obligation of FS are not United States property with respect to FT for purposes of section 956(a) and §1.956–2(a). FS is not excluded from the definition of expatriated foreign subsidiary pursuant to §1.7874–12T(a)(9)(ii) because FS was not a CFC on the completion date.

Example 3. (A) *Facts.* Before the inversion transaction, FA also wholly owns USP, a domestic corporation, which, in turn, wholly owns, LFS, a foreign corporation that is a controlled foreign corporation. DT was not a United States shareholder of LFS on or before the completion date. On January 31, 2015, FT contributed assets to LFS in exchange for 60% of the stock of LFS, by vote and value. FT acquired an obligation of LFS on February 15, 2015.

(B) *Analysis.* LFS is a foreign related person. Because LFS was a controlled foreign corporation and a member of the EAG with respect to the inversion transaction on the completion date, and DT was not a United States shareholder with respect to LFS on or before the completion date, LFS is excluded from the definition of expatriated foreign subsidiary pursuant to §1.7874–12T(a)(9)(ii). Thus, pursuant to §1.7874–12T(a)(16), LFS is a non-CFC foreign related person, and the stock and obligation of LFS are United States property with respect to FT for purposes of section 956(a) and §1.956–2(a). The fact that FT contributed assets to LFS in exchange for 60% of the stock of LFS does not change this result.

Example 4. (A) *Facts.* The facts are the same as in *Example 3* of this paragraph (a)(4)(iv), except that on February 10, 2015, LFS organized a new foreign corporation (LFSS), transferred all of its assets to LFSS, and liquidated, in a transaction treated as a reorganization described in section 368(a)(1)(F), and FT acquired an obligation of LFSS, instead of LFS, on February 15, 2015. On March 1, 2015, LFSS acquired an obligation of FS.

(B) *Analysis.* LFS is a controlled foreign corporation with respect to which USP, an expatriated entity, is a United States shareholder. USP is an expatriated entity because on the completion date, USP and DT became related to each other within the meaning of section 267(b). Because LFSS was not a member of the EAG with respect to the inversion transaction on the completion date, LFSS is not excluded from the definition of expatriated foreign subsidiary pursuant to §1.7874–12T(a)(9)(ii). Accordingly, under §1.7874–12T(a)(9)(i), LFFS is an expatriated foreign subsidiary and is therefore not a non-CFC foreign related person. Thus, the stock and obligation of LFSS are not United States property with respect to FT for purposes of section 956(a) and §1.956–2(a). However, because LFSS is an expatriated foreign subsidiary, pursuant to §1.7874–12T(a)(9), the obligation of FS, a non-CFC foreign related person, is United States property with respect to LFSS for purposes of section 956(a) and §1.956–2(a).

(b)(1) introductory text through (b)(1)(x) [Reserved] For further guidance, see §1.956–2(a) through (b)(1)(x).

(xi) An obligation of a United States person arising from a nonperiodic payment by a controlled foreign corporation (within the meaning of section 957(a)) with respect to a notional principal contract described in §1.446–3T(g)(4)(ii)(B)(*1*) or (*2*) if the following conditions are satisfied—

(A) The controlled foreign corporation that makes the nonperiodic payment is either a dealer in securities (within the meaning of section 475(c)(1)) or a dealer in commodities; and

(B) The conditions set forth in §1.446–3T(g)(4)(ii)(C)(*1*) (relating to full margin or collateral in cash) are satisfied.

