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so paid, equals the total dividend which is paid. The determination of tax deemed paid by M Corporation with respect to distributions from 1963 earnings and profits of B Corporation is as follows:

1963	
Pretax and predistribution earnings and profits of B Corporation for 1963	$100
Total dividend paid by B Corporation in 1963 ($21/0.70)	30
Total foreign income tax paid by B Corporation for 1963 (0.40[$100 − $30] + [0.20 × $30]) or ($28 + $6)	34
Foreign income tax, represented by "t" in the following equation, to be taken into account with respect to total dividend in determining tax deemed paid under section 902(a) by M Corporation: t = (0.20 × $30) + 0.40t. t = $6 + 0.40t. 0.60t = $6. t = $6/0.60, or	$10
Foreign income tax deemed paid by M Corporation for 1963 ($21/$30 × $10)	7
1964	
Remaining 1963 earnings and profits of B Corporation ([$100 − $34] − $30) or ($66 − $30)	36
Dividend received by M Corporation for 1964 (0.70 × $36)	25.20
Foreign income tax deemed paid by M Corporation for 1964 ($25.20/$36 × [$34 − $10]) or ($25.20/$36 × $24)	16.80

[T.D. 6759, 29 Sept. 25, 1964; 29 FR 13896, Oct. 8, 1964, as amended by T.D. 6767, 29 FR 14879, Nov. 3, 1964]

§ 1.963–6 Deficiency distribution.

(a) *In general.* Section 963(e)(2) and this section provide a method under which, by virtue of a deficiency distribution, a United States shareholder may be relieved from the payment of a deficiency in tax for any taxable year arising by reason of failure to include subpart F income in gross income under section 951(a)(1)(A)(i), when it has been determined that such shareholder has failed to receive a minimum distribution for such year in respect of which it elected to secure the exclusion under section 963. In addition, this section provides rules with respect to a credit or refund of part or all of any such deficiency which has been paid. Under the method provided, the benefit of the exclusion of subpart F income from gross income of the United States shareholder is allowed retroactively for the taxable year in respect of which the election under section 963 applied, but only if the subsequent deficiency distribution meets the requirements of this section. The benefits of the retroactive exclusion will not, however, prevent the assessment of interest, additional amounts, and assessable penalties.

(b) *Requirements for deficiency distribution*—(1) *Distribution made on or after date of determination.* If—

(i) A United States shareholder, in making its return of the tax imposed by chapter 1 of the Code for any taxable year, elects to secure an exclusion under section 963 for such year,

(ii) It is subsequently determined (within the meaning of paragraph (c) of this section) that an exclusion under section 963 of subpart F income with respect to stock to which such election relates does not apply for such taxable year because of the failure of such shareholder to receive a minimum distribution for such year with respect to such stock, and

(iii) Such failure is due to reasonable cause, a deficiency distribution which is received by such shareholder with respect to such stock from a foreign corporation which was the single first-tier corporation, or a corporation in the chain or group, as the case may be, with respect to which the election was made, shall count toward a minimum distribution under section 963 for such year of election if such deficiency distribution is received (except as provided by subparagraph (2) of this paragraph) on, or within 90 days after, the date of such determination and prior to the filing of a claim under paragraph (d)(1) of this section. Such claim must be filed within 120 days after the date of such determination, and the deficiency distribution must be a dividend of such a nature (except as otherwise provided in this section) as would have permitted it to count toward a minimum distribution for the taxable year of the election if it had been received by the United States shareholder during such year. No distribution shall count as a deficiency distribution under this subparagraph unless a claim therefor is filed under paragraph (d)(1) of this section.

