

the United States on or with respect to the earnings and profits attributable to such excluded amount when such earnings and profits were actually distributed directly or indirectly through a chain of ownership described in section 958(a)(2).

(c) *Amount in excess of basis.* To the extent that the amount of the reduction in the adjusted basis of property provided by paragraph (a) of this section exceeds such adjusted basis, the amount shall be treated as gain from the sale or exchange of property.

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

Example 1. (a) Domestic corporation M owns all of the 1,000 shares of the one class of stock in controlled foreign corporation R, which owns all of the 500 shares of the one class of stock in controlled foreign corporation S. Each share of M Corporation's stock in R Corporation has a basis of \$200. Corporations M, R, and S use the calendar year as a taxable year. In 1963, S Corporation has \$100,000 of earnings and profits after the payment of \$50,000 of foreign income taxes and \$100,000 of subpart F income. For 1963, M Corporation includes \$100,000 in gross income under section 951(a) with respect to S Corporation. In accordance with the provisions of § 1.961-1, M Corporation increases the basis of each of its 1,000 shares of stock in R Corporation to \$300 ($\$200 + \$100,000/1,000$) as of December 31, 1963.

(b) On July 31, 1964, M Corporation sells 250 of its shares of stock in R Corporation to domestic corporation N at a price of \$350 per share. Corporation N satisfies the requirements of paragraph (d) of § 1.959-1 so as to qualify as M Corporation's successor in interest. On September 30, 1964, the earnings and profits attributable to the \$100,000 included in M Corporation's gross income under section 951(a) for 1963 are distributed to R Corporation which incurs a withholding tax of \$10,000 on such distribution (10 percent of \$100,000) and an additional foreign income tax of 33½ percent or \$30,000 by reason of the inclusion of the net distribution of \$90,000 ($\$100,000$ minus $\$10,000$) in its taxable income for 1964. On June 30, 1965, R Corporation distributes the remaining \$60,000 of such earnings and profits to corporations M and N: Corporation M receives \$45,000 ($750/1,000 \times \$60,000$) and excludes such amount from gross income under section 959(a); Corporation N receives \$15,000 ($250/1,000 \times \$60,000$) and, as M Corporation's successor in interest, excludes such amount from gross income under section 959(a). As of June 30, 1965, M Corporation must reduce the adjusted basis of each of its 750 shares of stock in R Corporation to \$200

($\$300$ minus $(\$45,000/750 + \$10,000/1,000 + \$30,000/1,000)$); and N Corporation must reduce the basis of each of its 250 shares of stock in R Corporation to \$250 ($\350 minus $(\$15,000/250 + \$10,000/1,000 + \$30,000/1,000)$).

Example 2. The facts are the same as in paragraph (a) of example 1, except that in addition, on July 31, 1964, R Corporation sells its 500 shares of stock in S Corporation to domestic corporation P at a price of \$600 per share. Corporation P satisfies the requirements of paragraph (d) of § 1.959-1 so as to qualify as M Corporation's successor in interest. On September 30, 1964, S Corporation distributes \$100,000 of earnings and profits to P Corporation, which earnings and profits are attributable to the \$100,000 included in M Corporation's gross income under section 951(a) for 1963. Corporation P incurs a withholding tax of \$10,000 on the distribution from S Corporation (10 percent of \$100,000). As M Corporation's successor in interest, P Corporation excludes the \$90,000 it receives from gross income under section 959(a). As of September 30, 1964, P Corporation must reduce the basis of each of its 500 shares of stock in S Corporation to \$400 ($\600 minus $(\$90,000/500 + \$10,000/500)$).

[T.D. 6850, 30 FR 11854, Sept. 16, 1965]

§ 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 sections 960(a) and 960(d) (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).

(3) 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.

