WESTERN DIGITAL CORPORATION AND SUBSIDIARIES, ET AL.,
Petitioners,

ELECTRONICALLY FILED

v.

Docket No. 18984-18, 4818-19

COMMISSIONER OF INTERNAL REVENUE,
Respondent

RESPONDENT'S MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

UNITED STATES TAX COURT

WESTERN DIGITAL CORPORATION AND SUBSIDIARIES,	)	
Petitioner,	)	
v.	)	Docket Nos. 18984-18, 4818-19
COMMISSIONER OF INTERNAL REVENUE,	)	Judge Patrick J. Urda
Respondent	)	Filed Electronically

MEMORANDUM IN SUPPORT OF RESPONDENT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

This memorandum is filed in support of Respondent's Motion for Partial Summary Judgment.

ISSUES

1. Whether partial summary judgment is appropriate in this case.

2. Does Treas. Reg. § 1.482-2(a)(1)(iii)(B) apply to Section 956(c)(2)(C) of the Internal Revenue Code.[1]

[1] Unless otherwise indicated, all references to code sections are to the Internal Revenue Code of 1986, as amended and in effect for the tax years at issue. Similarly, unless otherwise indicated, all references to Treasury Regulations are to the regulations in effect for the tax years at issue.

FACTS

The facts below are presented by way of background so that the legal issues may be examined in context and relate to the tax years before the Court in these cases (2008 through 2012):

Petitioner's Corporate Structure

Petitioner, Western Digital Corporation ("WDC"), is a multi-national corporation registered in Delaware. WDC operates through various domestic subsidiaries and controlled foreign corporations ("CFCs") in several foreign taxing jurisdictions. Of relevance to this Motion for Partial Summary Judgment are the following:

a. Western Digital Technologies, Inc., a U.S. Corporation owned 100% by WDC ("WDT").
b. Western Digital Ireland Ltd., a WDC CFC and Cayman Island entity ("WDI").
c. Western Digital (Malaysia) Sdn. Bhd., a WDC CFC and Malaysian entity ("WDM")
d. Western Digital (Thailand) Co. Ltd., a WDC CFC and Thailand entity ("WDTh").

Prior to June 29, 2007, WDT owned WDM and WDTh. On or about June 29, 2007, WDT transferred its ownership of WDM and WDTh to WDI. On June 30, 2007, WDM filed Form 8832 and elected to be disregarded as a separate entity from its owner for United States federal income tax purposes effective as of that date. On September 29, 2007, WDTh filed Form 8832 and elected to be disregarded as a separate entity form its owner for United States federal income tax purposes as of that date.

Petitioner's Operations

WDC designed, developed, manufactured and sold hard disk drives ("HDDs") worldwide to original equipment manufacturers and original design manufactures for use in desktop, mobile, enterprise and consumer electronic products. It also sold HDDs as part of stand-alone Western Digital-branded storage products.

WDM and WDTh separately owned and operated manufacturing facilities that produced the finished HDDs. WDM and WDTh sold all HDDs they manufactured to WDT. These sales resulted in accounts payable on WDT's books. The payment terms for WDT's purchase of HDDs from WDM and WDTh was 90 days from date of invoice (this payment term is referred to as "Net"), or 90 Net.

WDT sold and distributed the HDDs to third parties.

Respondent's Adjustments under Section 956

As he had for prior tax years, Respondent examined WDT's accounts payable associated with its purchases of HDDs from WDM and WDTh for tax years 2008 through 2012. Respondent determined that the 90 days Net payment terms WDM and WDTh had with WDT were not ordinary and reasonable as: WDT had ample ability to pay WDM and WDTh earlier; WDT and other WDC subsidiaries had terms of 60 days Net or sooner with the vast majority of their external suppliers and customers totaling billions of dollars per year; and, the industry standard for paying invoices was approximately 60 days Net.

Applying Section 956 (and subsequently Section 951(a)(1)(B)), Respondent made adjustments of $89,784,465 for and $52,957,567 for Petitioner's Fiscal Years 2009 and 2010, respectively.[2] These adjustments are set forth in the Statutory Notices of Deficiency ("SNODs") underlying these cases. Petitioner challenged these adjustments in their petitions to the SNODs.

[2] Petitioner did not have sufficient foreign earnings and profits for adjustments under Section 956 (and 951) in Petitioner's fiscal years 2008, 2011 and 2012. See generally I.R.C. §§ 956(a), 951(a)(1)(B) and 959(a)(2).