(2) *Distribution made before date of determination.* A deficiency distribution may also be received by a United States shareholder at any time prior to the date on which the determination required by subparagraph (1) of this paragraph is made. A distribution will

count as a deficiency distribution under this subparagraph—

(i) To the extent that such distribution otherwise satisfies the requirements of this section;

(ii) If the United States shareholder files within 90 days after such distribution but before the determination date an advance claim described in paragraph (d)(2) of this section for treatment of such distribution as a deficiency distribution;

(iii) If such shareholder consents in such claim to include such deficiency distribution in gross income for the taxable year of the election to the extent necessary to complete a minimum distribution for such year and under section 6501 to extend the period for the making of assessments, and the bringing of distraint or a proceeding in court for collection, in respect of a deficiency and all interest, additional amounts, and assessable penalties for such taxable year;

(iv) If, when requested by the district director, such shareholder consents under section 6501 in such claim to extend the period for the making of assessments, and the bringing of distraint or a proceeding in court for collection, in respect of a deficiency and all interest, additional amounts and assessable penalties for the year of receipt of such distribution; and

(v) To the extent that such shareholder makes advance payment of tax which would result from the inclusion of such distribution in gross income as a minimum distribution for the year of such deficiency.

To the extent that such distribution is not necesasry under the determination (when made under paragraph (c) of this section) for a deficiency distribution, it shall be included in the United States shareholder's gross income for the taxable year of receipt of such distribution and paragraph (g) of this section shall not apply.

(3) *Earnings and profits of year of election to be first distributed.* If—

(i) In the case of a first-tier election, the United States shareholder's proportionate share of the earnings and profits of the foreign corporation which was the single first-tier corporation, or

(ii) In the case of a chain or group election, any portion of the share of any corporation or corporations (which were in the chain or group) of the consolidated earnings and profits with respect to the United States shareholder,

for the taxable year of the election has not been distributed on the stock with respect to which the election was made, then a distribution, in order to be counted toward a deficiency distribution, must be made by such corporation or corporations and from such earnings and profits to the extent thereof. Once all such earnings and profits of such corporation or corporations have been completely distributed, a deficiency distribution may be made from other earnings and profits of such foreign corporation which was a single first-tier corporation, or of such corporation or corporations which were in such chain or group, as the case may be.

(4) *Proof of reasonable cause.* Reasonable cause for failure to receive a minimum distribution shall be deemed to exist, in the absence of circumstances demonstrating bad faith, if the electing United States shareholder receives, within the period prescribed by paragraph (a)(1)(i) of §1.963–3 with respect to the year of election, at least 80 percent of the amount of a minimum distribution (from the earnings and profits to which the election for such year relates) which if received during such period would have satisfied the conditions for the section 963 exclusion to apply to such year. If less than 80 percent of the amount of a minimum distribution is received during such period, the existence of a reasonable cause for failure to receive a minimum distribution must be established by clear and convincing evidence; however, the preceding sentence shall not be taken as a limitation on the establishment of reasonable cause by any other proof of reasonable cause. For example, reasonable cause will exist if a single first-tier corporation for its taxable year makes a distribution which would be a minimum distribution but for a refund of foreign income tax which it has paid in good faith under foreign law but which is found not to be due after the United States income tax return of the United States shareholder has been filed.

(c) *Nature and details of determination.* (1) A determination that the section 963 exclusion does not apply to a United States shareholder for a taxable year due to its failure to receive a minimum distribution for such year shall, for the purposes of this section, be established by—

(i) A decision by the Tax Court or a judgment, decree, or other order by any court of competent jurisdiction, which has become final;

(ii) A closing agreement made under section 7121; or,

(iii) An agreement which is signed by the district director, or such other official to whom authority to sign the agreement is delegated, and by, or on behalf of, such shareholder and which relates to the liability of such shareholder for the tax under chapter 1 of the Code for such year.

(2) The date of determination by a decision of the Tax Court shall be the date upon which such decision becomes final, as prescribed in section 7481.

(3) The date upon which a judgment of a court becomes final shall be determined upon the basis of the facts in the particular case. Ordinarily, a judgment of a United States district court shall become final upon the expiration of the time allowed for taking an appeal, if no such appeal is duly taken within such time; and a judgment of the United States Court of Claims shall become final upon the expiration of the time allowed for filing a petition for certiorari, if no such petition is duly filed within such time.

(4) The date of determination by a closing agreement made under section 7121 shall be the date such agreement is approved by the Commissioner.