(C) *Examples.* The following examples illustrate the application of this paragraph (b)(1)(xi):

Example 1. Full margin—cleared contract. (i) A domestic corporation (U.S.C.) wholly owns a controlled foreign corporation (CFC) that is a dealer in securities under section 475(c)(1). CFC enters into an interest rate swap contract with unrelated counterparty B. The contract is required to be cleared and is accepted for clearing by a U.S.-registered derivatives clearing organization (DCO). CFC is not a member of the DCO. CFC uses a U.S. affiliate (CM), which is a member of the DCO, as its clearing member to submit the contract to be cleared. CM is a domestic corporation that is wholly owned by U.S.C.. The standardized terms of the contract provide that, for a term of X years, CFC will pay B a fixed coupon of 1% per year and receive a floating coupon on a notional principal amount of $Y. When CFC and B enter into the contract, the market coupon for similar interest rate swaps is 2% per year. The DCO requires CFC to make an upfront payment to compensate B for the below-market annual coupon payments that B will receive, and CFC makes the upfront payment in cash. CFC makes the upfront payment through CM to the DCO, which then makes the payment to B. The DCO also requires B to post initial variation margin in an amount equal to the upfront payment and requires each party to post and collect daily variation margin in an amount equal to the change in the fair market value of the contract on a daily basis for the entire term of the contract. B posts the initial variation margin in U.S. dollars, which is received by CFC (through DCO and CM), and the parties post and collect daily variation margin in U.S. dollars.

(ii) Because the contract is subject to initial variation margin in an amount equal to the upfront payment and daily variation margin in an amount equal to the change in the fair market value of the contract on a daily basis for the entire term of the contract, the contract is described in §1.446–3T(g)(4)(ii)(B)(*1*). Furthermore, because the additional conditions set forth in this paragraph (b)(1)(xi) are satisfied, the obligation of CM arising from the upfront payment by CFC does not constitute United States property for purposes of section 956.

Example 2. Full margin—uncleared contract. (i) Assume the same facts as in *Example 1*, except for the following. CFC's counterparty to the contract is U.S.C., CM is not involved, and the contract is not required to be cleared and is not accepted for clearing by a U.S.-registered derivatives clearing organization. The contract requires CFC to make an upfront payment to compensate U.S.C. for the below-market annual coupon payments that U.S.C. will receive, and CFC makes the upfront payment in U.S. dollars. Pursuant to the requirements of a federal regulator, U.S.C. is obligated to post initial variation margin with CFC in an amount equal to CFC's upfront payment, and U.S.C. and CFC are obligated to post and collect daily variation margin in an amount equal to the change in the fair market value of the contract on a daily basis for the entire term of the contract. U.S.C. posts the initial variation margin in U.S. dollars, which is received by CFC, and the parties post and collect daily variation margin in U.S. dollars.

(ii) Because the contract is subject to initial variation margin in an amount equal to the upfront payment and daily variation margin in an amount equal to the change in the fair market value of the contract on a daily basis for the entire term of the contract, the contract is described in §1.446–3T(g)(4)(ii)(B)(*2*). Furthermore, because the additional conditions set forth in this paragraph (b)(1)(xi) are satisfied, the obligation of U.S.C. arising from the upfront payment by CFC does not constitute United States property for purposes of section 956.

(b)(2)–(c)(4) [Reserved] For further guidance, see §1.956–2(b)(2) through (d)(1).

(5) *Special guarantee and pledge rule for expatriated foreign subsidiaries*—(i) *General rule.* In applying §1.956–2(c)(1) and (2) to a controlled foreign corporation that is an expatriated foreign subsidiary, the phrase ''of a United States person or a non-CFC foreign related person'' is substituted for the phrase ''of a United States person'' each place it appears.

(ii) *Additional rules.* The rule in paragraph (c)(5)(i) of this section—

(A) Applies regardless of whether, when the pledge or guarantee was entered into or treated as entered into, the controlled foreign corporation was a controlled foreign corporation or an expatriated foreign subsidiary, or a foreign person whose obligation is subject to the pledge or guarantee, or deemed pledge or guarantee, was a non-CFC foreign related person; and

(B) Applies to pledges or guarantees entered into, or treated pursuant to §1.956–2(c)(2) as entered into—

(*1*) During the applicable period; or

(*2*) In a transaction related to the inversion transaction.

(d) introductory text through (d)(1) [Reserved] For further guidance, see §1.956–2(b)(2) through (d)(1).