Petitioner's assertions that Treas. Reg. § 1.482-2(a)(1)(iii)(B) applies to Section 956(c)(2)(C)

During Respondent's examinations discussed above, Petitioner repeatedly argued that an interest exception in Treas. Reg. § 1.482-2(a)(1)(iii)(B) ("482 Interest Free Exception") should be applied to Section 956(c)(2)(C). In a letter dated, March 25, 2020, Petitioner confirmed that it believes that 482 Interest Free Exception "is relevant to respondent's adjustments under I.R.C. §§ 951 and 956" and "the Court should consider [it] in ruling on this issue."

LAW AND ANALYSIS

I. Partial Summary Judgment Is Appropriate Because There Is No Genuine Dispute As To Any Material Fact.

Summary judgment will be granted if the pleadings and other acceptable materials, together with the affidavits, if any, show that there is no genuine dispute as to any material fact and that a decision may be rendered as a matter of law. Rule 121(b); Yarish v. Commissioner, 139 T.C. 290 (2012); Taproot Admin. Servs. v. Commissioner, 133 T.C. 202, 204 (2009), aff'd, 679 F.3d 1109 (9th Cir. 2012); O'Neal v. Commissioner, 102 T.C. 666, 674 (1994). Summary judgment may not be used, however, to resolve disagreements over factual issues. Northern Ind. Pub. Serv. Co. & Subs. v. Commissioner, 101 T.C. 294, 295 (1993).

The moving party bears the burden of establishing that there is no genuine issue of material fact and that the moving party is entitled to judgment on the substantive legal issues. Taproot, 133 T.C. at 204; O'Neal, 102 T.C. at 674. In addition, factual inferences must be read in the light most favorable to the party opposing the motion. Blanton v. Commissioner, 94 T.C. 491, 494 (1990); Jacklin v. Commissioner, 79 T.C. 340, 343 (1982); Espinoza v. Commissioner, 78 T.C. 412, 416 (1982); Baker v. Commissioner, T.C. Memo 2001-283 (2001). The party opposing summary judgment must set forth specific facts showing that a genuine question of material fact exists and may not rely merely on allegations or denials in the pleadings. Rule 121(d); Celotex Corp v. Catrett, 477 U.S. 317, 324 (1986); King v. Commissioner, 87 T.C. 1213, 1217 (1986); Ellis v. Commissioner, T.C. Memo 2012-250 (2012).

The facts set forth above are not in dispute, and so a decision properly may be rendered by partial summary judgment.

II. Overview of Section 956

Section 951(a)(1)(B) provides that every person who is a United States

shareholder[3] of a CFC shall include in his gross income "the amount determined under section 956 with respect to such shareholder for such year (but only to the extent not excluded from gross income under section 959(a)(2))."[4] Generally, there is an amount determined under Section 956 if a CFC holds United States property ("U.S. property") at the close of a quarter of its taxable year and has sufficient earnings and profits.[5]

U.S. property generally includes an obligation of a domestic person that is a United States shareholder[6] of the CFC.[7] An "obligation" includes accounts receivable. Treas. Reg. § 1.956-2(d)(2).[8] Section 956(c)(2)(C) provides an

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[3] Section 951(a)(1)(B) applies to every person that is a United States shareholder that owns stock on the last day of the corporation's taxable year on which the corporation is a CFC.

[4] Section 959(a)(2) provides rules on the exclusion of PTI from gross income.

[5] The amount determined under Section 956 (for purposes of section 951(a)) is the lesser of (1) the excess of (A) the United States shareholder's pro rata share of the amounts of U.S. property held, directly or indirectly, by the CFC as of the close of each quarter of the taxable year over (B) the amount of section 959(a)(1)(A) earnings and profits with respect to the United States shareholder; and (2) the United States shareholder's pro rata share of the applicable earnings (as defined in Section 956(b)(1)) of the CFC. Section 956(a)(1).

[6] Section 951(b) defines a "United States shareholder."

[7] Section 956(c)(1)(C).

[8] During the tax years at issue, this regulation was in temporary form, having been issued on June 14, 1988. In 2018, the temporary regulation was finalized without modification, with an effective date consistent with that of the temporary

exception to the definition of U.S. property that excludes:

> any obligation of a United States person arising in connection with the sale or processing of property if the amount of such obligation outstanding at no time during the taxable year exceeds the amount which 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 United States person had the sale or processing transaction been made between unrelated persons.