(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* means the excess of—

(A) The sum of—

(1) All amounts required to be included in his gross income under section 951(a) for the taxable year with respect to a foreign corporation of which he is a United States shareholder, including—

(i) His section 965(a) inclusion amounts (as defined in § 1.965-1(f)(38)); and

(ii) His domestic pass-through owner shares (as defined in § 1.965-1(f)(21)) of section 965(a) inclusion amounts with respect to deferred foreign income corporations (as defined in § 1.965-1(f)(17)) of which he is a United States shareholder; plus

(2) His GILTI inclusion amount (as defined in § 1.951A-1(c)(1)) for the taxable year; plus

(3) All amounts which would be required to be included in his gross income under section 78 for the taxable year with respect to the amounts referred to in paragraph (b)(1)(i)(A)(1) and (2) of this section if the shareholder were a domestic corporation; over

(B) The sum of the following deductions, but no other deductions or amounts—

(1) His section 965(c) deduction amount (as defined in § 1.965-1(f)(42)) for the taxable year;

(2) His domestic pass-through owner shares of section 965(c) deduction amounts corresponding to the amounts referred to in paragraph (b)(1)(i)(A)(1)(ii) of this section; and

(3) The portion of the deduction under section 250 and § 1.250(a)-1 that would be allowed to a domestic cor-

poration equal to the percentage applicable to global intangible low-taxed income for the taxable year under section 250(a)(1)(B) (including as modified by section 250(a)(3)(B)) multiplied by the sum of the amount described in paragraph (b)(1)(i)(A)(2) of this section and the amount described in paragraph (b)(1)(i)(A)(3) of this section that is attributable to the amount described in paragraph (b)(1)(i)(A)(2) of this section.

(ii) [Reserved]

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

(ii) *Application of sections 960(a) and 960(d).* In applying sections 960(a) and 960(d) for purposes of this paragraph (b)(2) in the case of an electing United States shareholder, the term “domestic corporation” as used in sections 960(a), 960(d), and 78, and the term “corporation” as used in sections 901 and 960(d)(2)(A) and (B), are treated as referring to such shareholder with respect to the amounts described in paragraph (b)(1)(i) of this section.

(iii) *Carryback and carryover of excess tax deemed paid.* For purposes of this paragraph (b)(2), other than with respect to section 951A category income (as defined in § 1.904-4(g)) (including section 951A category income that is reassigned to a separate category for income resourced under a treaty), 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 exceed the limitation determined under paragraph (b)(2)(iv)(A) of this section is treated as a carryback and carryover of excess tax paid under section 904(c), except that in no case will excess tax paid be deemed paid in another taxable year under section 904(c) if an election under section 962 by the shareholder does not apply for such taxable year. Such carrybacks and carryovers are applied

only against the United States tax on amounts described in paragraph (b)(1)(i) of this section.

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

(1) *Facts.* (i) Individual A is a U.S. resident who owns all of the shares of the one class of stock in CFC, a controlled foreign corporation. A and CFC each use the calendar year as their U.S. and foreign taxable years and the U.S. dollar as their functional currency. A owns no direct or indirect interest in any other controlled foreign corporation.

(ii) For the 2019 taxable year, CFC has \$6,000,000 of pre-foreign tax earnings with respect to which it accrues and pays \$1,000,000 of foreign income tax, leaving \$5,000,000 of after-tax net income. Of this amount, \$3,000,000 is general category tested income as defined in section 951A(c)(2), and \$2,000,000 is passive category subpart F income described in sections 952 and 904(d)(1)(C) that is all in a single subpart F income group under §§1.954-1(c)(1)(iii) and 1.960-1(d)(2)(ii)(B)(2)(i). Of the \$1,000,000 of foreign income taxes

paid or accrued by CFC, \$600,000 is allocated and apportioned to its general category tested income group and \$400,000 is allocated and apportioned to its passive category subpart F income group under § 1.960-1(d)(3)(ii).

(iii) For the 2019 taxable year, A includes under section 951A(a) all \$3,000,000 of the tested income of CFC as A's GILTI inclusion amount, as defined in § 1.951A-1(c)(1). In addition, A includes under section 951(a)(1) the \$2,000,000 of passive category subpart F income of CFC.

(iv) For the 2019 taxable year, A earns \$1,000,000 of foreign source passive category gross income and \$3,000,000 of U.S. source gross income. A pays \$100,000 of foreign withholding taxes with respect to the \$1,000,000 of foreign source passive category gross income. A incurs \$1,000,000 of deductible expenses for the 2019 taxable year that are definitely related to all of A's gross income and are properly allocated and apportioned under §§1.861-8(b)(5) and 1.861-8T(c)(1) among the section 904 statutory and residual groupings on the basis of the relative amounts of gross income in each grouping.

