

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 1.956-1: Definition of United States property
(Also: 956(c)(2)(J))

Rev. Proc. 2008-26

SECTION 1. PURPOSE

This revenue procedure sets forth circumstances in which the Internal Revenue Service (Service) will not challenge whether a security is a “readily marketable security” for purposes of section 956(c)(2)(J) of the Internal Revenue Code (Code). No inference should be drawn regarding whether a security would be described in section 956(c)(2)(J) if it falls outside the scope of this revenue procedure. Furthermore, there should be no inference regarding whether securities within the scope of this revenue procedure would be readily marketable or would not be readily marketable for purposes of section 956(c)(2)(J) but for this revenue procedure. In addition, this revenue

procedure does not address any United States federal income tax issue arising under any other section of the Code.

SECTION 2. BACKGROUND

Section 951(a)(1) requires that a United States shareholder of a controlled foreign corporation include in gross income for his taxable year in which or with which such taxable year of the corporation ends certain amounts including the amount determined under section 956 with respect to such shareholder for such year. Section 951(a)(1)(B).

The amount determined under section 956 is generally the lesser of (i) the excess (if any) of the United States shareholder's pro rata share of the average of the amounts of United States property held (directly or indirectly) by the controlled foreign corporation as of the close of each quarter of the controlled foreign corporation's taxable year over the amount of earnings and profits described in section 959(c)(1)(A) with respect to such shareholder or (ii) the United States shareholder's pro rata share of the applicable earnings (as defined in section 956(b)(1)) of such controlled foreign corporation. Section 956(a).

The term United States property includes an obligation of a United States person, excluding, however:

an obligation of a United States 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.

Section 956(c)(2)(J) (emphasis added).

Current market conditions and liquidity constraints are creating some uncertainty regarding whether a security is “readily marketable” for purposes of section 956(c)(2)(J). For example, the market for certain securities that were readily marketable in the past has become severely curtailed. As a result, there is uncertainty whether many securities are readily marketable in the current economic environment even though they are of a type that are readily marketable under ordinary market conditions. In response to taxpayers’ concerns, this revenue procedure provides certainty to taxpayers by setting forth circumstances under which the Service will not challenge whether a security is “readily marketable” for purposes of section 956(c)(2)(J) to the extent that it is of a type that would be readily marketable under ordinary market conditions.

SECTION 3. SCOPE

This revenue procedure applies to determine whether securities are “readily marketable” for purposes of section 956(c)(2)(J) for any day during calendar years 2007 or 2008 for which it is relevant whether securities are readily marketable for purposes of that section.

SECTION 4. APPLICATION

With respect to a determination within the scope of this revenue procedure, the Service will not challenge whether a security is readily marketable for purposes of section 956(c)(2)(J) if the security is of a type that was readily marketable at any time within three years prior to the effective date of this revenue procedure. For example, the Service will not challenge whether a mortgage-backed security or corporate debt

security (whether secured or unsecured) is “readily marketable” if such a security is described in Section 3 of this revenue procedure and is of a type that was readily marketable at any time within three years prior to the effective date of this revenue procedure.

This revenue procedure does not address any other issue relating to the qualification of a transaction under section 956(c)(2)(J) (e.g., whether the transaction is undertaken in the ordinary course of business by a dealer in securities or commodities).

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective May 12, 2008.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is John H. Seibert of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure contact Mr. Seibert at (202) 622-0171 (not a toll free call).