Determining if an obligation is ordinary and necessary is based on all the facts and circumstances. Treas. Reg. § 1.956-2(b)(1)(v). The correct interpretation of Section 956(c)(2)(C) and the associated regulations is the focus of this memorandum.

III. Section 956 Is Part Of The Statutory Regime To Prevent Multi-National Corporations From Avoiding Or Delaying U.S. Taxation On CFC Income.

Congress enacted Section 956 in 1962 "to prevent the repatriation of income to the United States in a manner which does not subject it to U.S. taxation." H.R. Rep. No. 1447 at 58. Congress intended Section 956 to fix a gap in the Code's Subpart F provisions, which were also enacted in 1962.

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regulations (June 14, 1988). Treas. Reg. §§ 1.956-2(d)(2) and (h)(4); T.D. 9834, 83 FR 32537-38 (2018).

Congress enacted the Subpart F provisions to prevent indefinite deferral on specific types of income. Before Section 956, however, CFCs could repatriate non-Subpart F income to the United States in forms other than dividends (such as loans), and the U.S. shareholders of such CFCs would not be taxed on such repatriations. Congress intended Section 956 to end this gap.

IV. No Statute, Legislative History, Regulation, Case Law Or Respondent's Determinations Even Suggest That The 482 Interest Free Exception Applies To Section 956(c)(2)(C).

Section 482, its regulations and related case law are a behemoth of incredibly complex and intertwined legal and economic principles. These principles typically govern the shifting of property around the world and billions of dollars in alleged tax adjustments. See, e.g., Amazon.com, Inc. v. Commissioner, 934 F.3d 976 (9th Cir. 2019); The Coca-Cola Company v. Commissioner, Docket No. 31183-15; and, Facebook, Inc. v. Commissioner, Docket No. 21959-16.

One of the countless provisions buried in the mountain of tax law around Section 482 is Treas. Reg. § 1.482-2(a)(1). This narrow and single regulatory subsection concerns interest on bona fide indebtedness from intercompany loans or advances.

Treas. Reg. § 1.482-2(a)(1)(iii)(B), the focus of Respondent's motion for partial summary judgment, provides for an interest free period on payments for intercompany trade receivables in the ordinary course of business. Specifically, this subsection states:

> Exception for intercompany transactions in the ordinary course of business. Interest is not required to be charged on an intercompany trade receivable until the first day of the third calendar month following the month in which the intercompany trade receivable arises.

Petitioner asserts that the 482 Interest Free Exception should inform the analysis under Section 956(c)(2)(C). In doing so, Petitioner seeks to inappropriately create a new safe harbor rule by plucking a single, unrelated regulatory provision from over thousands of pages of regulations and case law governing Section 482 and waving it as some sort of defense to adjustments under Section 956. While Petitioner's creativity is certainly laudable, it should not be allowed to create safe harbors or factors for judicial consideration by cherry-picking unrelated language from the vast library of tax law. Permitting such unsupported statutory and regulatory constructions would encourage misleading arguments and clog the Court with pleadings, motions, memorandums and briefs filled with rubbish.

A. Nothing on the face of any statute states that the 482 Interest Free Exception or a similar safe harbor applies to Section 956(c)(2)(C).

In determining if one part of tax law applies to another, such as if the 482 Interest Free Exception applies to Section 956(c)(2)(C), the Tax Court has reaffirmed the cannons of statutory construction by holding that "[w]e must first turn to the relevant statutory text … We look beyond the plain meaning of the words used in the statute only when their meaning is 'inescapably ambiguous'. CRI-Leslie, LLC v. Commissioner, 147 T.C. 217, 224 (2016) (determining if Section 1234A extends to Section 1231) (citations omitted).

Section 956(c)(2)(C) is clear and unambiguous on its face. It does not reference or incorporate the 482 Interest Free Exception or any similar safe habor or exception. Likewise, Section 956 does not reference either Section 482 or its regulations.

Section 956 does reference several Code sections provisions and other authority without mentioning Section 482. The referenced code provisions include (in order of appearance):

- 959;
- 316;
- 958;

- 953;
- 951;
- 952;
- 954;
- 475; and,
- 864.

