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§ 1.962–1 Limitation of tax for individuals on amounts included in gross income under section 951(a).

(a) *In general.* An individual United States shareholder may, in accordance with §1.962–2, elect to have the provisions of section 962 apply for his taxable year. In such case—

(1) The tax imposed under chapter 1 of the Internal Revenue Code on all amounts which are included in his gross income for such taxable year under section 951(a) shall (in lieu of the tax determined under section 1) be an amount equal to the tax which would be imposed under section 11 if such amounts were received by a domestic corporation (determined in accordance with paragraph (b)(1) of this section), and

(2) For purposes of applying section 960(a)(1) (relating to foreign tax credit) such amounts shall be treated as if received by a domestic corporation (as provided in paragraph (b)(2) of this section).

Thus, an individual United States shareholder may elect to be subject to tax at corporate rates on amounts included in his gross income under section 951(a) and to have the benefit of a credit for certain foreign taxes paid with respect to the earnings and profits attributable to such amounts. Section 962 also provides rules for the treatment of an actual distribution of earnings and profits previously taxed in accordance with an election of the benefits of this section. See §1.962–3. For transitional rules for certain taxable years, see §1.962–4.

(b) *Rules of application.* For purposes of this section—

(1) *Application of section 11.* For purposes of applying section 11 for a taxable year as provided in paragraph (a)(1) of this section in the case of an electing United States shareholder—

(i) *Determination of taxable income.* The term ''taxable income'' as used in section 11 shall mean the sum of—

(*a*) All amounts required to be included in his gross income under section 951(a) for such taxable year; plus

(*b*) All amounts which would be required to be included in his gross income under section 78 for such taxable year with respect to the amounts referred to in (*a*) of this subdivision if such shareholder were a domestic corporation.

For purposes of this section, such sum shall not be reduced by any deduction of the United States shareholder even if such shareholder's deductions exceed his gross income.

(ii) *Limitation on surtax exemption.* The surtax exemption provided by section 11(c) shall not exceed an amount which bears the same ratio to $25,000 ($50,000 in the case of a taxable year ending after December 31, 1974, and before January 1, 1976) as the amounts included in his gross income under section 951(a) for the taxable year bear to his pro rata share of the earnings and profits for the taxable year of all controlled foreign corporations with respect to which such United States shareholder includes any amount in his gross income under section 951(a) for the taxable year.

(2) *Allowance of foreign tax credit*—(i) *In general.* Subject to the applicable limitation of section 904 and to the provisions of this subparagraph, there shall be allowed as a credit against the United States tax on the amounts described in subparagraph (1)(i) of this paragraph the foreign income, war profits, and excess profits taxes deemed paid under section 960(a)(1) by the electing United States shareholder with respect to such amounts.

(ii) *Application of section 960(a)(1).* In applying section 960(a)(1) for purposes of this subparagraph in the case of an electing United States shareholder, the term ''domestic corporation'' as used in sections 960(a)(1) and 78, and the term ''corporation'' as used in section 901, shall be treated as referring to such shareholder with respect to the amounts described in subparagraph (1)(i) of this paragraph.

(iii) *Carryback and carryover of excess tax deemed paid.* For purposes of this subparagraph, any amount by which the foreign income, war profits, and excess profits taxes deemed paid by the electing United States shareholder for any taxable year under section 960(a)(1) exceed the limitation determined under subdivision (iv)(*a*) of this subparagraph shall be treated as a carryback and carryover of excess tax paid under section 904(d), except that in no case shall excess tax paid be

deemed paid in a taxable year if an election under section 962 by such shareholder does not apply for such taxable year. Such carrybacks and carryovers shall be applied only against the United States tax on amounts described in subparagraph (1)(i) of this paragraph.

(iv) *Limitation on credit.* For purposes of determining the limitation under section 904 on the amount of the credit for foreign income, war profits, and excess profits taxes—

(*a*) Deemed paid with respect to amounts described in subparagraph (1)(i) of this paragraph, the electing United States shareholder's taxable income shall be considered to consist only of the amounts described in such subparagraph (1)(i), and

(*b*) Paid with respect to amounts other than amounts described in subparagraph (1)(i) of this paragraph, the electing United States shareholder's taxable income shall be considered to consist only of amounts other than the amounts described in such subparagraph (1)(i).

(v) *Effect of choosing benefits of sections 901 to 905.* The provisions of this subparagraph shall apply for a taxable year whether or not the electing United States shareholder chooses the benefits of subpart A of part III of subchapter N of chapter 1 (sections 901 to 905) of the Internal Revenue Code for such year.