(5) The date of a determination made by an agreement which is signed by the district director, or such other official to whom authority to sign the agreement is delegated, shall be the date prescribed by this subparagraph. The agreement shall be sent to the United States shareholder at his last known address by either registered or certified mail. For further guidance regarding the definition of last known address, see §301.6212–2 of this chapter. If registered mail is used for such purpose, the date of registration shall be treated as the date of determination; if certified mail is used for such purpose, the date of the postmark on the sender's receipt for such mail shall be treated as the date of determination. However, if the deficiency distribution is received by such shareholder before such registration or postmark date but on or after the date the agreement is signed by the district director or such other official to whom authority to sign the agreement is delegated, the date of determination shall be the date on which the agreement is so signed.

(6) The determination under this paragraph shall find that, due to the United States shareholder's failure to receive a minimum distribution, the section 963 exclusion does not apply for the taxable year with respect to stock to which the election under such section relates. A determination described in subdivision (ii) or (iii) of subparagraph (1) of this paragraph shall set forth the amount of the deficiency distribution and the amount of additional income tax for which the United States shareholder is liable under Chapter 1 of the Code by reason of not including in gross income for such year the amount of the deficiency distribution. If a determination described in subdivision (i) of subparagraph (1) of this paragraph does not establish the amount of the deficiency distribution and such amount of additional tax, such amounts may be established by an agreement which is signed by the district director, or such other official to whom authority to sign the agreement is delegated.

(d) *Claim for treatment of distribution as a deficiency distribution*—(1) *Claim filed after date of determination.* A claim (including any amendments thereof) for treatment of a deficiency distribution as counting toward a minimum distribution for the taxable year of election shall be filed in duplicate, within 120 days after the date of the determination described in paragraph (c) of this section, with the requisite declaration prescribed by the Commissioner on the appropriate claim form and shall be accompanied by—

(i) A copy of such determination and a description of how it became final;

(ii) If requested by the district director, or by such other official to whom

authority to sign the agreement referred to in paragraph (c)(1) or (6) of this section is delegated, a consent by the United States shareholder under section 6501 to extend the period for the making of assessments, and the bringing of distraint or a proceeding in court for collection, in respect of a deficiency and all interest, additional amounts, and assessable penalties for the taxable year of election; and

(iii) Such other information as may be required by the claim form or the district director, or other official, in support of the claim.

(2) *Advance claim.* An advance claim for treatment of a deficiency distribution as counting toward a minimum distribution for the taxable year of election shall be filed in duplicate, within 90 days after such distribution but before the date of determination described in paragraph (c) of this section, and shall satisfy all requirements of subparagraph (1) of this paragraph other than subdivision (i) of such subparagraph. However, within 120 days after the date of the determination described in paragraph (c) of this section, the advance claim shall be completed so that it satisfies all requirements of subparagraph (1) of this paragraph.

(e) *Computation of interest on deficiencies in tax.* If a United States shareholder, for the taxable year of the election under section 963, completes a minimum distribution for such year by receiving a deficiency distribution to which this section applies, the interest on the deficiency in tax due by reason of the failure to include the amount of such deficiency distribution in such shareholder's gross income for such year shall be computed for the period from the last date prescribed for payment of the tax for such year to the date such deficiency in tax is paid. No interest shall be due by reason of the failure to include Subpart F income in gross income for a taxable year in respect of which a minimum distribution under section 963 is completed by a deficiency distribution to which this section applies.

(f) *Claim for credit or refund.* If a deficiency in tax is asserted for any taxable year by reason of failure to include Subpart F income in gross income under section 951(a)(1)(A)(i) and the United States shareholder has paid any portion of such asserted deficiency, such shareholder is entitled to a credit or refund of such payment to the extent that such payment constitutes an overpayment of tax as the result of the receipt of a deficiency distribution to which this section applies. To secure credit or refund of such overpayment of tax, the United States shareholder must file a claim for refund in accordance with §301.6402–3, in addition to the claim form required under paragraph (d) of this section. No interest shall be allowed on such credit or refund. For other rules applicable to the filing of claims for credit or refund of an overpayment of tax, see section 6402 and the regulations thereunder. For the limitations applicable to the credit or refund for an overpayment of tax, see section 6511 and the regulations thereunder.