(v) A elects to apply section 962 and chooses to claim credits under section 901 for the 2019 taxable year.

(2) *Analysis with respect to section 962 taxable income.* (i) Section 962(a)(1) and § 1.962-1(a)(1) provide that when an individual United States shareholder elects to apply section 962 for a taxable year, the U.S. tax imposed with respect to amounts that the individual includes under section 951(a) (the "section 951(a) inclusions") equals the tax that would be imposed under section 11 if the amounts were included by a domestic corporation under section 951(a). For purposes of section 962, an amount included under section 951A is treated as an inclusion under section 951(a). See section 951A(f)(1)(A). Therefore, A has total section 951(a) inclusions of \$5,000,000: a \$2,000,000 passive category subpart F inclusion and a \$3,000,000 GILTI inclusion amount. A is taxed at the corporate rates under section 11 with respect to these inclusions.

(ii) Section 962(a)(2), § 1.962-1(a)(2), and § 1.962-1(b)(2) provide that sections 960(a) and 960(d) apply to the section

951(a) inclusions of an electing individual United States shareholder as though the inclusions were received by a domestic corporation, and the electing individual United States shareholder is allowed a credit against the U.S. tax imposed with respect to the section 951(a) inclusions.

(iii) Section 960(a) deems a domestic corporation that is a United States shareholder of a controlled foreign corporation to pay the foreign income taxes paid or accrued by the foreign corporation that are properly attributable to the foreign corporation's items of income included in the domestic corporation's income under section 951(a). The foreign income taxes of a CFC that are properly attributable to such items are the domestic corporation's proportionate share of the taxes that are allocated and apportioned to the relevant subpart F income group. See §1.960-1(c) and §1.960-2(b). A owns 100 percent of CFC, and includes all of its subpart F income, which is in a single subpart F income group. Therefore, all of the \$400,000 of foreign income taxes that are allocable to CFC's subpart F income are properly attributable to the section 951(a) inclusion of A, and A is deemed to pay these taxes.

(iv) Section 960(d) provides that a domestic corporation that has an inclusion in income under section 951A is deemed to pay an amount of foreign income taxes equal to 80 percent of the product of the domestic corporation's inclusion percentage multiplied by the sum of all tested foreign income taxes. Tested foreign income taxes are the foreign income taxes of a controlled foreign corporation that are properly attributable to its tested income that the domestic corporation takes into account under section 951A. The foreign income taxes that are properly attributable to the tested income taken into account by a domestic corporation are the domestic corporation's proportionate share of the controlled foreign corporation's foreign income taxes that are allocated and apportioned to the relevant tested income. See §1.960-1(c) and §1.960-2(c). Because A owns 100% of CFC and takes all \$3,000,000 of CFC's tested income into account in computing A's GILTI inclusion amount, all \$600,000 of the foreign income taxes

that are allocated and apportioned to the general category tested income group of CFC are tested foreign income taxes. A has an inclusion percentage of 100 percent because A's GILTI inclusion amount equals all of A's share of the tested income of CFC. A is therefore deemed to pay under section 960(d) 80 percent of the \$600,000 of tested foreign income taxes of CFC, or \$480,000 of the tested foreign income taxes.

(v) Section 1.962-1(b)(1)(i)(A) provides that, for purposes of computing taxable income under section 962, gross income includes amounts that would be included under section 78 if the shareholder with the section 951(a) inclusions were a domestic corporation. Section 78 requires a domestic corporation to include in its gross income the foreign income taxes that it is deemed to pay under section 960, computed without regard to the 80 percent limitation under section 960(d), and to which the benefits of section 901 apply. See section 78. A therefore includes in gross income the \$600,000 of foreign income taxes that A is deemed to pay under section 960(d), computed without regard to the 80 percent limitation, and the \$400,000 of taxes that A is deemed to pay under section 960(a).