(2) *Obligation defined.* For purposes of section 956 and §1.956–2, the term ''obligation'' includes any bond, note, debenture, certificate, bill receivable, account receivable, note receivable, open

account, or other indebtedness, whether or not issued at a discount and whether or not bearing interest, except that the term does not include—

(i) Any indebtedness arising out of the involuntary conversion of property which is not United States property within the meaning of §1.956–2(a)(1) or §1.956–2T(a);

(ii) Any obligation of a United States person (as defined in section 957(c)) arising in connection with the provision of services by a controlled foreign corporation to the United States person if the amount of the obligation outstanding at any time during the taxable year of the controlled foreign corporation does not exceed an amount which would be ordinary and necessary to carry on the trade or business of the controlled foreign corporation and the United States person if they were unrelated. The amount of the obligations shall be considered to be ordinary and necessary to the extent of such receivables that are paid within 60 days;

(iii) Any obligation of a non-CFC foreign related person arising in connection with the provision of services by an expatriated foreign subsidiary to the non-CFC foreign related person if the amount of the obligation outstanding at any time during the taxable year of the expatriated foreign subsidiary does not exceed an amount which would be ordinary and necessary to carry on the trade or business of the expatriated foreign subsidiary and the non-CFC foreign related person if they were unrelated. The amount of the obligations shall be considered to be ordinary and necessary to the extent of such receivables that are paid within 60 days;

(iv) Unless a controlled foreign corporation applies the exception provided in paragraph (d)(2)(v) of this section with respect to the obligation, any obligation of a United States person (as defined in section 957(c)) that is collected within 30 days from the time it is incurred (a *30-day obligation*), unless the controlled foreign corporation that holds the 30-day obligation holds for 60 or more calendar days during the taxable year in which it holds the 30-day obligation any obligations which, without regard to the exclusion described in this paragraph (d)(2)(iv), would constitute United States property within the meaning of section 956 and §1.956–2(a); or

(v) Unless a controlled foreign corporation applies the exception provided in paragraph (d)(2)(iv) of this section with respect to the obligation, any obligation of a United States person (as defined in section 957(c)) that is collected within 60 days from the time it is incurred (a *60-day obligation*), unless the controlled foreign corporation that holds the 60-day obligation holds for 180 or more calendar days during the taxable year in which it holds the 60-day obligation any obligations which, without regard to the exclusion described in this paragraph (d)(2)(v), would constitute United States property within the meaning of section 956 and §1.956–2(a).

(e) [Reserved] For further guidance see §1.956–2(e).

(f) *Effective/applicability date.* Paragraph (b)(1)(xi) of this section applies to payments described in §1.956–2T(b)(1)(xi) made on or after May 8, 2015. Taxpayers may apply the rules of paragraph (b)(1)(xi) to payments made before May 8, 2015.

(g) *Expiration date.* The applicability of paragraph (b)(1)(xi) of this section expires on May 7, 2018.

(h) [Reserved]

(i) *Effective/applicability date.* (1) Except as otherwise provided in this paragraph (i)(1), paragraphs (a)(4) and (c)(5) of this section apply to obligations or stock acquired or to pledges or guarantees entered into, or treated as entered into, on or after September 22, 2014, but only if the inversion transaction was completed on or after September 22, 2014. The phrase ‘‘, regardless of whether, when the obligation or stock was acquired, the acquirer was a controlled foreign corporation or an expatriated foreign subsidiary’’ in paragraph (a)(4)(i)(A) of this section, the phrase ‘‘regardless of whether, when the obligation or stock was acquired, the foreign person or foreign corporation was a non-CFC foreign related person’’ in paragraph (a)(4)(i)(B) of this section, and paragraphs (a)(4)(i)(C)(*2*), (c)(5)(ii)(A), and (c)(5)(ii)(B)(*2*) of this section apply to obligations or stock acquired or pledges or guarantees entered into or treated as entered into on