(g) *Effect of deficiency distribution*—(1) *Allocation of distributions.* The deficiency distribution shall be allocated, by applying the rules of §1.963–3 (and paragraph (b) of §1.963–4, if applicable for the year of election), as a distribution first from the earnings and profits (to the extent thereof) of the foreign corporation which was the single first-tier corporation, or of the distributing corporation or corporations which were in the chain or group, as the case may be, for the taxable year in respect of which the election was made, and then from earnings and profits (to the extent thereof) described in section 959(c)(3) and determined as provided in section 959 for the most recent taxable year and the first, second, etc., taxable years preceding such recent taxable years, in that order, of the distributing corporation or corporations. In applying the preceding sentence to taxable years other than the taxable year in respect of which the election was made, the deficiency distribution shall first be allocated, in the order of allocation prescribed by such sentence, first to taxable years in respect of which no election under section 963 was made with respect to the stock on which such distribution is received and then to taxable years in respect of which an election under such section was made.

(2) *Year of receipt.* Any deficiency distribution made with respect to a taxable year of the United States shareholder shall be treated, except as provided in paragraph (b)(2) of this section, as having been received by the shareholder in that year for which such shareholder elected to secure an exclusion under section 963; and, for purposes of the foreign tax credit under section 901, the foreign income taxes paid or accrued, or deemed paid, by the United States shareholder by reason of a distribution of any amount treated as a deficiency distribution for such year shall be treated as paid or accrued, or deemed paid, for such year.

(3) *Year of payment.* A distribution counting toward a deficiency distribution for a taxable year of election shall, except as provided in paragraph (b)(2) of this section, be treated for purposes of applying paragraph (a) of §1.963–3, relating to conditions under which earnings and profits are counted toward a minimum distribution, and paragraph (b)(3) of §1.963–4, relating to rules for distributing through a chain or group, as if it were distributed during the distribution period (as defined in paragraph (g) of §1.963–3) with respect to the distributing corporation and each foreign corporation through which such distribution is made to the United States shareholder, for the taxable year to which the election under section 963 applies; and the foreign income taxes paid by any foreign corporation by reason of such distribution shall, in the application of section 902 and of the special rules of paragraph (c) of §1.963–4, be treated as paid or accrued by such foreign corporation for its taxable year to which such election applies. The distribution shall not count toward a minimum distribution for any other taxable year.

(4) *Allocation of reduction in tax credit.* If any portion of a deficiency distribution from a corporation which was in a chain or group is paid from earnings and profits of a taxable year other than that in respect of which the election was made, then the minimum distribution toward which such deficiency distribution counts may not be treated as a pro rata minimum distribution for purposes of §1.963–4. Moreover, the amount of the overall United States and foreign income tax with respect to such minimum distribution must satisfy the minimum tax requirements of paragraph (a)(1)(i), or paragraph (ii), of §1.963–4, but, if the latter applies, without any reduction and deferral under paragraph (c)(3) of such section of the foreign tax credit allowable under section 901 with respect to the deficiency distribution.

[T.D. 6759, 29 FR 13346, Sept. 25, 1964, as amended by T.D. 6767, 29 FR 14879, Nov. 3, 1964; T.D. 7410, 41 FR 11020, Mar. 16, 1976; T.D. 8939, 66 FR 2819, Jan. 12, 2001]

§ 1.963–7 Transitional rules for certain taxable years.

(a) *Extension of time for making, revoking, or changing election*—(1) *In general.* Subparagraphs (2) and (3) of this paragraph provide additional rules which apply only to a taxable year of a United States shareholder for which the last day prescribed by law for filing its return (including any extensions of time under section 6081) occurs on or before the 90th day after September 30, 1964.

(2) *Manner of making the election.* The election of the United States shareholder to secure the exclusion under section 963 and the consent to the regulations under such section may be made for the taxable year—

(i) By filing with the return (or with an amended return filed on or before such 90th day) for such taxable year—

(*a*) A written statement stating that such election is made for such taxable year, and

(*b*) The names of the foreign corporations to which such election applies, the taxable year, country of incorporation, pretax earnings and profits, foreign income taxes, earnings and profits, and outstanding capital stock, of each such corporation, and such other information relating to the election made as the Commissioner may prescribe, on or before the date of filing, by instructions or schedules to support such return; or

(ii) In case of any extension of time under section 6081 with respect to such taxable year where the last day prescribed by law for filing the return by the electing United States shareholder (not including any extensions thereof) occurs on or before September 30, 1964,