(vi) Section 1.962-1(b)(1)(i)(B)(3) provides that, for purposes of computing taxable income under section 962, gross income is reduced only by specified deductions, which include the deduction allowed to a domestic corporation under section 250 and §1.250(a)-1 equal to 50 percent of the sum of the GILTI inclusion amount and the inclusion under section 78 with respect to the GILTI inclusion amount. See section 250(a). A is therefore allowed a deduction under section 250 equal to 50 percent of \$3,600,000 (the \$3,000,000 GILTI inclusion amount plus the \$600,000 inclusion under section 78), or \$1,800,000.

(vii) A's taxable income and pre-credit U.S. tax liability with respect to the section 951(a) inclusions are computed as follows:

TABLE 1 TO PARAGRAPH (c)(2)(vii)

Section 951(a) inclusions with respect to CFC	\$5,000,000
Section 78 inclusions	1,000,000
Deduction under section 250	(1,800,000)

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TABLE 1 TO PARAGRAPH (c)(2)(vii)—Continued

Taxable income under section 962	4,200,000
Pre-credit U.S. tax (0.21 × \$4,200,000)	882,000

(viii) Section 962 and §1.962-1(b)(2) provide that, in computing the section 904 limitation on the credit for foreign income taxes that an electing individual United States shareholder is deemed to pay under sections 960(a) and (d), the individual's taxable income for a taxable year is considered to consist only of section 951(a) inclusions and the deductions allowed under section 962. Section 904 limits the credit that a taxpayer may claim for the taxes that it pays or accrues, or is deemed to pay, to the amount of its U.S. tax that is attributable to the taxpayer's foreign source income, and applies this limitation separately with respect to each separate category of income. The limitation amount is computed by multiplying the taxpayer's total pre-credit U.S. tax by the ratio of the taxpayer's foreign source taxable income in a separate category for the taxable year to the taxpayer's total taxable income for the taxable year. See section 904(a) and §1.904-1(a).

(ix) A must compute the limitation on the credit for the foreign income taxes deemed paid under section 960(d) separately with respect to A's taxable income in the separate category described in section 904(d)(1)(A) (the "GILTI category"), namely, taxable income attributable to the GILTI inclusion amount. The limitation is computed using only A's 2019 taxable income under section 962 and the pre-credit U.S. tax of \$882,000 on this income. A therefore computes the limitation by multiplying \$882,000 by the ratio of A's foreign source GILTI category taxable income under section 962 to A's total taxable income under section 962, as follows:

TABLE 2 TO PARAGRAPH (c)(2)(ix)

GILTI inclusion amount	\$3,000,000
Section 78 inclusion	\$600,000
Section 250 deduction	(\$1,800,000)
Total GILTI category taxable income under section 962	\$1,800,000

TABLE 2 TO PARAGRAPH (c)(2)(ix)—Continued

Ratio of GILTI category taxable income to total taxable income under section 962 (1,800,000/\$4,200,000)	42.86%
Limitation amount (pre-credit U.S. tax of \$882,000 × (\$1,800,000/\$4,200,000)) ..	\$378,000

(x) A also must compute the limitation on the credit for the foreign income taxes deemed paid under section 960(a) separately with respect to the foreign source passive category taxable income under section 962, namely, A's taxable income attributable to the subpart F inclusion. A computes the limitation by multiplying A's pre-credit U.S. tax of \$882,000 by the ratio of A's foreign source passive category taxable income under section 962 to A's total taxable income under section 962, as follows:

TABLE 3 TO PARAGRAPH (c)(2)(x)

Subpart F inclusion	\$2,000,000
Section 78 inclusion	\$400,000
Total foreign source passive category taxable income ...	\$2,400,000
Ratio of foreign source passive category taxable income to total taxable income under section 962 (\$2,400,000/\$4,200,000) ...	57.14%
Limitation amount (pre-credit U.S. tax of \$882,000 × (\$2,400,000/\$4,200,000)) ..	\$504,000

(xi) A may claim a foreign tax credit for \$378,000 of the \$480,000 of foreign income taxes deemed paid under section 960(d), and a foreign tax credit for all \$400,000 of the foreign income taxes deemed paid under section 960(a), for a total foreign tax credit of \$778,000. The U.S. tax on A's 2019 taxable income with respect to CFC under section 962 is reduced from \$882,000 to \$104,000 (\$882,000 minus \$778,000).