or after April 4, 2016, but only if the inversion transaction was completed on or after September 22, 2014. Paragraph (a)(4)(ii) of this section applies to obligations acquired on or after April 4, 2016. For inversion transactions completed on or after September 22, 2014, however, taxpayers may elect to apply paragraph (a)(4)(ii) of this section to an obligation acquired before April 4, 2016. For purposes of paragraph (a)(4)(i) of this section and this paragraph (i)(1), a deemed exchange of an obligation or stock pursuant to section 1001 constitutes an acquisition of the obligation or stock. For purposes of paragraph (c)(5) of this section and this paragraph (i)(1), a pledgor or guarantor or deemed pledgor or guarantor is treated as entering into a pledge or guarantee when there is a significant modification, within the meaning of §1.1001–3(e), of an obligation with respect to which it is a pledgor or guarantor or is treated as a pledgor or guarantor.

(2) Paragraphs (d)(2)(i) and (ii) of this section are effective June 14, 1988, with respect to investments made on or after June 14, 1988.

(3) Paragraph (d)(2)(iii) of this section applies to obligations acquired on or after April 4, 2016, but only if the inversion transaction was completed on or after September 22, 2014. For inversion transactions completed on or after September 22, 2014, however, taxpayers may elect to apply paragraph (d)(2)(iii) of this section to an obligation acquired on or after September 22, 2014, and before *April 4, 2016*. For purposes of paragraph (d)(2)(iii) of this section and this paragraph (i)(3), a significant modification, within the meaning of §1.1001–3(e), of an obligation on or after April 4, 2016, constitutes an acquisition of an obligation on or after April 4, 2016.

(4) Paragraph (d)(2)(iv) of this section applies to obligations held on or after September 16, 1988.

(5) Paragraph (d)(2)(v) of this section applies to the first three taxable years of a foreign corporation ending after October 3, 2008, other than taxable years of a foreign corporation beginning on or after January 1, 2011, as well as the fourth taxable year of a foreign corporation, if any, when the foreign corporation's third taxable year (including any short taxable year) ended after October 3, 2008, and on or before December 31, 2009.

(j) *Expiration date.* The applicability of paragraphs (a)(4), (c)(5), and (d)(2) of this section expires on or before April 4, 2019.

[T.D. 8209, 53 FR 22171, June 14, 1988, as amended at T.D. 9406, 73 FR 38117, July 3, 2008; T.D. 9525, 76 FR 26181, May 6, 2011; T.D. 9589, 77 FR 27614, May 11, 2012; T.D. 9719, 80 FR 26442, May 8, 2015; T.D. 9761, 81 FR 20886, Apr. 8, 2016; T.D. 9761, 81 FR 46833, July 19, 2016]

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

(a) *In general.* For purposes of section 956(a) and §1.956–1, the term ''United States property'' also includes any trade or service receivable if the trade or service receivable is acquired (directly or indirectly) from a related person who is a United States person (as defined in section 7701(a)(30)) (a *related United States person*) and the obligor under the receivable is a United States person. A trade or service receivable described in this paragraph is considered to be United States property notwithstanding the exceptions (other than subparagraph (H)) contained in section 956(c)(2). The terms ''trade or service receivable'' and ''related person'' have the respective meanings given to the terms by section 864(d) and the regulations thereunder, including §1.864–8T(b). For purposes of this section, the exception in §1.956–2T(d)(2)(ii) does not apply to trade or service receivables described in this paragraph.

(b) *Acquisition of a trade or service receivable*—(1) *General rule.* The rules of §1.864–8T(c)(1) apply to determine whether a controlled foreign corporation has acquired a trade or service receivable.

(2) *Indirect acquisitions*—(i) *Acquisition through unrelated person.* A trade or service receivable is considered acquired from a related person when it is acquired from an unrelated person who acquired (directly or indirectly) the receivable from a person who is a related person to the acquiring person.

(ii) *Acquisition by nominee, pass-through entity, or related foreign corporation.* A controlled foreign corporation