Section 956 even references non-Code statutory provisions, such as the Bank Holding Company Act, 12 U.S.C. § 1841, that define foundational aspects of Section 956, such as the amount of previously taxed earnings and profits (Section 959). These references also include key operational definitions: a dividend (Section 316); a bank (12 U.S.C. § 1841); applicable contracts under Section 953, a U.S. shareholder (Section 951); a related person (Section 954); a dealer in commodities (Section 475); a trade or service receivable (Section 864); and, a related person (Section 864). By referencing other code sections, Congress intended to create a comphrensive statutory scheme for applying Section 956. The lack of any reference to the 482 Interest Free Exception, or Section 482 at all, shows that Congress did not intend for either to apply to Section 956.

In attempting to force the 482 Interest Free Exception into Section 956(c)(2)(C), Petitioner is ignoring the most basic cannon of statutory construction—the plain language of the Section 956(c)(2)(C).

B. Nothing in the legislative histories of Section 482 or Section 956 state that the 482 Interest Free Exception or a similar safe harbor applies to Section 956(c)(2)(C).

Courts only need to move beyond the face of Section 956 *if* that section is "inescapably ambiguous." CRI-Leslie, LLC, 147 T.C. at 224. Assuming for arguments sake that Section 956's lack of any reference to the 482 Interest Free Exception, regulations under Section 482 or Section 482 itself is somehow "inescapably ambiguous," the Court should look to the legislative history of Section 956 "'primarily to learn the purpose of the statute and to resolve any ambiguity in the words contained in the text'" and "'give effect to the will of Congress.'" Id. (internal citations omitted).

Nothing in the legislative history of either Sections 956 or 482 suggests that the 482 Interest Free Exception or a similar safe harbor applies to Section 956(c)(2)(C). Further, nothing in the legislative history ties Section 956 to Section 482, or vice-versa.

Section 482 was added to the Code on October 4, 1954. Public Law 83-591. Of relevance to the tax years before the Court (2008 through 2012), Section 482 was amended in 1976 and 1986. Public Laws 94-455 and 99-514, respectively. Section 482 was also amended in 2017 and 2018. Public Law 115-97 (effective December 22, 2017); Public Law 115-141 (effective March 23, 2018). Neither the original version of Section 482 nor any of its amendments reference Section 956.

As originally enacted in 1962, Section 956 contained several explicit references to other sections of the Code, including former Sections 955 (withdrawal of previously excluded Subpart F income from qualified investment), 959 (previously taxed earnings and profits), 958 (stock ownership rules), 953 (insurance income) and 952 (Subpart F income). Public Law 87-834. It should be noted that the originally enacted Section 956 contained the verbatim language of Section 956(c)(2)(C) in effect during the tax years at issue here.[9] Section 482 was already in existence when Section 956 was enacted. Congress was fully aware of Section 482 when drafting and passing Section 956. By not referencing Section

[9] The applicable language of Section 956(c)(2)(C) was found in originally enacted Section 956(b)(2)(C). Public Law 87-834, 76 Stat. at 1016 (1962).

482, Congress was sending a clear message: Section 482 has no bearing on Section 956(c)(2)(C).

The amendments to Section 956 reinforce this point. Section 956 was amended eight times from its enactment through the years at issue in these cases: 1976[10]; 1984[11]; 1986[12]; 1993[13]; 1996[14]; 1997[15]; 2004[16]; and, 2007.[17] These amendments added, deleted and changed key definitions, exceptions and the referenced Code sections in Section 956. However, none of the amendments even reference Section 482 let alone include the 482 Interest Free Exception or a similar safe harbor.

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[10] Public Law 94-455 (adding exceptions to the definition of U.S. property for stock or obligations held by a CFC and property used to transport resources).
[11] Public Law 98-369 (adding Section 956(b)(3) to add trade and service receivables to the definition of U.S. Property).
[12] Public Law 99-514 (further amending the language of Section 956(b)(3)).
[13] Public Law 103-66 (redesigned the Section 956 and added 956(e) to give the Secretary the authority to prescribe regulations to carry out the purposes of Section 956).
[14] Public Law 104-188 (amending: the definition of earnings; and, rules for when a corporation ceases to be a CFC).
[15] Public Law 105-34 (adding exceptions to the definition of U.S. Property for transactions involving dealers in securities).
[16] Public Law 108-357 (adding: further exceptions for dealers of securities; and, obligations of non-U.S. Shareholders).
[17] Public Law 110-172 (removing the exception for property held by a foreign sales corporation used in export activities).