(3) *Analysis with respect to other income.* (i) A's taxable income and pre-credit U.S. tax liability with respect to A's other income is computed as follows:

TABLE 4 TO PARAGRAPH (c)(3)(i)

Gross income	\$4,000,000
Deductions	1,000,000
Taxable Income	3,000,000
Pre-credit U.S. tax computed under section 1(j)	1,074,988

(ii) A must compute a separate limitation on the credit for the foreign withholding taxes paid with respect to A's other foreign source passive category taxable income. Under § 1.962-1(b)(2)(iv)(B), A's section 904 limitation on this income is computed on the basis of A's taxable income other than the amounts taken into account under § 1.962-1(b)(1)(i). Accordingly, \$250,000 of A's deductions ($\$1,000,000 \times \$1,000,000/\$4,000,000$) are apportioned to A's \$1,000,000 of other foreign source passive category gross income, and \$750,000 of deductions ($\$1,000,000 \times \$3,000,000/\$4,000,000$) are apportioned to A's \$3,000,000 of U.S. source gross income, resulting in \$750,000 of other foreign source passive category taxable income and \$2,250,000 of U.S. source taxable income. A computes the limitation by multiplying A's pre-credit U.S. tax on A's other income of \$1,074,988 by the ratio of A's other foreign source passive category taxable income to A's other total taxable income, as follows:

TABLE 5 TO PARAGRAPH (c)(3)(ii)

Total other foreign source passive category taxable income	\$750,000
Ratio of other foreign source passive category taxable income to total other taxable income ($\$750,000/\$3,000,000$)	25%
Limitation amount (pre-credit U.S. tax of \$1,074,988 \times ($\$750,000/\$3,000,000$))	\$268,747

(iii) A may claim a foreign tax credit under section 901 for all \$100,000 of the foreign withholding taxes on the other passive income. The U.S. tax on A's \$3,000,000 of other taxable income is reduced from \$1,074,988 to \$974,988 (\$1,074,88 minus \$100,000).

(d) *Applicability dates.* Except as otherwise provided in this paragraph (d), paragraph (b)(1)(i) of this section ap-

plies beginning the last taxable year of a foreign corporation that begins before January 1, 2018, and with respect to a United States person, for the taxable year in which or with which such taxable year of the foreign corporation ends. Paragraphs (b)(1)(i)(A)(2) and (b)(1)(i)(B)(3) of this section apply to taxable years of a foreign corporation that end on or after March 4, 2019, and with respect to a United States person, for the taxable year in which or with which such taxable year of the foreign corporation ends. Paragraphs (a)(2), (b)(1)(ii), (b)(2)(i) through (iii), and (c) of this section apply to taxable years of a foreign corporation that end on or after July 15, 2020, and with respect to a United States person, for the taxable year in which or with which such taxable year of the foreign corporation ends. For taxable years that precede the applicability dates described in the preceding two sentences, taxpayers may choose to apply the provisions of paragraphs (a)(2), (b)(1)(i)(A)(2), (b)(1)(i)(B)(3), (b)(1)(ii), (b)(2)(i) through (iii), and (c) of this section for taxable years of a foreign corporation beginning on or after January 1, 2018, and with respect to a United States person, for the taxable year in which or with which such taxable year of the foreign corporation ends.

[T.D. 6858, 30 FR 13695, Oct. 28, 1965, as amended by T.D. 7413, 41 FR 12640, Mar. 26, 1976; T.D. 9846, 84 FR 1874, Feb. 5, 2019; T.D. 9849, 84 FR 9236, Mar. 14, 2019; T.D. 9901, 85 FR 43109, July 15, 2020]

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

(a) *Who may elect.* The election under section 962 may be made only by an individual (including a trust or estate) who is a United States shareholder (including an individual who is a United States shareholder because, by reason of section 958(b), he is considered to own stock of a foreign corporation owned (within the meaning of section 958(a)) by a domestic pass-through entity (as defined in § 1.965-1(f)(19))).

(b) *Time and manner of making election.* 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.