(c) *Illustration.* The application of this section may be illustrated by the following example:

Example. Throughout his taxable year ending December 31, 1964, A, an unmarried individual who is not the head of a household, owns 60 of the 100 shares of the one class of stock in foreign corporation M and 80 of the 100 shares of the one class of stock in foreign corporation N. A and corporations M and N use the calendar year as a taxable year, corporations M and N are controlled foreign corporations throughout the period here involved, and neither corporation is a less developed country corporation. The earnings and profits and subpart F income of, and the foreign income taxes paid by, such corporations for 1964 are as follows:

	M	N
Pretax earnings and profits	$500,000	$1,200,000
Foreign income taxes	200,000	400,000
Earnings and profits	300,000	800,000
Subpart F income	150,000	750,000

Apart from his section 951(a) income, A has gross income of $200,600 and $100,000 of deductions attributable to such income. He is required to include $90,000 (0.60 × $150,000) in gross income under section 951(a) with respect to M Corporation and $600,000 (0.80 × $750,000) with respect to N Corporation. A elects to have the provisions of section 962 apply for 1964 and computes his tax as follows:

Tax on amounts included under section 951(a):			
Income under section 951(a) from M Corporation	$90,000		
Gross-up under sections 960(a)(1) and 78 ($90,000/$300,000 × $200,000)	60,000		
Income under section 951(a) from N Corporation	600,000		
Gross-up under sections 960(a)(1) and 78 ($600,000/$800,000 × $400,000)	300,000		
Taxable income under section 11	1,050,000		
Normal tax (0.22 × $1,050,000)		$231,000	
Surtax exemption ([$90,000 + $600,000]/[0.60 × $300,000 + (0.80 × $800,000)] × $25,000)	21,036		
Subject to surtax under section 11 ($1,050,000 − $21,036)	1,028,964		
Surtax (0.28 × $1,028,964)		288,110	
Tentative U.S. tax		519,110	
Foreign tax credit ($60,000 + $300,000)	360,000		
Total U.S. tax payable on amounts included under section 951(a)			$159,110
Tax with respect to other income:			
Gross income		200,600	
Less:			
Personal exemption	600		
Deductions	100,000		
	100,600		
Taxable income		100,000	
Tax with respect to such other taxable income		59,340	

Total tax ($159,110 + $59,340)	218,450

[T.D. 6858, 30 FR 13695, Oct. 28, 1965, as amended by T.D. 7413, 41 FR 12640, Mar. 26, 1976]

§ 1.962–2 Election of limitation of tax for individuals.

(a) *Who may elect.* The election under section 962 may be made only by a United States shareholder who is an individual (including a trust or estate).

(b) *Time and manner of making election.* Except as provided in § 1.962–4, a United States shareholder shall make an election under this section by filing a statement to such effect with his return for the taxable year with respect to which the election is made. The statement shall include the following information:

(1) The name, address, and taxable year of each controlled foreign corporation with respect to which the electing shareholder is a United States shareholder and of all other corporations, partnerships, trusts, or estates in any applicable chain of ownership described in section 958(a);

(2) The amounts, on a corporation-by-corporation basis, which are included in such shareholder's gross income for his taxable year under section 951(a);

(3) Such shareholder's pro rata share of the earnings and profits (determined under § 1.964–1) of each such controlled foreign corporation with respect to which such shareholder includes any amount in gross income for his taxable year under section 951(a) and the foreign income, war profits, excess profits, and similar taxes paid on or with respect to such earnings and profits;

(4) The amount of distributions received by such shareholder during his taxable year from each controlled foreign corporation referred to in subparagraph (1) of this paragraph from excludable section 962 earnings and profits (as defined in paragraph (b)(1)(i) of § 1.962–3), from taxable section 962 earnings and profits (as defined in paragraph (b)(1)(ii) of § 1.962–3), and from earnings and profits other than section 962 earnings and profits, showing the source of such amounts by taxable year; and

(5) Such further information as the Commissioner may prescribe by forms and accompanying instructions relating to such election.

(c) *Effect of election*—(1) *In general.* Except as provided in subparagraph (2) of this paragraph and § 1.962–4, an election under this section by a United States shareholder for a taxable year shall be applicable to all controlled foreign corporations with respect to which such shareholder includes any amount in gross income for his taxable year under section 951(a) and shall be binding for the taxable year for which such election is made.

(2) *Revocation.* Upon application by the United States shareholder, an election made under this section may, subject to the approval of the Commissioner, be revoked. 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 the United States shareholder's mailing a letter for such purpose to Commissioner of Internal Revenue, Attention: T:R, Washington, DC 20224, containing a statement of the facts upon which such shareholder relies in requesting such consent.

[T.D. 6858, 30 FR 13696, Oct. 28, 1965]

§ 1.962–3 Treatment of actual distributions.

(a) *In general.* Section 962(d) provides that the earnings and profits of a foreign corporation attributable to amounts which are, or have been, included in the gross income of an individual United States shareholder under section 951(a) by reason of such shareholder's ownership (within the meaning of section 958(a)) of stock in such corporation and with respect to which amounts an election under § 1.962–2 applies or applied shall, when such earnings and profits are distributed to such shareholder with respect to such stock, notwithstanding the provisions of section 959(a)(1), be included in his gross income to the extent that such earnings and profits exceed the amount of income tax paid by such shareholder