The statutory history of Section 956 makes no reference to the 482 Interest Free Exception or a similar safe harbor. The 482 Interest Free Exception was included in regulations under Section 482 on July 8, 1994. 59 F.R. 34971. Congress was fully aware of the 482 Interest Free Exception when it amended Section 956 in 1996, 1997, 2004 and 2007. Despite this awareness, Congress did not include any reference to the 482 Interest Free Exception Free Period or enact a similar safe harbor in Section 956. This silence is deafening.

C. Nothing on the face of the 482 Interest Free Exception states that it or a similar safe harbor applies to Section 956(c)(2)(C).

Regulations are interpreted in much the same manner as statutes; their plain meaning applies unless they are "genuinely ambiguous." Amazon.com, Inc., 934 F.3d at 992 (9th Cir. 2019)("a court must exhaust all the 'traditional tools' of construction")(internal citations omitted). The 482 Interest Free Exception does not state or imply in any way that it applies to Section 956. Treas. Reg. § 1.482-2(a)(1)(iii)(B). Similarly, no part of Treas. Reg. § 1.482-2 even hints that a subsection within the regulation may apply to Section 956(c)(2)(C).

Moreover, the plain text of the 482 Interest Free Exception itself limits its applicability. This text specifically limits the 482 Interest Free Exception to "apply only to indebtedness described in paragraph (a)(1)(ii)(A)(2) of this section." Treas.

Reg. § 1.482-2(a)(1)(iii)(A). Thus, for the 482 Interest Free Exception to apply to Section 956(c)(2)(C), the Court would have to blind itself to plain text of the 482 Interest Free Exception and ignore this explicit limitation.

D. Nothing in the regulations under Section 482 states that the 482 Interest Free Exception or a similar exception applies to Section 956(c)(2)(C).

The regulations under Section 482 covering tax years 2008 through 2012 are comprehensive, addressing a multitude topics concerning the application of Section 482. None of these pages contain a single reference to Section 956, let alone state that any part of the regulations apply to Section 956.

E. The regulations under Section 956 demonstrate that the Section 482 Interest Free Exception or a similar safe harbor does not apply to Section 956(c)(2)(C).

The regulations under Section 956 make clear the inapplicability of the 482 Interest Free Exception or a similar safe harbor to Section 956(c)(2)(C). No regulation under Section 956 applies or references the 482 Interest Free Exception. In addition, no regulation under Section 956 contains a similar safe harbor or exception for intercompany transfers of goods. In fact, the regulations make clear that whether or not the exception under Section 956(c)(2)(C) applies is a facts and circumstances determination.

The significance of the lack of such safe harbors is made even clearer by the other rules that exist in the regulations under Section 956. Treas. Reg. § 1.956-2(d)(2)(ii) excludes certain accounts receivable arising from *services* provided by a CFC to its United States parent from Section 956's definition of obligations. This exclusion applies if receivables are paid within 60 days.[18] Likewise, Treas. Reg. §§ 1.956-2(d)(2)(iii) and (iv) further exempt from the definition of U.S. Property certain obligations owed by a U.S. Corporation to a CFC that are paid within 30 or 60 days. In including these safe harbors but not the 482 Interest Exception or any other exception for intercompany goods, the intent of the regulations under Section 956 is clear—Section 956(c)(2)(C) applies based on the specific facts and circumstances.

The plain language of the regulations under Section 956 contradicts the 482 Interest Free Exception. As discussed, the regulations under 956 contain several safe harbors. These safe harbors are specifically defined and include enumerated exception periods. The 482 Interest Free Exception has a much broader scope than

[18] This 60-day services payable exception was originally contained in Treas. Reg. § 1.956-2T(d)(2)(B), T.D. 8209 (53 FR 22165)(1988), and was effective June 14, 1988. It was included in the final regulation in 2018 and maintained the same effective date. 83 FR 32524.

the regulations under Section 956, as it defines indebtedness as that "incurred in the ordinary course of business from sales, services, etc." Treas. Reg. § 1.482-2(a)(1)(iii)(A). As such, applying the 482 Interest Free Exception to Section 956(c)(2)(C) would result in the 482 Interest Free superseding and overruling several exceptions enumerated in the regulations under Section 956, namely Treas. Reg. §§ 1.956-2(d)(2)(ii), (iii) and (iv). Doing so would render the regulations under Section 956 meaningless, an end-state antithetical to their plain meaning.

The history of the regulations under Section 956 is also informative. Treas. Reg. §§ 1.956-1 and -2 apply for the tax years at issue. Treas. Reg. § 1.956-1 was issued in 1964 (29 F.R. 2600). It was amended in: 1965 (30 F.R. 942); 1980 (45 F.R. 52374); 1988 (53 F.R. 22171); 2008 (73 F.R. 35582); and, 2011 (76 F.R. 6994). Treas. Reg. § 1.956-2 was originally issued alongside Treas. Reg. § 1.956-1 in 1964. It was amended in: 1980; 1981 (46 F.R. 5675); 1988; 2002 (67 F.R. 48025); 2008 (73 F.R. 38117); 2011 (76 F.R. 26181); and, 2012 (77 F.R. 27614). None of these amendments, including those that added the 60-day service payable exception of Treas. Reg. § 1.956-2(d)(2) and 60 and 30-day exceptions in Treas. Reg. §§ 1.956-2(d)(2)(iii) and (iv), mention the 482 Interest Free Exception or a similar exception.

F. No case law even suggests that that the 482 Interest Free Exception or a similar safe harbor applies to Section 956(c)(2)(C).

As of March 31, 2020, 120 decisions from federal courts, including the Tax Court, cite Treas. Reg. § 1.482-2. None of these decisions cite Section 956 for any purpose let alone for extending the 482 Interest Free Exception to apply to Section 956(c)(2)(C). Moreover, no cases create a similar safe harbor to the 482 Interest Free Exception for Section 956(c)(2)(C).

G. None of Respondent's published official guidance or any determination state that the 482 Interest Free Exception applies to Section 956(c)(2)(C).

As of April 8, 2020, none of Respondent's determinations, such as revenue rulings, private letter rulings, technical advice memorandums or Chief Counsel Advice ("CCA"), state that the 482 Interest Free Exception applies to Section 956(c)(2)(C).

In constrast, Respondent has created limited exceptions to Section 956(c)(2)(C) as needed. For example, in Notice 2017-68, Respondent specifically exempted certain property from the definition of U.S. property due to the impacts of Hurricanes Irma and Maria. In doing so, Respondent did not want CFCs and U.S. Corporations to be impacted by Section 956(c)(2)(C) because these hurricanes forced property to be temporarily stored or moved for safekeeping. Notice 2017-

668 demonstrates that Respondent is keenly aware of the implications of Section 956(c)(2)(C) and will take action as necessary to clarify its application. Had Respondent wanted the 482 Interest Free Exception to apply to Section 956(c)(2)(C), he could have easily done so by issuing appropriate guidance. He has never done so.

Conclusion

As described in this memorandum, there is no genuine dispute regarding the facts on the applicability of the 482 Interest Free Exception to Section 956(c)(2)(C).

Petitioner's attempt to apply the 482 Interest Free Exception to Section 956 is nothing short of disengenious and incorrect statutory and regulatory construction. First, nothing on the face of any statute states that the 482 Interest Free Exception or a similar safe harbor applies to Section 956(c)(2)(C). Second, nothing in the legislative histories of Sections 482 or 956 state that the 482 Interest Exception or a similar safe harbor applies to Section 956(c)(2)(C). Third, nothing on the face of the 482 Interest Free Exception states that it or a similar safe harbor applies to Section 956(c)(2)(C). Fourth, nothing in the regulations under Section 482 states that the 482 Interest Free Exception or a similar safe harbor applies to

Section 956(c)(2)(C). Fifth, the regulations under Section 956 demonstrate that the Section 482 Interest Free Exception does not apply to Section 956(c)(2)(C). Sixth, no case law even suggests that the 482 Interest Free Exception or a similar safe harbor applies to Section 956(c)(2)(C). Finally, none of Respondent's published official guidance or determinations state that the 482 Interest Free Exception or a similar safe harbor applies to Section 956(c)(2)(C). Rather, it is clear from all of the guidance relevant to Section 956(c)(2)(C) that it is intended to be a determination based on the individual taxpayer's facts and circumstances.

As such, Respondent prays that the Court grant Respondent's Motion for Partial Summary Judgment and, rule that the 482 Interest Free Exception does not apply to Section 956(c)(2)(C).

Date: April 29, 2020

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